BRUNSWICK CITY
COMMITTEE-OF-THE-WHOLE

Agenda

JANUARY 8, 2024
6:15 PM
or Immediately Following
Services, Utilities, Technology & Cable Committee

1. Discussion Items

   (a) Discussion and motion to appoint Vice Mayor of Council

   (b) Vice Mayor to choose Vice Mayor Pro Tem

   (c) Discussion on Seat Assignments

   (d) Review of Council Rules 2022-2023 for any changes

   (e) Discussion of Committee assignments

   (f) Consider rescheduling 2024 Council Meetings with legal holiday conflicts (consider moving the May 27 Council Meeting to the third Monday, May 20, due to Memorial Day, Columbus Day, October 14, and consider moving the December 23 Council Meeting to the third Monday, December 16, due to Christmas).

   (g) Goal Setting Session

2. Motion Items

   (a) Motion to appoint Clerk of Council, Laura Timura as designee for all elected officials to attend public records training as required by Section 149.43 and 109.43 of the Ohio Revised Code.

   (b) Motion pursuant to Charter Section 3.11

3. Review Legislation

   (a) **RES. NO. 6-2024 -** An emergency resolution selecting City of Medina Councilman Dennie R. Simpson to serve as a voting member on the Medina County 9-1-1 Program Review Committee. - **1st Reading** (Committee-of-the-Whole, *Administration/Carl DeForest*)

   (b) **ORD. NO. 7-2024 -** An ordinance establishing Codified Ordinance Chapter 868 of the City of Brunswick Codified Ordinances relative to the license of Tobacco Retail Establishments - **1st Reading** (To be brought from Committee-of-the-Whole, *Administration/ Dennis Nevar*)

4. General Discussion

5. Executive Session

   (a) Motion to go into Executive Session to discuss the subject of pending or imminent court action.

6. Adjournment

THE CITY OF BRUNSWICK

PROPOSED LEGISLATION

DATE: 1/8/2024

TO: Vice Mayor Nicholas Hanek and Members of City Council

FROM: Carl S. DeForest, City Manager
Carl DeForest

COPY: Mayor Ron Falconi

LEGISLATION: **RES. NO. 6-2024 -** An emergency resolution selecting City of Medina Councilman Dennie R. Simpson to serve as a voting member on the Medina County 9-1-1 Program Review Committee. - **1st Reading** (Committee-of-the-Whole, *Administration/Carl DeForest*)

BACKGROUND: The City of Medina requires the City's confirmation of their recommendation to appoint Dennie Simpson to the Medina County 9-1-1 Program Review Committee.

PURPOSE AND EXPLANATION: A total of 5 resolutions from cities and villages is required to confirm the appointment.

Per Ohio Revised Code Section 128.06(A), the following are Members of the Medina County 911 Program Review Committee:

1. A Member of the Board of County Commissioners, or designee, who shall serve as Chairperson.
2. The Chief Executive Officer of the most populous municipal corporation in the County, Carl DeForest on behalf of the City of Brunswick.
3. A member of the Board of Township Trustees of the most populous Township in the County.
4. A member of a Board of Township Trustees in the County as selected by a majority of the Boards of Township Trustees in the County by Resolution.
5. A member of the legislative authority of a municipal corporation in the County selected by the majority of the legislative authorities of municipal corporations in the County by Resolution.

** This is the provision upon which the City of Medina is recommending the appointment of Medina City Council Member Dennie Simpson.

6. An elected official from within the Court appointed by the Board of County Commissioners.

IMPLEMENTATION

SCHEDULE: One reading, emergency with suspension of the rules.

FINANCIAL INFORMATION:

FINANCIAL SUMMARY:

RECOMMENDED ACTION:

One Reading	Yes
Two Readings	No
Three Readings	No
Emergency	Yes
Suspension of Rules	Yes

If emergency or suspension of the rules, why the request?
The committee will have its first meeting in January and will need to have the committee already in place.

ADDITIONAL INFORMATION:

CITY OF BRUNSWICK, OHIO
RESOLUTION NO. 6-2024

BY: Committee-of-the-Whole

AN EMERGENCY RESOLUTION SELECTING CITY OF MEDINA COUNCILMAN DENNIE R. SIMPSON TO SERVE AS A VOTING MEMBER ON THE MEDINA COUNTY 9-1-1 PROGRAM REVIEW COMMITTEE.

