

# Hancock County Combined General Health District Board of Health

## REGULATION 2019-01

### **Section 1000. TITLE**

This regulation shall be known as the Sale of Tobacco, Alternative Nicotine Products and Vaping Products to youth under 21.

### **Section 1001. FINDINGS AND PURPOSE**

The Hancock County Combined General Health District Board of Health finds that youth addiction to tobacco products is a public health problem with grave health consequences. Nearly 9 out of 10 smokers begin smoking before the age of eighteen (18), and 98% begin by the age of twenty-six (26). The average age of onset for smoking is 13.2 years of age and youth begin smoking whole cigarettes at 10 years old or younger. Our most recent Community Health Assessment of 2018 showed that 10% of youth in Hancock County had tried cigarette smoking, increasing to 20% of those ages 17 and older. Furthermore, that same survey showed that 11% of Hancock County youth used e-cigarettes or vaping. In recognition of the Surgeon General's conclusion that nicotine is as addictive as cocaine or heroin, action is needed to curtail the easy access of cigarettes and other tobacco products to individuals under the age of twenty-one (21). Therefore, the purpose of this regulation is to implement a strict and enforceable system to prevent the illegal sale of cigarettes, alternative nicotine products, vapor products and other tobacco products to those under the age of 21.

### **Section 1002. DEFINITIONS**

As used in this regulation:

(A) "Age Verification" means a service provided by an independent third party (other than a manufacture, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes) that compares information available from a commercially available database, or aggregate of databases, that regularly are used by government and businesses for the purpose of age and identity verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser is twenty-one years of age or older.

(B) "Alternative nicotine product" means, subject to division (2)(b) of this section, an electronic smoking device, vapor product, or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving, or inhaling. (b) "alternative nicotine product" does not include any of the following:

- (i) Any cigarette or other tobacco product;
- (ii) Any product that is a "drug" as that term is defined in 21 U.S.C. 321(g)(1);
- (iii) Any product that is a "device" as that term is defined in 21 U.S.C. 321(h);
- (iv) Any product that is a "combination product" as described in 21 U.S.C. 353 g

(C) "Cigarette" includes clove cigarettes and hand-rolled cigarettes.

(D) “Distribute” means to furnish, give, or provide cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, alternative nicotine products, or papers used to roll cigarettes.

(E) “Electronic smoking device” means any device that can be used to deliver aerosolized or vaporized nicotine or any other substance to the person inhaling from the device including an electronic cigarette, electronic cigar, electronic hookah, vaping pen, or electronic pipe. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353 (g).

(F) “License” means a license issued by the Hancock County Combined General Health District Board of Health for retail sale of tobacco products.

(G) “Licensee” means the holder of a valid license for the retail sale of tobacco products.

(H) “Proof of Age” means a driver’s license, a commercial driver’s license, a military identification card, a passport, or an identification card issued under sections 4507.50 to 4507.52 of the Revised Code that shows that a person is twenty-one years of age or older.

(I) “Public Place” means any area to which the public is invited or in which the public is permitted, including, but not limited to, any right-of-way, mall or shopping center, park, playground, and any other property owned by the city, and any school district, or any park district.

(J) “Self-Service Displays” means any displays from which customers may select a tobacco product without assistance from the tobacco retailer or the tobacco retailer’s agent or employee and without a direct person-to-person transfer between the purchaser and the tobacco retailer or tobacco retailer’s agent or employee. A vending machine is a form of self-service display.

(K) “Tobacco Product” means product that is made or derived from tobacco or that contains any form of nicotine, if it is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including, but not limited to, a cigarette, an electronic smoking device, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. Tobacco product also means any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, blunt or hemp wraps, and liquids used in electronic smoking devices, whether or not they contain nicotine. Tobacco product does not include any product that is a drug device, or combination product, as those terms defined or described in 21 U.S.C. 321 and 353 (g).

(L) “Tobacco retail establishment” means any place or business where tobacco products are available for sale to the general public. The term includes but is not limited to grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.

