

**ENVIRONMENTAL HEALTH
CODE OF THE SUMMIT
COUNTY COMBINED
GENERAL HEALTH DISTRICT
CHAPTER 2250**

(Enacted 7/12/2018, Resolution No. 021-18, Effective 10/1/2018)

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Cross References

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Board of Health to establish a uniform system of fees; adoption of rules - see ORC 3909.09

R.C. 3709.281 and relevant municipal and county ordinances adopted thereunder

R.C. 3709.21

R.C. 3709.211

EHC Environmental Health Code **ORC** Ohio Revised Code **OAC** Ohio Administrative Code

2250.01 DEFINITIONS

As used in this chapter:

(A) "Board" or "Board of Health" means Summit County Combined General Health District dba Summit County Public Health or its authorized representative including the Health Commissioner, Environmental Health Director, Assistant Director of Environmental Health, Environmental Health Supervisor, Sanitarian, Public Health Nurse, and any authorized employee or agent.

(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. 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 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.

(C) "Operator" means any manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or tobacco product paraphernalia or any agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or tobacco product paraphernalia.

(D) "Retail Tobacco Paraphernalia Sales" means the act of giving, selling or otherwise

distributing product paraphernalia in a retail setting, including but not limited to, gas stations, convenience stores, carry out markets, grocery stores, supermarkets, retail warehouse clubs, drug stores, vape shops and hookah bars.

(E) "Retail Tobacco Sales" means the act of giving, selling or otherwise distributing tobacco products in a retail setting, including but not limited to, gas stations, convenience stores, carry out markets, grocery stores, supermarkets, retail warehouse clubs, drug stores, vape shops and hookah bars.

(F) "Tobacco Product Paraphernalia" means any product that is used to assist in chewing, smoking, absorbing, dissolving, inhaling, or any other consumption of nicotine to include, but not limited to, pipes and rolling papers.

(G)"Tobacco Product" means any product that is made from or derived from tobacco, and 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, a cigar, pipe tobacco, chewing tobacco, snuff, or snus. The term also includes, but is not limited to, an electronic smoking device and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes, or liquids used in electronic smoking devices, whether or not they contain nicotine. 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.

(H)"Vending Machine" means any mechanical or electronic device designed to do both of the following:

- (1) In return for the insertion or deposit of a coin, bill, token, or credit card, automatically dispense property, provide a service, or grant a certificate.
- (2) Receive a coin, bill, token, or credit card, including, but not limited to, a card, code, device, or other means of access to a customer's account, made for that purpose ;

(I) "Underage Buy Attempt" means a person, authorized by the Board, under the age of 21, who requests purchase of tobacco products or product without presenting identification.

2250.02 CERTIFICATE OF COMPLIANCE APPLICATION

(A) At no time shall an Operator fail to have a Certificate of Compliance. Operators found to be operating without a Certificate of Compliance shall be subject to orders from the Board pursuant to R.C. 3709.21 and the penalties associated therewith. Operators operating without a Certificate of Compliance may also be subject to penalties provided in this chapter or any applicable ordinance, law, or regulation adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to R.C. 3709.281.

(B) All Operators shall apply for a valid Certificate of Compliance from the Board. Certificates of Compliance shall be issued by the Board upon determination by the Board that the Operator is in compliance with this Chapter, applicable EHC, and any other ordinance, law, or regulation adopted by any legislative body enforced by the Board pursuant to R.C. 3709.281. Certificates of Compliance shall be denied if the Board determines that any part of the application is inaccurate, misleading, false, or fraudulent. Certificates shall be valid until the Board determines that the Operator is not in compliance with this chapter. A Certificate shall be required for each location where retail tobacco sales or retail paraphernalia sales are conducted and is non-transferable.

(C) All Operators shall apply for a valid Certificate of Compliance within thirty (30) days of commencement of Retail Tobacco Sales or Retail Tobacco Paraphernalia Sales. A penalty equal to twenty-five percent (25%) of the applicable Certificate of Compliance fee shall be

assessed by the Board for certificate fee payments that are not received or postmarked within 30 days of invoicing by the Board.