WHEREAS: Ohio Revised Code Section 128.06(A) provides that every county in the State of Ohio shall maintain a 9-1-1 Program Review Committee;

WHEREAS: Ohio Revised Code Section 128.06(A)(5) provides that the 9-1-1 Program Review Committee shall consist of a member of the legislative authority of a municipal corporation in the county selected by the majority of the legislative authorities of municipal corporations in the county by duly adopted resolution; and

WHEREAS: Pursuant to Ohio Revised Code Section 128.06(A)(5), the City of Medina has recommended City of Medina Councilman Dennie R. Simpson to serve as a voting member on the Medina County 9-1-1 Program Review Committee.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY RESOLVES:

SECTION 1: That pursuant to Ohio Revised Code Section 128.06(A)(5), this Council hereby selects City of Medina Councilman Dennie R. Simpson to serve as a voting member on the Medina County 9-1-1 Program Review Committee.

SECTION 2: That this Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety or welfare, and for the additional reason that immediate passage is necessary as the Medina County 9-1-1 Program Review Committee is scheduled to have its first meeting in January of 2024. Therefore, the same shall be in full force and effect from and after its passage by the required number of votes or from the earliest time allowed by law.

PASSED: 1st Reading _____

Rules Suspended: AYES _____ NAYS _____

ADOPTED: _____ AYES _____ NAYS _____

ATTEST: _____
Clerk of Council
Laura E. Timura

County Final Plan – Guidance/Recommendations

Department of Administrative Services
9-1-1 Program Office

County 9-1-1 Coordinators,

Several have asked for input on how to complete your County final plan. The 9-1-1 Program Office has reviewed the Ohio Revised Code (ORC) and is providing general guidance on what should be included in your final plan. It is always recommended that you contact your local legal counsel for specific directions. We are also providing recommendations on additional information that can be included in your final plan, in addition to the required content.

Before you get started a couple of changes are important to note.

- Your final plan is due to the 9-1-1 Program Office on or before **April 3, 2024**, as per §128.08(B)(2).
- ORC §128.571 was repealed, therefore there is no longer a limitation on the number of PSAPs that can receive Government Assistance Funds (GAF). Therefore, if you had only one or two PSAPs receiving Wireless Government Assistance Funds (WGAF), you can now provide funding to others if you so choose. For any PSAP to receive funding, they will need to be working on transition to Next Generation 9-1-1. Once a PSAP receives GAF or NG9-1-1 funding they will have to meet the PSAP rules as defined in Chapter 5507 of the Ohio Administrative Code (OAC).
- All call routing in NG9-1-1 is based off GIS polygon layers and not your standard call routing. If you limit the call routing to a specific PSAP for wireless vs. wireline you would be reducing the capabilities of the NG9-1-1 system. It can be done if you still want that in your community, but we strongly advise against that.

Effective October 3, 2023, Ohio revised code §128.06 requires each County to have a 9-1-1 Program Review Committee. The committee's make-up is based on how your county operates. You have four (4) options to choose from: §128.06 (A), (B), (C)(1), or (C)(2).

- **§128.06 (A)**
  - Counties that have more than one Public Safety Answering Point (PSAP) unless you meet the requirements in (B).
    1. A member of the board of county commissioners, or a designee, who shall serve as chairperson of the committee;
    2. The chief executive officer of the most populous municipal corporation in the county;
       a. When determining population under division (A)(2) of this section, population residing outside the county shall be excluded.
    3. A member of the board of township trustees of the most populous township in the county as selected by majority vote of the board of trustees;
    4. A member of a board of township trustees selected by the majority of boards of township trustees in the county pursuant to resolutions they adopt;
    5. A member of the legislative authority of a municipal corporation in the county selected by the majority of the legislative authorities of municipal corporations in the county pursuant to resolutions they adopt;
    6. An elected official from within the county appointed by the board of county commissioners.

- **§128.06 (B)**
  - Counties that have **fewer** than five (5) township, population **greater** than seven hundred and fifty thousand (750,000), which contain more than one PSAP, the 9-1-1 review committee shall consist of five members as follows:
    1. A member of the board of county commissioners, or a designee, who shall serve as chairperson of the committee;
    2. The chief executive officer of the most populous municipal corporation in the county. Population residing outside the county shall be excluded when making this determination.
    3. A member from one of the following, whichever is more populous
       a. The chief executive officer of the second most populous municipal corporation in the county;
       b. A member of the board of township trustees of the most populous township in the county as selected by majority vote of the board of trustees.
    4. The chief executive officer of a municipal corporation in the county selected by the majority of the legislative authorities of municipal corporations in the county pursuant to resolutions they adopt;
    5. A member of a board of township trustees selected by the majority of boards of township trustees in the county pursuant to resolutions they adopt.