(M) “Tobacco retailer” means any person, partnership, joint venture, society, club, trustee, trust,

association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Tobacco retailer does not mean the no management employees of any tobacco retail establishment

(N) “Tobacco Vending Machine” means any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of currency, trade checks, or slugs.

(O) “Vapor product” means a product, other than a cigarette or other tobacco product as defined in Chapter 5743 of the Revised Code, that contains or is made or derived from nicotine and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. Vapor product includes any component, part, or additive that is intended for use in an electronic smoking device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product. Vapor product does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 or 353 (g). Vapor product includes any product containing nicotine, regardless of concentration.

(P) “Vendor-assisted” means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until after it is purchased.

(Q) “Sales Transaction” is a sale or purchase of tobacco products per instance regardless of quantity.

### **Section 1003. POSTING OF SIGNS**

Every place in the County where tobacco products, alternative nicotine products or vapor products are sold shall display at all times in a prominent place on the premises thereof, a printed card which shall be furnished by the Hancock County Combined General Health District Board of Health and which shall read substantially as follows:

**OHIO REVISED CODE:** Forbids anyone under twenty-one (21) years of age to purchase, attempt to purchase, possess, or use cigarettes, tobacco products, alternative nicotine products or vapor products-

Forbids merchants to sell, give or furnish any tobacco products, alternative nicotine products or vapor products to anyone under twenty-one (21) years of age.

### **HANCOCK COUNTY COMBINED GENERAL HEALTH DISTRICT BOARD OF HEALTH REGULATION:**

Merchants must require photographic age identification for the sale of tobacco products, alternative nicotine products or vapor products if the purchaser appears under twenty-seven (27) years of age.

Merchants selling tobacco products, alternative nicotine products or vapor products to anyone under twenty-one (21) years of age will be subject to fines or loss of licensure to sell tobacco products, alternative nicotine products or vapor products.

### **Section 1004. SALE OF TOBACCO TO INDIVIDUALS UNDER THE AGE OF TWENTY-ONE (21) PROHIBITED**

No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, vapor products or

other tobacco products, or any agent, employee, or representative of the manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, alternative nicotine products or vapor products or other tobacco products shall do any of the following:

1. Give, sell, or otherwise distribute cigarettes, alternative nicotine products, vapor products or other tobacco products to any person under twenty-one (21) years of age;
2. Give away, sell or distribute cigarettes, alternative nicotine product, vapor products or other tobacco products in any place that does not have posted in a conspicuous place a sign stating giving, selling or otherwise distributing cigarettes, alternative nicotine products, vapor products or other tobacco products to a person under twenty-one (21) years of age is prohibited by law.

#### **Section 1005. IDENTIFICATION REQUIRED**

No retailer shall sell cigarettes, alternative nicotine products, vapor products or other tobacco products to an individual that appears under the age of twenty-seven (27) without examining photographic identification for the purpose of establishing the purchaser's age as twenty-one (21) or greater.

#### **Section 1006. LICENSE REQUIRED**

It shall be unlawful for a retailer to sell, give, furnish, or otherwise provide cigarettes, alternative nicotine products, vapor products or other tobacco products unless that retailer holds and maintains a valid license from the Hancock County Combined General Health District Board of Health for each location in which tobacco products, alternative nicotine products or vapor products are sold. All such licenses shall be renewed annually. This section shall be effective on the date the Hancock County Combined General Health District Board of Health adopts this regulation.

#### **Section 1007. LICENSE APPLICATION AND FEE**

Application for a license hereunder shall be made in writing to the Hancock County Combined General Health District Board of Health and shall include the name of the business applying for a license; the name(s) and signature(s) of the owner(s) of the business; and the address at which the sale, offer to sell, give away, or delivery will take place. In the case of a corporation, the name of said corporation and the corporation's designee (vendor) shall be included.

The fee for obtaining or renewing a license shall be established by the Hancock County Combined General Health District Board of Health or their designee, and shall be enough to fund the administration, implementation, and enforcement of this regulation.

#### **Section 1008. NON-TRANSFERABILITY**

A tobacco retail license is non-transferable, except a new license will be issued to a tobacco retailer who changes locations.

