

ORDINANCE NO. 3799

AN ORDINANCE AMENDING AND SUPPLEMENTING THE OXFORD MUNICIPAL CODE BY REVISING A CHAPTER OF PART 7, BUSINESS REGULATION CODE, CHAPTER 744, REVISING THE TOBACCO RETAILER LICENSE REQUIREMENTS FOR THE SALE OF TOBACCO AND PARAPHERNALIA PRODUCTS IN THE CITY OF OXFORD.

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-government; and

WHEREAS, the City of Oxford desires to ensure proper training and enforcement of the restrictions on the sales of tobacco and nicotine-containing products to those under the age of 21; and

WHEREAS the Oxford Comprehensive Plan lists a goal of a Connected, Livable, and Equitable community for all and outlines an action of supporting high-quality health services for the region; and

WHEREAS, there are currently approximately 23 Tobacco Retail Establishments in the City of Oxford; and

WHEREAS, the City of Oxford City Council adopted Ordinances 3730 and 3731 on August 1, 2023 and Ordinance 3778 on October 15, 2024.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oxford, Ohio:

SECTION I: That Part 7 of the Business Regulation Code of the Oxford Municipal Code is hereby amended to include revisions to Chapter 744, entitled "Tobacco Retailer Licensing Requirements," as seen attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2: This Ordinance shall take effect at the earliest time allowed by law.



MAYOR

ADOPTED: FEBRUARY 18, 2025

ATTEST: Heather Barber

CLERK OF OXFORD CITY COUNCIL
INTRODUCED BY: WILLIAM SNAVELY
PREPARED BY: COMMUNITY DEVELOPMENT STAFF
CHECKED BY: LAW

Exhibit A

744: Tobacco Retailer Licensing Requirements

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744.01. Definitions.

As used in this chapter:

(a) "Tobacco Retailer License" means a license issued by the City of Oxford for the sale of tobacco products. "Tobacco retailer license" and "license" are used interchangeably in this Ordinance and shall have the same meaning.

(b) "Licensee" means the holder of a valid license for the sale of tobacco products.

(c) "Person" means any natural person.

(d) "Property line" means the boundary of the land parcel, tract or lot surrounding the business premises.

(e) "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.

(f) "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 or moveable place of business. Tobacco retailer does not mean the nonmanagement employees of any tobacco retail establishment.

(g) "Tobacco Retail Establishment" means any place of business where tobacco products are available for sale, whether or not the business is open to the public, whether the business is a "movable place of business" defined under this section, or a business or entity that maintains a private membership-based point of sale. The term includes but is not limited to grocery stores, tobacco product shops, kiosks, internet-based sales, convenience stores, gasoline service stations, bars, country clubs, cigar lounges, restaurants, and delivery services offered by Tobacco Retail Establishment.

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

(i) "Tobacco product" means

(1) Any product containing, made of, or derived from tobacco or nicotine, regardless of source, that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, shisha, or snus;

(2) Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, including but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah; or

(3) Any component, part, or accessory, instrument, or paraphernalia of subsections (1) or (2) above, whether or not any of these contain tobacco or nicotine or whether or not sold separately, including but not limited to liquids used in electronic smoking devices, filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

(4) Tobacco product does not include any product that is a drug, device, or combination of products specifically authorized for smoking cessation purposes by the United States Food and Drug Administration, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

(j) "Vending machine" includes any mechanical or electronic device designed to do both of the following:

(1) Receive a coin or bill, credit or debit card, or token, made for that purpose;

(2) In return for the insertion or deposit of a coin, bill, credit or debit card, or token, automatically dispenses any tobacco products.

(k) "Sale" is not only the transfer coin, bill, credit or debit card, or token made for that purchase, but also includes but not limited to the delivery, barter, exchange, transfer or gift, or offer

thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee.

(l) "Possess" or "Possession" means having control over a thing or substance, but may not be inferred solely from mere access to the thing or substance through ownership or occupation of the premises upon which the thing or substance is found.