- **§128.06 (C)(1)**
  - In counties that contain only one PSAP, the composition of the 9-1-1 review committee shall consist of three members as follows:

1) If the PSAP is not operated by the board of county commissioners, the committee shall be composed of the following:
   a) A member of the board of county commissioners, or the member's designee, who shall serve as chairperson of the committee;
   b) One of the following:
      i) If the PSAP is operated by a township, then a member of the board of township trustees;
      ii) If the PSAP is operated by a municipal corporation, then the chief executive officer of the municipal corporation;
      iii) If the PSAP is operated by a subdivision that is not a township or municipal corporation or is operated by a regional council of governments, then an elected official of that subdivision or regional council of governments.
   c) A member who is an elected official of the most populous township or municipal corporation in the county that does not operate the PSAP. When determining population under this division, the population residing outside the county shall be excluded.

- **§128.06 (C)(2)**
  - In counties that contain only one PSAP, the composition of the 9-1-1 review committee shall consist of three members as follows:
  2) If the PSAP is operated by the board of county commissioners, then the board of county commissioners shall serve as the 9-1-1 program review committee.

Other areas of interest in ORC §128.06 that you will need to keep in mind as they have **annual requirements** are as follows:

- **§128.06 (D)**
  - Each committee shall maintain and amend a final plan for implementing and operating a countywide 9-1-1 system. Any amendment to the final plan shall require a two-thirds vote of the committee. Each committee shall convene at least once annually for the purposes of maintaining or amending a final plan described in this section.
- **§128.06 (E)**
  - Each committee shall, not later than the first day of March of each year, submit a report to the political subdivisions within the county and to the 9-1-1 program office detailing the sources and amounts of revenue expended to support and all costs incurred to operate the countywide 9-1-1 system and the PSAPS that are a part of that system for the previous calendar year. A county shall provide the county's committee with any clerical, legal, and other staff assistance necessary.
  - ❖ The 9-1-1 Program Office has created a new form to capture 128.06(E) information.

- Each final plan must contain the answers to the following eight subsections of ORC §128.07:
  - §128.07 (A)
    - (1) Which telephone companies serving customers in the county and, as authorized in division (A) of section 128.03 of the Revised Code, in an adjacent county will participate in the 9-1-1 system;
      - ❖ This could be AT&T, Frontier, CenturyLink, etc.
    - (2) The location and number of PSAPS; how the PSAPS will be connected to a county's preferred next generation 9-1-1 system; from what geographic territory each PSAP will receive 9-1-1 calls; whether enhanced 9-1-1 or next generation 9-1-1 service will be provided within such territory; what subdivisions will be served by the PSAP; and whether a PSAP will respond to calls by directly dispatching an emergency service provider, by relaying a message to the appropriate emergency service provider, or by transferring the call to the appropriate emergency service provider;
      - ❖ Name and address of each PSAP in your County
      - ❖ How each PSAP will connect to the County's preferred NG9-1-1 system
      - ❖ From what geographic territory each of the PSAPs will receive 9-1-1 calls (County/Township/City/Village/etc.)

- ❖ Within each territory listed whether Enhanced 9-1-1 or NG9-1-1 service be provided
- ❖ What subdivisions will be served by each PSAP listed (County Sheriff/Law Enforcement Agency/Fire Department or District/EMS/etc.)
- ❖ Identify if the listed PSAPs are going to respond to calls by directly dispatching, relaying a message, or transferring the call to an appropriate emergency service provider. (Some PSAPs may do all three, others may only relay or transfer)

(3) How originating service providers must connect to the core 9-1-1 system identified by the final plan and what methods will be utilized by the originating service providers to provide 9-1-1 voice, text, other forms of messaging media, and caller location to the core 9-1-1 system;

- ❖ How the originating service providers are going to connect the 9-1-1 core system.
  - (i) Example: Send calls directly to the NG9-1-1 core via internet protocol
  - (ii) Example: Link the selective routers to NG9-1-1 core

(4) That in instances where a public safety answering point, even if capable, does not directly dispatch all entities that provide the emergency services potentially needed for an incident, without significant delay, that request shall be transferred or the information electronically relayed to the entity that directly dispatches the potentially needed emergency services;

- ❖ If you are not directly dispatching a call for service, how will you notify the dispatching agency of the call for service? Will you be doing a data transfer, call relay, or transferring the caller?

(5) Which subdivision or regional council of governments will establish, equip, furnish, operate, and maintain a particular PSAP;

- ❖ Based on your list of PSAPs under 128.07(A)(2) define how each PSAP will be established, equipped, furnished, operated, and maintained

(6) A projection of the initial cost of establishing, equipping, and furnishing and of the annual cost of the first five years of operating and maintaining each PSAP;

- ❖ Most PSAPs in Ohio are already established, but still have ongoing costs. Provide the annual cost for each PSAP under 128.07(A)(2) and the most recent five-year cost to operate and maintain.

