



MAYFIELD VILLAGE

6622 Wilson Mills Road Mayfield Village, OH 44143

POLICE DEPARTMENT – 620 SOM Center Road

440.461.1234 · FAX 440.684.0454

police@mayfieldvillage.com · www.mayfieldvillage.com

Brenda T. Bodnar

Mayor

Paul J. Matias

Chief of Police

MEMORANDUM

TO: Council President Schutt & Members of Council

FROM: Police Chief Paul Matias

DATE: January 28, 2020

RE: **Mayfield Village Vaping Ordinance**

The Mayfield Village Police Department has been, and continues to aggressively deal with the youth vaping crisis that is impacting our children. Since the beginning of this school year we have been following the State ordinance which prohibits a child from using or possessing tobacco products. (ORC 2151.87). In addition, the State amended ORC 2927.02 which prohibits a person under 21 purchasing or receiving tobacco products which include vaping devices.

Our current practice is to issue a citation under the State ordinance to any juvenile caught using or possessing a vape device. We would only have the device tested if we suspected it contained THC or some other illegal substance. The testing process is expensive and time-consuming.

I recently learned that we now face another challenge. In the past we did not test anything that was tobacco-related. However, the language in the State ordinances refers to "nicotine" several times when describing prohibited items such as vape devices. As a result, the burden of proof falls on the prosecution to prove a vape device contains nicotine. What this means is every juvenile citation or case involving a vape device will require the testing of the device to prove it contains nicotine. Testing will be time-consuming, costly, and quite simply not realistic.

I spoke to the Cuyahoga County Juvenile Court Prosecutors Office. They recommend Municipalities adopt a local ordinance that prohibits the use or possession of an "Electronic Smoking Device". The language will eliminate the need to test the device for nicotine. It will be illegal for a juvenile to possess a vaping device, regardless of the contents simply. The City of Strongsville recently passed such an ordinance (ORD 636.23) which the County Juvenile Prosecutor suggested we use as a template. I believe Mayfield Village should adopt the suggested ordinance so we may continue to deal with the vaping crisis aggressively.

Respectfully,

Chief Paul J. Matias

521.14 PROHIBITING CHILD FROM POSSESSING, USING, PURCHASING OR RECEIVING AN ELECTRONIC SMOKING DEVICE

(a) As used in this section:

(1) "Child" means a person who is under eighteen (18) years of age;

(2) "Electronic Smoking Device" means any electronic delivery device and product containing or delivering nicotine, lobelia or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic Smoking Device shall include any component, part, or accessory of such 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 shall not include any product that has been approved or otherwise certified by the U.S. Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose; and

(3) "Detained" means the temporary care of a child pending Juvenile Court adjudication or disposition, or execution of a Juvenile Court order, in a public or private facility designed to physically restrict the movement and activities of a child.

(4) "Youth Smoking Education Program" means a private or public agency that is related to tobacco use, prevention, and cessation, that is carried out or funded by the Ohio Department of Health pursuant to Section 3701.84 of the Ohio Revised Code that utilizes educational methods focusing on the negative health effects of smoking and using tobacco products, and that is not more than twelve hours in duration.

(b) No child shall do any of the following unless accompanied by a parent, spouse who is eighteen years of age or older, or legal guardian of the child:

(1) Use, consume or possess an Electronic Smoking Device.

(2) Purchase or attempt to purchase an Electronic Smoking Device.

(3) Order, pay for, or share the cost of an Electronic Smoking Device.

(4) Except as provided in division (e) of this section, accept or receive an Electronic Smoking Device.

(c) No Child shall knowingly furnish false information concerning that child's name, age, or other identification for the purpose of obtaining an Electronic Smoking Device.

(d) A Juvenile Court shall not adjudicate a child a delinquent or unruly child for a violation of division (b)(1), (2), (3), or (4) or (c) of this section.

(e) (1) It is not a violation of division (b)(4) of this Section for a child to accept or receive an Electronic Smoking Device if the child is required to do so in the performance of the child's duties as an employee of that child's employer and the child's acceptance or receipt of an Electronic Smoking Device occurs exclusively within the scope of the child's employment.

(2) It is not a violation of division (b)(1), (2), (3), or (4) of this Section if the child possesses, purchases or attempts to purchase, orders, pays for, shares the cost of, or accepts or receive an Electronic Smoking Device, while participating in an inspection or compliance check conducted by a federal, state, local, or corporate entity at a location at which Electronic Smoking Devices are sold or distributed.