(m) "Moveable Place of Business" means any form of business that is operated out of a kiosk, truck, van, automobile, bike, e-scooter, or other type of vehicle or transportable shelter and that is not affixed address or other permanent type of structure licensed for over-the counter sales transactions.

(n) "Licensed Product" means the term that collectively refers to any tobacco product.

(o) "Compliance Check" means the system the City of Oxford uses to investigate and ensure that those authorized to sell licensed products are following and complying with the requirements of this Ordinance. Compliance checks can involve the use of persons under the age of 21 who purchase or attempt to purchase licensed products. Compliance checks may be conducted by the City of Oxford, other units of government, or designated agencies for educational, research, and/or training purposes, or for investigating or enforcing federal, state, or local laws and regulations relating to licensed products.

(p) "Delivery Sale" means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the counter sales transaction, or vending machine in a licensed retail establishment. Delivery sale includes, but is not limited to, the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

(q) "Youth-oriented facility" means any facility with residents, customers, visitors, or inhabitants of which 25 percent or more are under the age of 21 or that primarily sells, rents, or offers services or products that are consumed or used primarily by persons under the age of 21. Youth-oriented facility includes, but is not limited to, public or private schools, a licensed day care facility or preschool, playgrounds, a library open to the public, recreation centers, and parks.

744.02. Tobacco Retail License Required; Application Procedure.

(a) Tobacco Retail License required. No person, tobacco retailer, or tobacco retail establishment shall sell or offer to sell any tobacco product without first having obtained a license from the City of Oxford.

(b) Tobacco Retail License Application. An application for a license to sell tobacco products must be made on a form provided by the City of Oxford. The application must contain the full

name of the applicant, the applicant's residential and business addresses and telephone numbers, the name of the business for which the license is sought, and any additional information the City of Oxford deems necessary. If the City of Oxford 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) One year license term. The license term shall be a twelve (12) month period, beginning on January 1. In cases of applications for a new license submitted after January 1 of a given year and more than 60 days before the following January 1, the City of Oxford may issue a license for the remainder of the standard term period, but such license term will only extend to the following last day of December. The license fee remains the same regardless of the time of application. The license fee will not be prorated no matter the date an application is filed during the standard term period.

(d) Violation, suspension, or revocation. Any license issued may be suspended or revoked following the procedures set forth in this Chapter.

A tobacco retailer or retail establishment that violates any provision of this Ordinance, or any other federal, state, or local law relating to tobacco product sales, shall be subject to the penalties prescribed in this Chapter and pursuant to Section 537.16 of the Oxford Municipal Code pertaining to the illegal distribution and sale of tobacco products. These penalties include but are not limited to fines and/or the prohibition of the sale of tobacco products.

A violation of other federal, state, and/or local laws relating to tobacco product sales shall be included in the determination and accrual of violations against a tobacco retail establishment's license as prescribed in this Chapter.

(e) Display. All tobacco retail licenses must be posted and displayed at all times in plain view of the public or clientele of the tobacco retail establishment.

(f) Renewals. The renewal of a license issued under this Ordinance shall be handled in the same manner as the original application. The request for renewal must be made at least thirty (30) days, but no more than sixty (60) days, before the expiration of the current license on the last day of December.

Requests for license renewals received less than 30 days in advance of the expiration of the current license, will be subject to a nonrefundable late fee. Requests for license renewal received more than thirty (30) days after the expiration of the previous license could be denied.

(g) Issuance as privilege and not a right. The issuance of a license is a privilege and does not entitle the license holder to an automatic renewal of the license.

(h) Instructional program. Licensees must ensure that their employees complete a training program on the legal requirements related to the sale of licensed products and the possible consequences of license violations. The training shall include information that the sale of tobacco products to persons under twenty-one (21) years of age is illegal; the types of identification

legally acceptable for proof of age; and that sales to persons under twenty-one (21) years of age shall subject the tobacco retailer and/or retail establishment to penalties. Licensees must maintain documentation demonstrating their compliance and must provide this documentation at the time of renewal or whenever requested to do so during the license term.