(7) Whether the cost of establishing, equipping, furnishing, operating, or maintaining each PSAP should be funded through charges imposed under section 128.35 of the Revised Code or will be allocated among the subdivisions served by the PSAP and, if any such cost is to be allocated, the formula for so allocating it;

- ❖ Indicate whether you are funding the PSAP from charges on improved realty and/or if the costs are being allocated among the subdivisions served by the PSAP. If the costs are being allocated among subdivisions, also provide the formula.

(8) How each emergency service provider will respond to a misdirected call or the provision of a caller location that is either misrepresentative of the actual location or does not meet requirements of the federal communications commission or other accepted national standards as they exist on the date of the call origination.

- ❖ Indicate how each PSAP will handle a misdirected call.

Above are the items required by the ORC. Once you have completed your final plan, you will need to distribute the information:

128.07(B)(1)(a): The 9-1-1 program review committee shall send a copy of the final plan to the following entities either by certified mail or, if the committee has record of an internet identifier of record associated with the board or legislative authority, by ordinary mail and by that internet identifier of record:

- The board of county commissioners of the county
- The legislative authority of each municipal corporation in the county
- The board of township trustees of each township in the county

*128.07(C) As used in this section, "internet identifier of record" has the same meaning as in §9.312 ORC

128.07(B)(1)(b): The 9-1-1 program review committee shall also send a copy of the final plan to the additional following entities:

- The board of trustees, directors, or park commissioners of each subdivision that will be served by a PSAP under the plan.

128.07(B)(2): The 9-1-1 program review committee shall also file a copy of its final plan with the Ohio 9-1-1 Program Office not later than April 3, 2024. (6 months after the October 3, 2023, effective date).

128.07(B)(2): Any revisions or amendments made to the final plan (after the April 3, 2024, plan is filed) shall be filed with the Ohio 9-1-1 Program Office not later than ninety (90) days after adoption.

To create/approve the Final Plan due on April 3, 2024, to the Ohio 9-1-1 Program Office, you must follow the guidelines for local adoption of the plan found in ORC §128.08. Once you have your Final County 9-1-1 Plan filed, and you are only doing an addendum, you will follow the guidelines in ORC §128.12 for local adoption of the plan.

Within your County Plan you may want to also provide the following information:

1. Which PSAPs listed are supported by GAF funds (directly or indirectly)
2. Is the PSAP required to comply with Ohio Administrative Code Chapter 5507
3. If your center is required to provide EMD but it's being handled by another agency identify the agency and how this is being accomplished.
4. ORC §128.05 Identify your County Coordinator (Name, Title, Agency, and Contact Information)
5. ORC §128.25 Identify your County Point of Contact for 9-1-1 discrepancies, misroutes, and boundary disputes (Name, Title, Agency, and Contact Information)

Please submit your final plans by April 3, 2024, to the Ohio 9-1-1 Program Office, by either of the following:

Mail to: Ohio 9-1-1 Program Office, 4200 Surface Road, Columbus, Ohio 43228
or
Email to: Ohio9-1-1@das.Ohio.gov

**Please note, the Ohio 9-1-1 Program Office has developed a fill-in-the-blanks template for your Final Plans which you are welcome/encouraged to make use of for filing your initial April 3, 2024 Final Plan. You are not required to use this template, but it may help ensure you are capturing all of the necessary information that is required to be included in your Final Plans. Any questions should be directed to the Ohio Program Office at Ohio9-1-1@das.Ohio.gov or by calling the Program office at 614.728.2114.

THE CITY OF BRUNSWICK

PROPOSED LEGISLATION

DATE: 1/8/2024

TO: Vice Mayor Nicholas Hanek and Members of City Council

FROM: Carl S. DeForest, City Manager
Carl DeForest

COPY: Mayor Ron Falconi

LEGISLATION: **ORD. NO. 7-2024 -** An ordinance establishing Codified Ordinance Chapter 868 of the City of Brunswick Codified Ordinances relative to the license of Tobacco Retail Establishments - **1st Reading** (To be brought from Committee-of-the-Whole, *Administration/ Dennis Nevar*)

BACKGROUND: This Council recognizes that young people are particularly susceptible to the addictive properties of tobacco and nicotine and that youth who begin using tobacco and nicotine products are more likely to become lifelong users, reversing previous progress in the reduction of the overall tobacco use rate. This Council has the authority to protect life, health, and safety by requiring tobacco and nicotine retailers in the City to obtain and maintain a tobacco retailer license as a condition for engaging in the business of selling tobacco products.