#### **Section 1009. TOBACCO VENDING MACHINES**

A. Any person, firm or corporation that owns, leases, possesses, or controls one or more tobacco vending machines shall obtain a valid license for each machine pursuant to Section 1007.

B. A tobacco vending machine must be located and supervised as outlined in section 2927.02 of the Ohio Revised Code and sales of alternative nicotine products, vapor products or tobacco products to individuals under the age of twenty-one (21) at a vending machine location are

prohibited.

**Section 1010. MINIMUM AGE TO SELL TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, OR VAPOR PRODUCTS**

It is unlawful for any licensee to permit any person under twenty-one (21) years of age to sell tobacco products, alternative nicotine products or vapor products.

It is unlawful to sell cigarettes out of the manufacturer's package with required health warnings. It is unlawful to sell cigarettes in packages of fewer than ten (10) cigarettes per package.

**Section 1011. TOBACCO SAMPLES, ALTERNATIVE NICOTINE PRODUCTS OR VAPOR SAMPLES PROHIBITED**

No licensee or other entity shall distribute or furnish to individuals under the age of twenty-one (21) without charge or at nominal charge, or cause to be furnished or distributed without charge or at nominal charge, cigarettes, alternative nicotine products, vapor products or other tobacco products, or coupons for cigarettes, alternative nicotine products, vapor products or other tobacco products, in any public place or at any event open to the public.

**Section 1012. VENDOR ASSISTED SALES**

It shall be unlawful for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco products, alternative nicotine products, or vapor products by means of self-service displays or any other means other than vendor- assisted sales except in a Tobacco retailer stores.

**Section 1013. FINES AND LICENSE SUSPENSION**

- A. A licensee, or any agent, employee, or representative of said licensee, found in violation of Section 1003, 1004, 1009, 1010, 1011, 1012 or 1013 by the health commissioner after an opportunity to be heard may be subject to the following:
  - 1. In the case of a first violation, the fine of two hundred dollars (\$200) may be waived if the licensee and (in the case of an illegal sale) the sales clerk (if other than the licensee), have a hearing with the health commissioner and develop a plan for appropriate corrective action. This hearing shall occur within fourteen 14 days after receipt of the request for such hearing. Hearing dates may be continued by Hancock County Combined General Health District Board of Health. The licensee will be notified in writing of the penalties levied for further violations.
  - 2. In the case of a second violation, of any of the above noted sections in (a), in a two-year period, the licensee may be fined two hundred fifty (\$250) dollars.
  - 3. In the case of three violations within a two-year period the licensee may be fined five hundred (\$500) dollars and the license suspended for seven (7) consecutive business days. Tobacco retailers must remove all tobacco merchandise from all areas accessible to the public while the license is suspended. (Signage issued by the Hancock County Combined General Health District Board of Health, notifying the public of vendor license suspension, will be posted.)
  - 4. In the case of four violations within a two-year period, the license may be suspended for thirty (30) days. Tobacco retailers must remove all tobacco merchandise from all areas accessible to the public while the license is suspended. (Signage issued by the Hancock County Combined General Health District Board of Health, notifying the public

of vendor license suspension, will be posted.) Also, the licensee's license status will be reviewed by Hancock Public Board of Health.

- B. The Health Commissioner or his designee shall evaluate licensee locations for compliance with Sections 1003, 1004, 1009, 1010, 1011, 1012, and 1013 by inspection or sales compliance checks. Based on the Centers for Disease Control and Prevention guidelines, up to two (2) compliance checks will be performed per year, -with a check once to each vendor before repeat checks. After a violation, the licensee will not have another compliance check until final resolution of the current violation. Compliance checks will be performed by youth under the age of twenty-one (21) who have a valid driver's license verified by Health Department Staff, under the supervision of an adult, and with written consent to participate from a parent or guardian if under eighteen (18). The licensee will be notified in writing of the results of the above evaluations within seven (7) business days. In the case of a violation, notification will be by certified mail, and the licensee must request a hearing with the Health Commissioner within thirty (30) days following notification of the violation. The licensee may request a hearing before the Hancock County Combined General Health District Board of Health for a violation of Section 1014 a, (# 3 and # 4) Rulings made by the Health Commissioner and/or the Hancock County Combined General Health District Board of Health regarding a fine or suspension of a license, after adequate hearing, shall be final.