744.03 Denial, Suspension, and Revocation of License.

(a) Grounds for denying the issuance or renewal of a license include, but are not limited to, the following:

- (1) The applicant is under twenty-one (21) years of age.
- (2) The applicant has been convicted within the past five years of any violation of a federal, state, or local law, ordinance provision, or other regulation relating to licensed products.
- (3) The applicant has previously had a license to sell tobacco products revoked.
- (4) The applicant fails to provide the information required on the licensing application or provides false or misleading information.
- (5) The applicant is prohibited by federal, state, or other local law, Ordinance, or other regulation from holding a tobacco retailer license.
- (6) The business for which the tobacco retailer license is requested is a moveable place of business. Only fixed-location retail establishments are eligible to be licensed.
- (7) The number of licenses in the City of Oxford has already been exceeded or will be exceeded by the issuance of the requested license.
- (8) The business for which the license is requested does not comply with the proximity requirements.

(b) If a license is mistakenly issued or renewed to an applicant, the City of Oxford may revoke the license upon the discovery that the applicant was ineligible for the license under this Ordinance. The City of Oxford will provide the tobacco retailer license holder with notice of the revocation, along with information on the right to appeal.

(c) Any license may be suspended for a definite period, not to exceed six (6) months, as determined by the City of Oxford. Prior to reinstatement of the license following the expiration of the suspension, the licensee will be subject to a reinstatement fee. A license may be suspended for the following reasons:

(1) A business owned or operated by the licensee applicant engaging in the sale of Tobacco Products within the City of Oxford is the subject of a court order, or resolution, or final order declaring such business to be a public nuisance where said nuisance has not been abated, or where the court has ordered that sales of Tobacco Products shall cease pursuant to any temporary restraining order, preliminary injunction, or permanent injunction issued by said court;

(2) Substantiated evidence that licensee or agent of licensee has sold or otherwise distributed any Tobacco Product to any person under the age of twenty-one (21) within the city more than one time in the past twelve (12) months;

(3) The finding by a federal or state agency that the license applicant has violated a federal or state rule or regulation governing the sale of Tobacco Products;

(4) Entry of a City of Oxford inspector or designee is refused, or inspection or investigation is refused, hindered, or thwarted;

(5) For a second or any subsequent violation of this section within a twelve (12) month period of the first violation; and/or

(6) The licensee is in arrears with respect to any fine imposed for any civil penalty levied under this Section.

(d) Any license may be revoked by the City of Oxford. A license may be revoked for any of the following reasons:

(1) The licensee applicant is determined to have knowingly included false or misleading information in the license application or renewal license application;

(2) Substantiated evidence that licensee or agent of licensee has sold or otherwise distributed any Tobacco Product to any person under the age of 21 within the City of Oxford more than two (2) times over a twelve (12) month period;

(3) Entry of a City of Oxford inspector or designee is refused, or inspection or investigation is refused, hindered, or thwarted;

(4) Upon the discovery that the person was ineligible for the license under this ordinance and the license was mistakenly issued or renewed to a person;

(5) A period of suspension imposed has elapsed and the licensee remains in arrears of payment of such fine or penalty for greater than 60 days;

(6) The licensee has been subject to three (3) or more suspensions in the previous thirty-six (36) month period.

744.04 License Fees and Fines.

(a) The status of a tobacco retail license cannot be changed while the license remains in arrears of fees, fines, or other penalties pursuant to this Ordinance. This includes, but is not limited to, the following:

(1) No tobacco retailer license shall be issued under this Ordinance until the appropriate license fees are paid in full.

(2) No tobacco retailer license shall be renewed if the tobacco retailer or tobacco retail establishment has outstanding fees or fines.

(3) No tobacco retail license shall be eligible for transfer from one party to another while either has outstanding fees or fines.

(4) No tobacco retail license shall be eligible for a transfer of location while the retailer has outstanding fees or fines.

(b) If a tobacco retail license is suspended or revoked, whether due to applicant or licensee ineligibility, or determination of a violation under this Ordinance, or any other federal, state, or local law or regulation, the license fee is forfeited to the City of Oxford and shall not be refunded to the applicant or licensee.