A tobacco retailer license is an evidence-based strategy to reduce initiation to nicotine and tobacco through improved compliance with minimum legal sales age and other important sales regulations. A tobacco retailer license is a regulatory tool that further enables the City to monitor nicotine and tobacco sales, fund compliance efforts, and create effective penalty and suspension structures for repeated violations. Tobacco retailer license laws in other communities have been effective in reducing the number of illegal nicotine and tobacco sales to underage purchasers.

PURPOSE AND EXPLANATION:

IMPLEMENTATION SCHEDULE: Three readings

FINANCIAL INFORMATION:

FINANCIAL SUMMARY:

RECOMMENDED

ACTION:

One Reading	No
Two Readings	No
Three Readings	Yes
Emergency	No
Suspension of Rules	No

If emergency or suspension of the rules, why the request?

ADDITIONAL INFORMATION:

CITY OF BRUNSWICK, OHIO
ORDINANCE NO. 7-2024

BY: Committee-of-the-Whole

AN ORDINANCE ESTABLISHING CHAPTER 868 OF THE CITY OF BRUNSWICK CODIFIED ORDINANCES RELATIVE TO THE LICENSE OF TOBACCO RETAIL ESTABLISHMENTS.

WHEREAS: This Council recognizes the health risks associated with nicotine and tobacco use and addiction, especially for young people.

WHEREAS: US Food and Drug Administration data indicates that one in five Ohio retailers illegally sell nicotine and tobacco products to underage buyers.

WHEREAS: Tobacco retailers may choose to concentrate near schools and in low-income neighborhoods.

WHEREAS: Tobacco use is the foremost preventable cause of premature death in the U.S., causing a half million deaths annually, and has been responsible for 20.8 million premature deaths in the U.S. since the first U.S. Surgeon General's report on smoking in 1964.

WHEREAS: This Council recognizes that young people are particularly susceptible to the addictive properties of tobacco and nicotine, and that youth who begin using tobacco and nicotine products are more likely to become lifelong users, reversing previous progress in the reduction of the overall tobacco use rate.

WHEREAS: This Council has the authority to protect life, health and safety by requiring tobacco and nicotine retailers in the City to obtain and maintain a tobacco retailer license as a condition for engaging in the business of selling tobacco products.

WHEREAS: A tobacco retailer license is an evidence-based strategy to reduce initiation to nicotine and tobacco through improved compliance with minimum legal sales age and other important sales regulations.

WHEREAS: A tobacco retailer license is a regulatory tool that further enables the City to monitor nicotine and tobacco sales, fund compliance efforts, and create effective penalty and suspension structures for repeated violations.

WHEREAS: Tobacco retailer license laws in other communities have been effective in reducing the number of illegal nicotine and tobacco sales to underage purchasers.

WHEREAS: THE COUNCIL OF THE CITY OF BRUNSWICK HEREBY ORDAINS:

SECTION 1: That the Chapter 868 of the Codified Ordinances titled "Tobacco Retailer Licenses" is hereby established to read as follows:

"868.01 DEFINITIONS.

(A) Definitions. For the purposes of this Section, the following definitions shall apply:

(1) "Applicant" means the applicant for a license under this Chapter, including any person or entity that holds an interest in the applicant.

(2) "Compliance Check" means the system utilized by the Licensing Agent to investigate and ensure that those authorized to sell Tobacco Products are following and complying with the requirements of this Chapter. Compliance checks may be conducted by the Licensing Agent, the City of Brunswick and/or other units of government or designated agencies for educational, research and/or training purposes, of for investigating and enforcing federal, state and local laws pertaining to Tobacco Products.

(3) "Distribute" means giving, providing, or delivering Tobacco Products.

(4) "Educational Facility" means any public or private educational facility, including, without limitation, child-care facilities, nursery schools, pre-schools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, junior colleges and universities, trade schools, tutorial services and commercial learning centers.

(5) "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized nicotine or any other substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic Smoking Device includes any component, part, or accessory to such a device, whether or not sold separately, and also includes any substance intended to be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic Smoking Device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(6) "Licensee" means the holder of a valid Tobacco Retailer License or Temporary Event License.

(7) "Licensing Agent" means the City of Brunswick or its duly authorized designee.

(8) "Person" means any natural person.

(9) "Premises" means the location to which any License or Temporary Event License issued under this Chapter has been issued.