**Section 1014. PENALTY FOR FAILURE TO PURCHASE A LICENSE**

A violation of section 1006 of this regulation subjects the licensee, or anyone required to be a licensee, to a fine of \$100 per day. The Health Commissioner or his designee shall have the authority to enforce this section.

**Section 1015. NONRETALIATION**

No person or employer shall discharge, refuse to hire or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reported violations of any provisions of this regulation, unless the employee was responsible for a violation.

**Section 1016. PUBLIC EDUCATION**

The Health Commissioner or his designee shall engage in a continuing program to explain and clarify the purposes and requirements of this regulation to citizens affected by it, and to guide owners, operators and managers in their compliance with this regulation semi-annually. Public education will also promote an awareness of the grave health consequences of tobacco use.

**Section 1017. SEVERABILITY**

If any provision, clause, sentence or paragraph of this regulation or the application thereof to any person or circumstance shall be held to be invalid, such invalidity shall not affect the provisions of this regulation which can be given effect without the invalid provision of application, and to this end the provisions are declared to be severed.

Date Adopted:

Effective Date: January 1, 2020



# Process Map for Implementation

## 1. Board of Health Process

### Authority to Regulate

Regulation 2019-01 will be used as the authority to issue license to tobacco vendors and the authority to fine tobacco vendors that are not compliant with rules concerning the sales of tobacco to any person under twenty-one

### Rule-making Period

HPH will update current regulation 2016-16 regarding the licensing process, enforcement process and appeals process. The rules will detail protocols for inspectors, the license process for vendors, and the process for collection of registration payments, and collection of fines. The Board of Health will read and review the rules three times during public meetings.

## 2. Program Roll-out

### Vendor Licensing

Vendors will pay a \$125.00 annual license fee that will run March 1-February 28.

### Education & Outreach

HPH will conduct education and outreach efforts to ensure vendors are aware of the regulations. HPH will send notices out to vendors to seek feedback on the regulations.

### Yearly Compliance Check

After roll-out period, HPH compliance officer will conduct annual compliance checks of all vendors to check for signage and provide additional education to store employees and managers, which may include random unannounced buys.

## 3. Enforcement Process

**Enforcement of the Regulation will feature no criminal component. HPH does not have the authority or intention to fine or charge youth customers or vendor employees.** Enforcement will be strictly limited to business owners in the form of fines and/or certificate of compliance revocation. Each vendor will be subject to annual compliance check in which an undercover operative will be used and HPH will investigate all complaints received via phone, email, or letter.

### Enforcement Example

Enforcement action may be triggered by any of the following events:

- \*A HPH Sanitarian witnesses tobacco sales to an underage customer.
- \*A vendor sells to an undercover underage customer.
- \* A complaint is investigated, and vendor is found to be in violation.

### 1 FIRST OFFENSE-\$200

Vendor sells to undercover operative HPH may waive the \$200 if the vendor has a hearing with the Health Commissioner. The hearing will provide opportunity to develop a plan for appropriate corrective action. The hearing will occur within fourteen (14) days after receipt of the request for such hearing.

### 2 SECOND OFFENSE-\$250

Vendor sells to undercover operative in a two-year period the vendor will be fined \$250.

### 3 THIRD OFFENSE-\$500 AND 7 DAY LICENSES SUSPENSION

Vendor sells to undercover operative three times within a two-year period the license will be suspended for 7 consecutive business days. Vendor must remove all tobacco merchandise from all areas accessible to the public while the license is suspended.

### 4 FOURTH OFFENSE-LICENSE REVIEW

Vendor sells to undercover within a two-year period the license will be suspended for 30 consecutive business days. Vendor must remove all tobacco merchandise from all areas accessible to the public while the license is suspended. Also, the vendors license status will be reviewed by HPH Board of Health.