744.05 Tobacco Retailer Density.

(a) The total number of tobacco retailer licenses within the City of Oxford shall be limited to one license for each 1,500 inhabitants of the City of Oxford. The calculation shall be rounded up to the nearest whole number.

(b) For the purposes of this section, the total inhabitant population of the City of Oxford shall be determined by the most current published population value available from the U.S. Census Bureau decennial census as of the date the license application is filed.

(c) No new tobacco retail license shall be issued if the existing number of tobacco retailer licenses equals or exceeds the total number of authorized tobacco retail licenses pursuant to this Section.

(d) Notwithstanding subsections 744.05 (a) and (c), a tobacco retailer operating lawfully on the date this Ordinance is adopted that would otherwise be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as all the following conditions are met:

- (1) The license is obtained by February 1, 2025 and is renewed without lapse or permanent revocation (as opposed to temporary suspension); and
- (2) The tobacco retail establishment is not closed for business or otherwise suspends tobacco sales, whether voluntarily or due to license suspension for more than sixty (60) consecutive days.

744.06 Transfer of License Holder and Transfer of License Location

(a) Tobacco Retail Licenses cannot be bought or sold. Licenses may be transferred to new licensees so long as all the following conditions are met:

- (1) The license is applied for as part of the sale of a business with an existing license
- (2) The applicant meets all the requirements for license issuance,
- (3) The applicant has paid the Tobacco Retail License Fee,
- (4) The license is not currently suspended or revoked,
- (5) The current license holder has not been subject to three (3) or more suspensions in the previous thirty-six (36) month period.
- (6) The current license holder has not been closed for business for more than sixty (60) days before the date of the sale of the business.

(b) Tobacco Retail Licenses can be transferred from one location to another so long as the following conditions are met:

- (1) The license holder has paid the Tobacco Retail License fee.
- (2) The location to which the license would be transferred is not within 500 feet of a youth-oriented facility, as measured by the shortest line from the property line of a youth-oriented facility.
- (3) The license holder has applied for and has been granted a transfer of location.
- (4) The license is not currently suspended or revoked.
- (5) The license holder or the license holder's location has not changed less than ninety (90) days previous to the license location transfer.
- (6) The current license holder has not been subject to three (3) or more suspensions in the previous thirty-six (36) month period.

(7) The license holder has not been closed for business for more than a total of sixty (60) consecutive days leading up to, through, and/or after the date of transfer.

744.07 Proximity of Tobacco Retail Establishments to Youth-Oriented Facilities.

(a) No license shall be granted to any person or entity for a tobacco retail establishment location that is within five hundred (500) feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed tobacco retail licensee to the nearest property line of a youth-oriented facility. This restriction does not apply to an existing tobacco retailer holding a current state tax license for the sale of tobacco products in that same location for at least one year before the date this section was enacted into law.

(b) Licenses will not be eligible for transfer to a new location if the new location is within five hundred (500) feet of a youth-oriented facility, as measured by the shortest line from the property line of the space to be occupied by the proposed tobacco retail licensee to the nearest property line of a youth-oriented facility.

744.08 Prohibited Sales.

(a) Legal age. No tobacco retailer, tobacco retail establishment, or person shall sell any tobacco product to any person under the age of twenty-one (21) under this Chapter and under Section 537.16 of the Oxford Municipal Code.

(b) Age verification. Licensees must verify by means of government-issued photographic identification containing the bearer's date of birth that the purchaser of any tobacco product is at least twenty-one (21) years of age.

(c) Signage. Notice of the legal sales age for the purchase of tobacco products, age verification requirements, and possible penalties for underage sales must be posted within six (6) feet of each cash register or place where payment may be made in a place conspicuous to both employees and customers, and where the sign(s) are unobstructed in their entirety. The sign shall state, "The sale or provision of tobacco products to an individual under twenty-one (21) years of age is prohibited by law." The sign required shall be 5 ½ inches by 8 ½ inches and the statement required shall be printed in 36-point boldfaced type. The required signage will be provided to the licensee by the City of Oxford.