(10) "Public Place" means any area in which the public is invited or permitted, including, without limitation, any public park or playground, but excluding any public right-of-way.

(11) "Purchaser" means any person who obtains or attempts to obtain a Tobacco Product.

(12) "Religious Institution" means a church, synagogue, temple or building which is used primarily for religious worship and related religious activities.

(13) "Sale", "Sell" or "Sold" means transferring, or offering or attempting to transfer, a Tobacco Product for money, trade, barter, exchange or other consideration.

(14) "Temporary Event" means an event open to the public, whether on private or public property, that is temporary in nature.

(15) "Temporary Event License" means a license issued by the Licensing Agent or its authorized designee for the sale of Tobacco Products at a Temporary Event.

(16) "Tobacco" or "Tobacco Product(s)" means: (a) any product containing, made of, or derived from tobacco or containing any form of nicotine that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, dissolved, inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, cigar, pipe tobacco, chewing tobacco, snuff or snus; (b) any Electronic Smoking Device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; (c) any component, part, or accessory of (a) or (b), whether or not any of these contain tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, or pipes. Tobacco Product does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(17) "Tobacco Retailer" means any individual, firm, partnership, joint venture, association, joint stock company, corporation, unincorporated business entity, or any other group acting as a unit that owns a business where Tobacco Products are

available for sale, including the employees thereof. Tobacco Retailer, as used herein, includes any manufacturer, producer, distributor or wholesaler of Tobacco Products. Tobacco Retailer does not mean the employees or agents of an owner of a business where Tobacco Products are available to the general public.

(18) "Tobacco Retail Establishment" means any place of business where Tobacco Products are available for sale, whether or not the business is open to the general public, whether pursuant to a License or Temporary Event License issued pursuant to this Chapter.

(19) "Tobacco Retailer License" or "License" means a license issued by the Licensing Agent or its authorized designee for the sale of Tobacco Products pursuant to this Chapter.

868.02 LICENSE REQUIRED/APPLICATION.

(A) License Required. No Person, Tobacco Retailer or Tobacco Retail Establishment shall sell, offer to sell or distribute any Tobacco Product without first having obtained a License or Temporary Event License from the Licensing Agent.

(B) Application. An application for a License or Temporary Event License to sell or distribute Tobacco Products must be made on a form provided by the Licensing Agent. The application must contain the full legal and doing business as name of the Applicant, the location of the Premises or Temporary Event, the Applicant's business address, phone number and email address, the name and social security number of each and every person(s) holding any interest in the Applicant (if the Applicant is not a natural Person), confirmation that the Applicant and all employees of the Applicant have completed the Instruction Program as required herein, and such additional information as may be required by the Licensing Agent. If the Licensing Agent determines that an application is incomplete, the application will be returned to the Applicant with notice of the deficiency and the requisite information necessary to make the application complete.

(C) Term. The term of any License issued pursuant to this Chapter is for a period of one (1) year commencing on the first day of September up to and including the last day of August. Any License issued after the first day of September will expire on the last day of August and remain subject to the full, non-prorated License fee regardless of the date of issuance. Any Temporary Event License issued pursuant to this Chapter shall be valid for no more than five (5) days during the calendar year in which it was issued.

(D) Violation; Suspension; Revocation. Any License or Temporary Event License issued under this Chapter may be suspended or revoked as follows:

(1) Any Licensee that violates any provision of this Chapter, or any other federal, state or local law relative to the distribution or sale of Tobacco Products, shall be subject to the penalties prescribed in this Chapter and/or Codified Ordinance Section 636.19.

(2) A previous violation of any other federal, state or local law relating to the distribution or sale of Tobacco Products that occurred within the previous thirty-six (36) months shall be considered a prior violation when determining any penalty under this Chapter and/or Codified Ordinance Section 636.19.

(E) Transfers. All Licenses or Temporary Event Licenses issued under this Chapter are valid only with respect to the Licensee and for the Premises or Temporary Event location for which same was issued. The transfer of any License or Temporary Event License to any other Person, Tobacco Retailer, Tobacco Retail Establishment and/or other Premises (or other Temporary Event location) is prohibited with the exception that the change in ownership of a Licensee shall not be deemed to constitute a transfer of a License or Temporary Event License.

(F) Display. All Licenses or Temporary Event Licenses must be posted and displayed at all times in plain view of the general public of the Tobacco Retail Establishment or at the Temporary Event location. Failure to properly display any License or Temporary Event License issued pursuant to this Chapter is a violation hereof.