- (D) The Certificate of Compliance fee shall be established using a uniform cost methodology and adopted in accordance with EHC 220.
- (E) Certificate of Compliance fees are due at the time of application and are not refundable.

2250.03 CERTIFICATE OF COMPLIANCE SUSPENSION, DENIAL, AND REVOCATION

- (A) A Certificate of Compliance may be suspended, denied, or revoked for any of the following:
 - (1) The Operator is giving, selling, or offering to sell cigarettes, other tobacco products, or product paraphernalia by or from a vending machine to any person under the age of 21.
 - (2) Observation by the Board or its authorized agent that the operator or any agent, employee, or representative of said operator has violated this chapter, any EHC, or any applicable ordinance, law, or regulation adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to R.C. 3709.281.
 - (3) Failure by the operator to post signage as required by this Chapter.
 - (4) An order by a court of competent jurisdiction that a retail tobacco or tobacco product paraphernalia sales location owned and/or operated by the operator constitutes a nuisance or is in violation of any part of this Chapter, or EHC, or any applicable ordinance, law, or regulation adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to R.C. 3709.281.
 - (5) The operator has outstanding fines, pursuant to this chapter, any EHC, or any applicable ordinance, law, or regulation adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to R.C. 3709.281.
- (B) Upon determination that an Operator is not in compliance with any applicable part of this Chapter, any EHC, or any applicable ordinance, law, or regulation adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to R.C. 3709.281, the Board shall recommend the Operator's Certificate of Compliance for revocation or suspension by the Board of Health.
- (C) Upon revocation of a Certificate of Compliance, the Operator shall pay all fines and fees levied by the Board. Once all fines and fees are paid, the Operator shall obtain another Certificate of Compliance.

2250.04 SIGN DISTRIBUTION AND POSTING

- (A) The Board shall make signs available to all Operators. Signs shall be provided by the Board at the time of certificate approval and upon request.
- (B) The Operator shall post the signs provided by the Board at points of transaction, which may include, but are not limited to, cash registers, sales counters, and on any display cases of

tobacco products and tobacco product paraphernalia. Signage shall be prominently displayed and not obscured.

2250.05 ILLEGAL DISTRIBUTION

(A) No Operator shall do any of the following:

1. Give, sell, or otherwise distribute cigarettes, other tobacco products, or product paraphernalia to any person under twenty-one (21) years of age.
2. Give, sell, or otherwise distribute cigarettes, other tobacco products, or product paraphernalia without viewing proof of age demonstrating that the recipient is at least twenty-one (21) years of age. "Proof of age" means a driver's certificate, a commercial driver's certificate, a military identification card, a passport, or an identification card issued under Sections 4507.50 to 4507.52 of the Ohio Revised Code demonstrating that the recipient or purchaser is at least 21 years of age.

(B) No person shall give, sell or offer to sell cigarettes, other tobacco products, or tobacco product paraphernalia by or from a vending machine to a person under 21.

2250.06 ENFORCEMENT AND CIVIL PENALTY

(A) Should a compliance inspection or underage buy attempt reveal non-compliance, additional inspections and underage buy attempts and/or enforcement will be completed until compliance is established.

(B) If the Board observes violation(s) of this Chapter at a retail tobacco and paraphernalia sales location, the following penalties shall be imposed on the Operator, in addition to the sanctions specified in this chapter or any applicable ordinance, law or regulation legally adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to **R.C. 3709.281**.

- (1) First violation: Warning
- (2) Second violation: \$500.00 per violation.
- (3) Third violation and any additional violations: \$1,000 per violation.

(C) Operators may appeal penalties in accordance with the appellate procedure in this Chapter.

(D) The Board may, at their discretion, waive any applicable penalties or escalation thereof if the Board determines that an Operator has exhibited good cause for a de-escalation or waiver of fees, fines, or other penalties.