(d) Samples prohibited. No tobacco retailer, tobacco retail establishment, or person shall distribute samples of any licensed product free of charge or at a nominal cost, regardless of the age of the person acquiring the product. The distribution of a licensed product as a sample, free donation, or at otherwise nominal cost, is prohibited and shall subject the tobacco retailer or tobacco retail establishment to the penalties prescribed under this Chapter and those prescribed by other local, state or federal laws pertaining to samples, donation, or otherwise nominally priced tobacco products.

(e) No tobacco retailer, tobacco retail establishment, or person shall sell or offer to sell any licensed product in any manner or form prohibited by federal, state, or other local law, ordinance provision, or other regulation.

(f) New operations. Any person, tobacco retailer or tobacco retail establishment found to be selling a tobacco product without a license required under Section 744.02 shall be issued a No Sales Order for Tobacco Products and shall be ineligible to receive a tobacco retailer license for a period of three (3) years. Continued sales after the issuance of a No Sales Order for Tobacco Products may result in a misdemeanor of first degree and a \$1,000 fine.

744.09 Compliance Checks and Inspections.

(a) All licensed premises must be open to inspection by the City of Oxford or its authorized designees during regular business hours. The tobacco retail establishment shall be subject to at least two (2) unannounced compliance checks per year by the City of Oxford or its authorized designees.

(b) Compliance checks must include verification that a tobacco retail establishment maintains a current tobacco retailer license to sell tobacco products.

(c) Compliance checks may include the participation of a person under the age of twenty-one (21) to enter the licensed premises to attempt to purchase licensed products.

(d) Unannounced follow-up compliance checks of all non-compliant tobacco retail establishments are required within three months of any violation of this Ordinance.

744.10 Exceptions and Defenses.

It is an affirmative defense to a violation of this Ordinance for a person to have reasonably relied on proof of age as described by state law.

744.11 Violations and Administrative Penalties.

(a) First Violation: Any person, tobacco retailer or tobacco retail establishment holding a tobacco retailer license and cited for violating Chapter 744, or whose employee has violated Chapter 744, shall be charged a fine of \$500 for a first violation within a twelve (12) month period.

(b) A second violation at the same tobacco retail establishment premises within a twelve (12) month period shall result in an additional fine of \$750, and the City of Oxford shall suspend the

tobacco retailer license for a period of not less than thirty (30) and not more than sixty (60) consecutive days.

(c) A third violation at the same tobacco retail establishment premises within a 12-month period shall result in an additional fine of \$1,000, and the City of Oxford shall suspend the tobacco retail establishment's license for a period of not less than sixty (60) consecutive days. In addition to the designated fine, the City of Oxford may revoke the tobacco retail establishment's license.

(d) A fourth violation at the same tobacco retail establishment premises within a twelve (12) month period shall be a misdemeanor of first degree and result in an additional fine of \$1,000 and the tobacco retail establishment's license shall be revoked.

(e) More than two violations of sales or distribution of any Tobacco Product to any person under the age of twenty-one (21) under a Tobacco Retail License within a twelve (12) month period shall result in an additional fine of \$1,000, and the City of Oxford shall revoke the tobacco retail establishment's license.

744.12 Appeals.

(a) If the City of Oxford denies the issuance of a tobacco retailer license, or suspends or revokes a tobacco retailer license, or issues a citation for violating this Chapter, the City of Oxford shall send the applicant or licensee written notice of the action and notice of the right to an appeal. Such notice shall be sent by Certified Mail with return receipt requested.

(b) Upon receipt of written notice of any citation or fines accrued under this Chapter, or the denial, suspension, or revocation of the license, the applicant or licensee shall have the right to appeal. An appeal must be appropriately filed within ten (10) days after the issuance of notice of the determination of a violation or change of license status due to suspension or revocation. The appellant shall bear the burden of proof.

774.13 Severability.

If any section or provision of this Ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given full force and effect without the invalidated section or provision.