(3) It is not a violation of division (b)(1) or (4) of this Section for a child to accept, receive, use, consume, or possess an Electronic Smoking Device while participating in a research protocol if all of the following apply:

(A) The parent or legal guardian of the child has consented in writing to the child participating in the research protocol;

(B) A review board sanctioned by the appropriate federal or state agency, or an equivalent entity, has approved the research protocol; and

(C) The child is participating in the research protocol at the facility or location specified in the research protocol.

(f) If a Juvenile Court finds that a child violated division (b)(1), (2), (3), (4), or (c) of this Section, the court may do any of the following:

(1) Require the child to attend a youth smoking education program or other smoking treatment program approved by the Court, if one is available.

(2) Require the Child to perform not more than ten (10) hours of community service.

(3) Impose a fine of not more than One Hundred Dollars (\$100.00).

(g) If a child disobeys a Juvenile Court order issued pursuant to division (f) of this Section, the Court may do any or all of the following:

(1) Increase the fine imposed upon the child under division (f)(3) of this Section.

(2) Require the child to perform an additional twenty (20) hours of community service.

(3) Suspend for a period of thirty (30) days the temporary instruction permit, probationary diver's license, or driver's license issued to the child.

(h) A child alleged or found to have violated division (b) or (c) of this section shall not be detained under any provision of this Chapter or any other provision of the Revised Code.

521.15 ILLEGAL DISTRIBUTION OF OR PERMITTING CHILDREN TO USE AN ELECTRONIC SMOKING DEVICE

(a) As used in this Section:

- (1) "Age Verification" means a service provided by an independent third party (other than a manufacturer, producer, distributor, wholesaler, or retailer of an Electronic Smoking Device) that compares information available from a commercially available database, or aggregate of databases that regularly are used but government and businesses for the purpose of age and indent verification to personal information provided during an internet sale or other remote method of sale to establish that the purchaser if eighteen (18) years of age or older.
- (2) "Child" means a person who is under eighteen (18) years of age.
- (3) "Distribute" means to furnish, give, or provide an Electronic Smoking Device to the ultimate consumer of an Electronic Smoking Device.
- (4) "Proof of Age" means a diver's license, a commercial driver's license , a military identification card, a birth certificate, a passport, or an identification card issued under Sections 4507.50 to 4507.52 of the Revised Code that shows that a person is eighteen (18) years of age or older.

(b) No manufacture, producer, distributor, wholesaler, or retailer of an Electronic Smoking Device, no agent, employee, or representative of a manufacture, producer, distributor, wholesaler, or retailer of an Electronic Smoking Device, and no other persona shall do any of the following:

- (1) Give, sell, or otherwise distribute an Electronic Smoking Device to any child.
- (2) Knowingly furnish any false information regarding the name, age, or other identification of any child with purpose to obtain an Electronic Smoking Device.
- (3) Give, sell, or otherwise distribute an Electronic Smoking Device over the internet or through another remote method without age verification.

(c) The following are affirmative defenses to a charge under division (b)(1) of this Section:

- (1) The Child was accompanied by a parent, spouse who is eighteen (18) years of age or older, or legal guardian of the child.
- (2) The person who gave, sold or distributed Electronic Smoking Devices to a child under division (b)(1) of this Section is a parent, spouse who is eighteen (18) years of age or older, or legal guardian of the child.

(d) It is not a violation of division (b)(1) or (2) of this Section for a person to give or otherwise distribute to a child Electronic Smoking Devises while the child is participating in a research protocol if all of the following apply:

- (1) The parent or legal guardian of the child has consented in writing to the child participating in the research protocol.
 - (2) A review board sanctioned by the appropriate federal or state agency, or an equivalent entity, has approved the research protocol.
 - (3) the child is participating in the research protocol at the facility or location specified in the research protocol.
- (e)
- (1) Whoever violates division (b)(1) or (3) of this Section is guilty of illegal distribution of Electronic Smoking Devices. Except as otherwise provided in this division, illegal distribution of an Electronic Smoking Device is a misdemeanor of the third degree. If the offender previously has been convicted of a violation of division (b)(1) or (3) of this Section, illegal distribution of Electronic Smoking Device is a misdemeanor of the second degree.
 - (2) Whoever violates division (b)(2) of this Section is guilty of permitting a child to use an Electronic Smoking Device. Except as otherwise provided in this division, permitting a child to use Electronic Smoking is a misdemeanor of the third degree. If the offender previously has been convicted of a violation of division (b)(2) of this Section, permitting a child to use an Electronic Smoking device is a misdemeanor of the second degree.