

ORDINANCE NO. 22-2020

**TITLE: BARBERTON CODIFIED ORDINANCES
CHAPTER 875 - T21**

AN ORDINANCE ADDING CHAPTER 875 “TOBACCO 21” TO SECTION 8 “BUSINESS REGULATION & TAXATION” TO THE BARBERTON CODIFIED ORDINANCES OF THE CITY OF BARBERTON TO PROHIBIT THE SALE OF CIGARETTES, OTHER TOBACCO PRODUCTS, AND TOBACCO PRODUCT PARAPHERNALIA TO INDIVIDUALS UNDER THE AGE OF TWENTY-ONE, AUTHORIZING A CONTRACT WITH THE SUMMIT COUNTY COMBINED GENERAL HEALTH DISTRICT TO IMPLEMENT THESE PROVISIONS THROUGH REGULATIONS, AND DECLARING AN EMERGENCY.

WHEREAS, tobacco use is the leading cause of preventable death in the United States (“U.S.”), resulting in approximately 480,000 deaths a year, or one in five of all deaths in the U.S.; and

WHEREAS, more than 16 million Americans live with a disease caused by smoking resulting in direct medical costs of about \$170 billion annually, with total economic costs of more than \$300 billion annually; and

WHEREAS, if current rates of youth tobacco use continue, 5.6 million Americans currently under the age of 18 are expected to die from smoking; and

WHEREAS, tobacco use contributes to many of Ohio and Barberton’s greatest health challenges, including cardiovascular disease, cancer, and infant mortality; and

WHEREAS, according to 2014 data, in Summit County, pregnant women under age 21 smoke at a rate that is 70% higher than their older counter parts and 23.7% of pregnant women in Summit County age 18 to 21 smoked while pregnancy; and

WHEREAS, studies show that young people who are addicted to nicotine are seven times more likely to suffer from a drug use disorder, and that individuals who have never used tobacco by age 21 are unlikely to ever start smoking; and

WHEREAS, according to 2019 data, 42% of Summit county high school students have tried an e-cigarette and of those students, almost 11% tried the product at the age of 12 or younger; and

WHEREAS, more than one-third (37%) of high school students who smoked said they could purchase the tobacco they used at a store; and

WHEREAS, students who use e-cigarettes are seven times (7X) more likely to try traditional tobacco the following school year; and

WHEREAS, the City of Barberton seeks to promote the health and well-being of all its citizens.

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

SECTION 1. That Chapter 875 of the Barberton Codified Ordinances be added to Section 8 “Business Regulation & Taxation” to read as follows:

CHAPTER 875
Tobacco 21

875.01 DEFINITIONS

For the purpose of this title the following definitions shall apply unless the context clearly indicates or requires a different meaning.

“Electronic Smoking Device” any device that can be used to deliver aerosolized or vaporized nicotine or any other substance 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 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.

“Tobacco Product Paraphernalia” 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, rolling papers, and electronic cigarette cases.

“Tobacco Product” 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 tobacco product paraphernalia, including but not limited to, electronic smoking devices 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.

875.02 ILLEGAL DISTRIBUTION OF CIGARETTES, TOBACCO PRODUCTS, OR TOBACCO PRODUCT PARAPHERNALIA.

- A. Except as otherwise provided by Divisions (D) and (E) of Section 2927.02 of the Ohio Revised Code, no 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 shall do any of the following:
 - 1. Give, sell, or otherwise distribute cigarettes, other tobacco products, or tobacco product paraphernalia to any person under twenty-one years of age;
 - 2. Give away, sell, or distribute cigarettes, other tobacco products, or tobacco product paraphernalia in any place that does not have posted in a conspicuous place sign stating that giving, selling or otherwise distributing cigarettes or other tobacco products to a person under 21 years of age is prohibited by law.
- B. No person shall sell or offer to sell cigarettes, tobacco products, or tobacco product paraphernalia by or from a vending machine except in the following locations:
 - 1. An area either:
 - A. Within a factory, business office, or other place not open to the general public; or
 - B. To which persons under the age of 21 years are not generally permitted access;

2. In any other place not identified in subsection (B)(1) of this section, upon all of the following conditions:
 - A. The vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of such person, so that all purchases of cigarettes, tobacco products, or tobacco product paraphernalia from the vending machine will be readily observed by the person who owns or operates the place or an employee of such person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediately vicinity, plain view, and control of the person who owns or operates the place or an employee of such person.
 - B. The vending machine is inaccessible to the public when the place is closed.
- C. As used in this section, “vending machine” has the same meaning as “coin machine” as defined in Section 2913.01 of the Revised Code.
- D. Whoever violates this section shall be subject to a civil penalty for illegal distribution of cigarettes, tobacco products, or tobacco product paraphernalia. Whoever violates this section shall not be subject to a fine for a first violation. A civil fine of \$500 will be issued for a second violation of this section. A civil fine of \$1000 will be issued for all subsequent violations.
- E. All fines collected by the Summit County Combined General Health District pursuant to this section shall be utilized for efforts to prevent smoking initiation by persons under the age of 21 or for efforts to promote smoking cessation, including supports for those who will no longer be able to purchase cigarettes or other tobacco products pursuant to this section.
- F. Notwithstanding any other provision of this title, enforcement authority of this section shall rest with the Summit County Combined General Health District pursuant to O.R.C. 3709.281. Enforcement of this ordinance, including the issuance of penalties, shall only be undertaken following the adoption of regulations by the Summit County Combined General Health District relating to the enforcement of this ordinance.

SECTION 2. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were meetings open to the public in compliance with the law.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, and for the reason that it will safeguard the health of Barberton residents, and provided it receives the necessary votes required by the City Charter, shall be in full force and effect from and after its passage and approval; otherwise to be in full force and effect from and after the earliest period allowed by law.

Passed _____ 2020

Clerk of Council

President of Council

Approved _____ 2020

Mayor