2250.07 INSPECTIONS

(A) The Board has the authority to conduct any inspection provided herein for the purposes of determining compliance or to conduct the investigation of a complaint which alleges non-compliance of this chapter and any applicable ordinance, law or regulation legally adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to R.C. 3709.281. Inspections completed for the latter purpose shall carry a fee for service as provided in EHC 220.

(B) The Board reserves the right to determine the number of inspections necessary for determining compliance with this chapter, EHC, and any applicable ordinance, law or

regulation legally adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to R.C. 3709.281.

- (C) The Board shall conduct a compliance inspection at least once annually for each Certificate of Compliance. A compliance inspection shall inspect compliance with this Part, except Sections (D) and (E) of EHC 2250.06, the EHC, and any applicable ordinance, law or regulation legally adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to R.C. 3709.281.
- (D) The Board shall conduct an underage buy attempt at least once every two years for each Certificate of Compliance. An underage buy attempt shall test compliance with EHC 2250.04 and any other ordinance, law or regulation legally adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to **R.C.** 3709.281 which prohibits the sale of tobacco or tobacco product paraphernalia to persons under the age of 21.
- (E) Prior to the issuance of a Certificate of Compliance, the Board shall conduct a pre-Certificate Inspection. At a pre-Certificate Inspection, the Board shall supply information on tobacco cessation, and education and materials explaining the provisions of this Chapter and any other applicable ordinance, law or regulation legally adopted by any legislative body in Summit County, Ohio and enforced by the Board pursuant to R.C. 3709.281.

2250.08 APPEAL

- (A) This rule prescribes the procedures for appealing the proposed denial, suspension, or revocation of a Certificate of Compliance. Hearings on any appeal shall be conducted in accordance with R.C. 3709.20(B).
- (B) In the case of a proposal to deny, suspend, or revoke a Certificate of Compliance, the Board shall provide the Operator with written notice of the proposed action and the cause for the action. The notice shall describe the procedure for appealing the proposed denial, suspension, or revocation.
 - (1) The Board shall provide notice by regular mail, hand delivery, or by conspicuously posting the notice at the entrance of the location listed on the Certificate of Compliance or application.
 - (2) To obtain a hearing, an Operator must submit a written request for a hearing that the Board receives by 4:00 **PM** on the last day listed on the notice.
 - (1) The Board shall schedule a hearing for all timely submitted notices within 30 days of receipt of the request for a hearing and shall mail written notice to the Operator no later than fourteen (14) days before the hearing. Hearings may be had before the Board or a Hearing Officer at the discretion of the Board.
 - (1) At the hearing, the Board and the Operator shall have the opportunity to present their respective cases orally or in writing and to confront and cross examine witnesses. The Operator may be represented by counsel and may review the case record before the hearing.
 - (2) Upon completion of the hearing, the Hearing Officer shall issue a decision within thirty (30) days and shall provide a written determination which is based upon the evidence and relevant law. The Hearing Officer shall not be required to prepare a full opinion or formal findings of fact or conclusions of law. The Hearing Officer shall deliver the determination to the Board and Operator by regular mail or hand delivery. The determination shall provide a final date for objections. Either party may file objections to the determination provided that the objections are received by the Hearing Officer within five (5) days of the final date provided in the determination.

- (3) After review of the recommendation, the Board may, by motion, take additional evidence or approve, modify, or disapprove the Hearing Officer's determination and shall enter an Order in the record of its proceedings.
- (4) If the Operator fails to request a hearing as provided above, the Board may Immediately enter an Order in the record of its proceedings.
- (5) Any Order issued by the Board shall be entered into the record of its proceedings by majority vote of the members of the Board at a meeting at which there is a quorum.

Section 2: That, to the extent these Rules and Regulations are in conflict with and change former rules and regulations, the matters set forth above shall control and have precedence, but as to matters not changed and altered, the above rules shall supplement and be in addition to the other rules and regulations of this Board.

Section 3: That this resolution is hereby declared to be necessary for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances and that an effective Environmental Health Code is essential to the administration of the functions of the Summit County Board of Health. Therefore, it shall take effect and be in force effective October 1, 2018.