(G) Renewals. The renewal of a License issued pursuant to this Chapter shall be subject to the same application process as provided hereinabove. The request for renewal must be made at least thirty (30) days prior to the expiration of the current License. The issuance of a License pursuant to this Chapter is a privilege and does not entitle the Licensee to the automatic renewal thereof. The failure to timely renew and/or the denial of the renewal of a License previously issued pursuant to this Chapter shall result in the revocation thereof. Temporary Event Licenses shall not be subject to renewal.

(H) Instructional Program. As a condition of the issuance of a License or Temporary Event License pursuant to this Chapter, the Licensee shall complete and ensure that all employees complete an annual training program pre-approved by the Licensing Agent related to the legal requirements for the distribution or sale of Tobacco Products. Documentation evidencing compliance with this requirement is a condition precedent to the issuance of any Temporary Event License, License or renewal thereof.

868.03 DENIAL OF LICENSE/TEMPORARY EVENT LICENSE.

(A) The Licensing Agent shall deny an application for a Temporary Event License, License, or renewal thereof, in the following circumstances:

(1) The Applicant is under the age of 21.

(2) The Applicant has been convicted of any violation of a federal, state or local law relating to the distribution or sale of Tobacco Products within the previous five (5) years.

(3) The Applicant has had a License or Temporary Event License issued under this Chapter revoked within the previous two (2) years.

(4) The Applicant fails to provide the information required on the application or provides false, incomplete or misleading information.

(5) The Applicant is prohibited by federal, state or local law from distributing or selling Tobacco Products.

(6) The Applicant is delinquent on the payment of any fee, tax or penalty imposed by this Chapter or any other provision of the Codified Ordinances.

(7) The maximum number of available Licenses under this Chapter have been issued.

(8) The Premises is not in compliance with the proximity requirements contained in this Chapter.

(9) The Applicant has been found to have been distributing or selling Tobacco Products without a License or Temporary Event License issued pursuant to this Chapter on two (2) occasions within any twelve (12) month period.

(B) In the event a License or Temporary Event License is mistakenly issued or renewed, the Licensing Agent may revoke same upon the discovery that the Applicant was ineligible under this Chapter. In such event, the Licensing Agent will provide the Licensee with notice of revocation along with information as to Licensee's rights of appeal consistent with this Chapter.

(C) If a License or Temporary Event License is suspended or revoked pursuant to this Chapter, the License fee is deemed forfeited and non-refundable.

868.04 LICENSE/TEMPORARY EVENT LICENSE FEE; FINES.

(A) No License or Temporary Event License shall be issued under this Chapter until the appropriate, non-refundable License/Temporary Event License fee is paid in full.

(B) The fee for a License (or renewal thereof) under this Chapter shall be a minimum of $600.00 payable to the Licensing Agent. The Licensing Agent shall have the

authority to adjust the License fee as deemed necessary, but in no event shall the License fee be less than $600.00. The fee for a Temporary Event License under this Chapter shall be a minimum of $150.00 payable to the Licensing Agent. The Licensing Agent shall have the authority to adjust the Temporary Event License fee as deemed necessary, but in no event shall the Temporary Event License fee be less than $150.00.

(C) License/Temporary Event License fees and fines collected pursuant to this Chapter shall be for the benefit of and payable to the Licensing Agent and shall be used to fund tobacco retail licensure compliance and enforcement measures, including, but not limited to, issuing Licenses/Temporary Event Licenses, administering the licensing program, tobacco retailer education, tobacco retailer inspection and compliance checks, documentation of violations and appellate proceedings. Funds may also be designated for other tobacco control, prevention and education programs as determined by the Licensing Agent.

868.05 NUMBER OF LICENSES.

(A) The total number of Licenses issued within the City shall be limited to one (1) License for each seven hundred fifty (750) residents of the City, as established by the most recent Federal Decennial Census. Notwithstanding the foregoing:

(1) Any Person or Tobacco Retailer lawfully engaged in the operation of a Tobacco Retail Establishment that is in full compliance with all applicable law as of the effective date of this Chapter shall be entitled to a License subject to full satisfaction of the requirements of this Chapter; and

(2) City Council shall have the authority, as part of a duly approved Development Agreement as otherwise required by the Codified Ordinances, to authorize the Licensing Agent to issue additional Licenses, subject to full satisfaction of the requirements of this Chapter, to any Applicant that proposes the construction of a new, single-tenant commercial/retail structure.

(B) The Licensing Agent shall maintain a list of all applications for Licenses which, if issued, would exceed the maximum number of licenses permitted pursuant to this Chapter. In the event of revocation and/or non-renewal of a License, the Licensing Agent may proceed with the processing of applications on file in the order in which they were received.

