



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

ORDINANCE 2018-24

Meeting: 10/08/18 7:30 PM
Dept: Planning and Zoning
Vail, Menapace
Category: Planning and Zoning
Prepared By: Rob Broeren
Initiator: Tanya Newell
DOC ID: 1800 A

1st - 10/8/18
2nd - 10/22/18
3rd - 11/26/18
as amended

AN ORDINANCE REGULATING THE USE AND SALE OF TOBACCO AND ELECTRONIC SMOKING DEVICES WITHIN THE CITY OF MOUNT VERNON, OHIO; AND DECLARING AN EMERGENCY

WHEREAS, the Ohio Revised Code provides rules and regulations regarding the prohibition on smoking in public places statewide; and,

WHEREAS, since the enactment of the existing prohibitions by the State of Ohio the City has experienced the development of and increasing popularity of electronic smoking devices, also known as e-cigarettes and/or “vaping”; and,

WHEREAS, the health, safety, and aesthetic concerns surrounding the use of tobacco by conventional means carry over in many ways to the use of electronic smoking devices thereby warranting the regulation of such electronic smoking devices in a substantially similar manner;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MOUNT VERNON, KNOX COUNTY, OHIO, THAT:

SECTION 1: Chapter 521 of the Codified Ordinances of the City of Mount Vernon, Ohio is hereby amended as set forth below:

CHAPTER 521: HEALTH, SAFETY AND SANITATION
521.13 DEFINITIONS.

As used in sections 521.14 to 521.15 of the Codified Ordinances:

- (a) "Business" means a sole proprietorship, partnership, association, joint venture, corporation, or any limited liability form of any of the foregoing, or any other entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, financial, counseling or other professional or consumer services are provided.
- (b) “Electronic Smoking Device” means any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including but not limited to, an e-cigarette, e-cigar, e-pipe vape pen or e-hookah.
- (c) "Employee" means a person who is employed by an employer, or who contracts with an employer or who contracts with a third person to perform services for an employer, or who otherwise performs services for an employer in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services to such employer for no monetary compensation.

- (d) "Employer" means an individual person, business, partnership, association, corporation, including a municipal corporation, trust, or any non-profit entity that accepts the provision of services from one or more employees.
- (e) "Enclosed area" means all space closed in by a roof or other overhead covering of any kind and walls or other side coverings of any kind on at least three sides with appropriate openings for ingress and egress.
- (f) "Outdoor patio" means an outdoor area, open to the air at all times, that is either enclosed by a roof or other overhead covering and not more than two walls or other side coverings; or has no roof or other overhead covering at all regardless of the number of walls or other side coverings.
- (g) "Place of employment" means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to, private offices, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, employee gymnasiums, auditoriums, libraries, storage rooms, file rooms, mailrooms, employee medical facilities, rooms or areas containing photocopying or other office equipment used in common by employees, elevators, stairways, hallways, factories, warehouses, garages, laboratories, taxis, limousines, and company-owned vehicles used for a business purpose. An enclosed area as described herein is a "place of employment" without regard to time of day or actual presence of employees. "Place of employment" only includes private residences, whether single or multi-family, if used as a child care, adult day care, or health care facility, or if a person uses a private residence in any way otherwise qualifying that person as an employer with respect to the use of that private residence; provided, however, that private residences are exempt from this chapter to the extent that the person providing the services is providing housecleaning, home maintenance or personal care services in the private residence.
- (h) "Proprietor" means the owner, manager, operator, liquor permit holder, or other person in charge or control of a public place or place of employment.
- (i) "Public place" means an enclosed area to which the public is invited or in which the public is permitted, and includes service lines. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
- (j) "Retail tobacco store" means a retail store used primarily for the sale of smoking materials and smoking accessories including the sale of Electronic Smoking Device materials and accessories and in which the sale of other products is incidental. "Retail tobacco store" does not include a tobacco or Electronic Smoking Device department of a larger commercial establishment such as a department store, discount store, or bar.
- (k) "Service line" means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- (l) "Smoking" means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other smoking equipment in any manner or in any form. Smoking also includes the use of any Electronic Smoking Devices. "Smoking" does not include the burning or carrying of incense in a religious ceremony.
- (m) "Smoking materials" means any cigar, cigarette, pipe, weed, plant or other smoking equipment in any form.
- (n) "Work area" means any room, desk, station or other area normally occupied by an employee while carrying out his or her primary work function.