(C) There are no maximum number of Temporary Event Licenses that may be issued by the Licensing Agent pursuant to this Chapter.

868.06 PROXIMITY REQUIREMENTS.

(A) No License/Temporary Event License shall be granted under this Chapter to an Applicant that is located (or Temporary Event that is located) within 1,000 feet of any existing Licensee, as measured from the nearest property lines of each respective property. This restriction does not apply to any Applicant that holds a state tax license to sell Tobacco Products at the same Premises for at least one (1) year prior to the effective date of this Chapter.

(B) No License/Temporary Event License shall be granted under this Chapter to an Applicant that is located (or Temporary Event that is located) within 3,500 feet of any Educational Facility, Religious Institution or Public Place, as measured from the nearest property lines of each respective property. This restriction does not apply to any Applicant that holds a state tax license to sell Tobacco Products at the same Premises for at least one (1) year prior to the effective date of this Chapter.

868.07 COMPLIANCE WITH CODIFIED ORDINANCE SECTION 636.19.

(A) All Licensees shall comply with the requirements of Codified Ordinance Section 636.19, which is incorporated herein by reference, as same may be amended from time to time.

868.08 COMPLIANCE CHECKS AND INSPECTIONS.

(A) The Tobacco Retail Establishment for which any License/Temporary Event License is issued pursuant to this Chapter shall be open to inspection by the Licensing Agent during regular business hours. The Tobacco Retail Establishment shall be subject to not less than two (2) unannounced compliance checks per License year (or during any Temporary Event) which may include, without limitation, checks to verify that the Tobacco Retail Establishment:

(1) Maintains and properly displays the License/Temporary Event License to distribute or sell Tobacco Products; and

(2) Does not permit sale to persons under the age of 21.

(B) Unannounced follow-up compliance checks of all non-compliant Tobacco Retail Establishments shall be conducted by the Licensing Agent within three (3) months of any violation of this Chapter.

(C) The results of all compliance checks shall be published annually and made available to the public by the Licensing Agent.

868.09PENALTY.

Notwithstanding any other penalty that may be imposed by applicable federal, state or local law, including, without limitation, those penalties prescribed by Codified Ordinance Section 636.19, any Person, Tobacco Retailer or Tobacco Retail Establishment that violates any provision of this Chapter or any provision of Codified Ordinance Section 636.19 shall be subject to the following penalties:

(A) For a first violation, a fine of $500.00.

(B) For second violation within a thirty-six (36) month period, a fine of $1,000.00 and a License/Temporary Event License suspension of thirty (30) days.

(C) For a third violation within a thirty-six (36) month period, a fine of $1,500.00 and License/Temporary Event License suspension of sixty (60) days.

(D) For a fourth violation within a thirty-six (36) month period, a fine of $2,000.00 and License/Temporary Event License revocation.

Any Person, Tobacco Retailer or Tobacco Retail Establishment found to be selling Tobacco Products without the License/Temporary Event License required under this Chapter shall be subject to the following penalties:

(A) For a first violation, a fine of $1,000.00.

(B) For a second violation and each subsequent violation within a thirty-six (36) month period, a fine of $2,000.00 per occurrence and ineligibility for a License/Temporary Event License for a period of three (3) years.

Additionally, in the event that the Licensing Agent determines that it is probable that any Person, Tobacco Retailer or Tobacco Retail Establishment has violated any provision of Codified Ordinance Section 636.19, the Licensing Agent will report same to the Division of Police for review of possible charges thereunder.

868.10 SEVERABILITY.

The provisions of this Chapter are severable, and if any provision, clause, sentence or paragraph of this Chapter or the application thereof to any person or circumstances are held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this Section that can be given effect.

868.11 NOTICES; APPEALS.

In the event that a violation is issued or a License/Temporary Event License is denied, suspended or revoked pursuant to this Chapter, the Licensing Agent shall inform the Applicant and/or Licensee in writing to be sent by certified mail, return receipt requested, to the address of the Applicant/Licensee as contained in the application. Such notice shall provide that the Applicant and/or Licensee shall have a right to appeal any such decision directly to the Licensing Agent, which appeal shall be in writing, contain all operative facts in support of such appeal and be filed with the Licensing Agent within thirty (30) days of the date of the notice. The determination of the Licensing Agent shall be considered a final order."

SECTION 2: The provisions of this Ordinance shall be effective and enforceable as of September 1, 2024.

SECTION 3: That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 1st Reading _____

2nd Reading _____

3rd Reading _____

ADOPTED: _____ AYES _____
NAYS _____

ATTEST: _____
Clerk of Council
Laura E. Timura