~~(c) "Young adult" means any natural person who has reached the age of eighteen (18) years old but has not yet reached the age of twenty-one (21) years old.~~

521.14 PROHIBITIONS.

- (a) No proprietor of a public place or place of employment shall permit smoking in said public place or place of employment within the City except as provided in Section 521.15.
- (b) No person, business, retailer, or other establishment shall distribute, sell, permit to be sold, or offer for sale to any ~~young adult~~ ^{person under 18 years of age} any Electronic Smoking Device within the City.
- (c) All enclosed areas, including buildings and vehicles owned, leased or operated by the City, shall be subject to the provisions of this chapter.
- (d) All areas immediately adjacent to the ingress and egress of any enclosed area shall be subject to the provisions of this chapter so as to ensure that tobacco smoke and/or vapor of and sort from and electronic smoking device does not enter the enclosed area through entrances, windows, ventilation systems, or other means.
- (e) A violation of Sections 521.14 to 521.15 of this chapter shall be an unclassified misdemeanor. The fine for a first offense within a twelve-month period shall not exceed one hundred fifty dollars (\$150.00). If the offender has previously been convicted of a violation of this section, or any substantially equivalent offense, within the previous twelve (12) months, the fine shall not exceed two hundred fifty dollars (\$250.00). For third and subsequent violations of this section or any equivalent offense within a twelve-month period, the fine shall not exceed five hundred dollars (\$500.00).
- (f) Strict liability is intended for a violation of Sections 521.14 to 521.15 of this chapter.

521.15 AREAS WHERE SMOKING IS NOT REGULATED BY THIS CHAPTER.

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the prohibitions in Section ~~521.14~~ ^{521.14(a)}.

- (a) Private residences, except if used as a licensed child care, adult day care, or health care facility, or if a person uses a private residence in any way otherwise qualifying that private residence as a place of employment; provided, however, that private residences are exempt from this chapter to the extent that the person providing services is providing housecleaning, home maintenance, cable or telephone repair or personal care services in the private residence.
- (b) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than 20% of rooms rented to guests in a hotel or motel may be so designated.
- (c) Family-owned and operated businesses in which all employees are related to the owner, and offices of self-employed persons in which all employees are related to the self-employed person, but only if the enclosed areas these businesses and offices occupy are not open to the public, are not in the same building with other enclosed areas subject to this regulation, and smoke from these businesses and offices does not infiltrate into enclosed areas where smoking is prohibited under the provisions of this chapter.
- (d) Any home, as defined in Ohio R.C. 3721.10(A), but only to the extent necessary to comply with Ohio R.C. 3721.13(A)(18) and rules promulgated according to that section.
- (e) Retail tobacco stores as defined in Section 1870.01 in operation prior to the effective date of this chapter. Any new retail tobacco store or any existing retail tobacco store that relocates to another site may only qualify for this exemption if located in a free-standing structure.

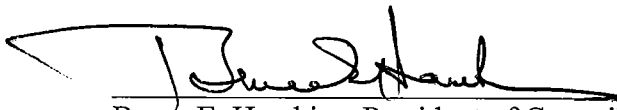
(f) Outdoor patios as defined in Section 1870.01. If the outdoor patio has a structure capable of being enclosed by walls, covers, solid surface fencing, or tents, regardless of the materials or the removable nature of the walls, covers, solid surface fencing, or tents, the space will be considered enclosed, when the walls, covers, fences, or tents are in place. All outdoor patios shall be physically separated from an enclosed area. If sliding or folding windows or doors or other windows or doors form any part of the border to the outdoor patio, the openings shall be closed to prevent the migration of smoke into the enclosed area. If sliding or folding windows or doors or other windows or doors do not prevent the migration of smoke into the enclosed area, the outdoor patio shall be considered an extension of the enclosed area and subject to the prohibitions of this chapter.

(g) Drug and alcohol rehabilitation facilities which provide recreational activities to recovering addicts, but do not possess any license issued by the Ohio Department of Liquor Control.

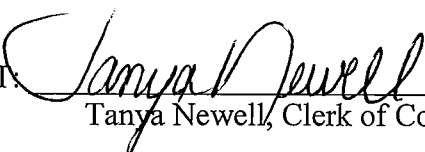
(h) No establishment is eligible for the exemptions described in this section if the establishment allows minors to be exposed to second-hand smoke.

SECTION 2: Section 521.10 of the Codified Ordinances is repealed.

SECTION 3: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public, peace, health and safety, and for the further reason to allow the City protect the health and safety of its residents, and said Ordinance shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.


Bruce E. Hawkins, President of Council

PASSED: November 21, 2018

ATTEST: 
Tanya Newell, Clerk of Council

APPROVED: November 21, 2018


Richard K. Mavis, Mayor

Proposed amendments to Ord. 2018-24

In the title:

CHAPTER 521: HEALTH, ~~S~~AFETY AND SANITATION

In section 521.13

~~(c) —“Young adult” means any natural person who has reached the age of eighteen (18) years old but has not yet reached the age of twenty-one (21) years old.~~

In section 521.14

(b) No person, business, retailer, or other establishment shall distribute, sell, permit to be sold, or offer for sale to any ~~young adult~~ **person under 18 years of age** any Electronic Smoking Device within the City.