

**Title:** To amend Chapter 715 of the Columbus City Codes to prohibit the sale of flavored tobacco products and to provide for civil penalties; to repeal pre-empted provisions of Chapter 715; and to repeal provisions of Chapter 2329.

**WHEREAS,** it is the goal of the City of Columbus and Columbus Public Health to protect residents from dangerous products and to reverse the impacts of generations of tobacco marketing focused on African Americans and children; and

**WHEREAS,** maximizing harm reduction requires limiting the availability of flavored tobacco products and ensuring enforcement of Ohio's T21 and local laws to ensure that children cannot access addictive tobacco products; and

**WHEREAS,** tobacco use remains the leading cause of preventable death in the United States, killing nearly half a million people each year. It causes or contributes to many forms of cancer, as well as heart disease and respiratory diseases, among other health disorders; and

**WHEREAS,** the Centers for Disease Control and Prevention estimates that more than 2 million U.S. middle and high school students reported currently using e-cigarettes in 2021, with more than 8 in 10 of those youth using flavored e-cigarettes; and

**WHEREAS,** every day, about 2,500 children in the United States try their first cigarette, and another 400 children under 18 years of age become new regular daily smokers. 81% of youth who have ever used a tobacco product report that the first tobacco product they used was flavored; and

**WHEREAS,** the Centers for Disease Control and Prevention reported a more than 800% increase in electronic cigarette use among middle school and high school students between 2011 and 2015 alone; and

**WHEREAS,** nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in thousands of flavors that appeal to youth, such as cotton candy, bubble gum, banana smash and mango ice; and

**WHEREAS,** data from the 2019 Ohio Youth Tobacco Survey indicates that nearly one out of four Ohio high school students and nearly 13% of Ohio middle school students report having used a flavored tobacco product; and

**WHEREAS,** the Centers for Disease Control and Prevention finds that while cigarette smoking among American adults declined overall, Columbus Public Health has seen an 8% increase in smoking rates for African American adults in Franklin County; and

**WHEREAS,** the City of Columbus has declared racism to be a public health crisis and is committed to working to address minority health inequities; and

**WHEREAS,** it is in the best interest of all parties to protect young people from flavored tobacco products, these products also disproportionately impact the 85% of African American smokers and 36% of LGBTQ smokers who smoke menthols as a result of targeted marketing practices; and

**WHEREAS,** the retail sale of most flavored tobacco products should be prohibited as of January 1, 2024 to allow for businesses to transition their stock and mitigate the economic impacts of the sales prohibition; and

**WHEREAS**, according to a November 2022 study from the FDA and the CDC on tobacco consumption among US middle and high school students in 2022, hookah was less commonly used than e-cigarettes, cigars, cigarettes, and smokeless tobacco; and

**WHEREAS**, Columbus Public Health is solely responsible for licensing City of Columbus tobacco retailers; and

**WHEREAS**, amending the city code to allow for the prohibition of the sale of flavored tobacco products will benefit the health of the residents of the City of Columbus, particularly its youth; **NOW, THEREFORE**,

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:**

**SECTION 1.** The existing Chapter 715 of the Columbus City Codes is hereby repealed in its entirety and replaced with the new Chapter 715, to be enacted to read as follows:

**Chapter 715 – SMOKING PROHIBITIONS**

**715.01 – Definitions**

For purposes of this Chapter:

(A) "Electronic Smoking Device" means 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 electronic cigarette, electronic cigar, electronic pipe, vaping pen or electronic hookah. "Electronic Smoking Device" includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance that may be aerosolized or vaporized during the use of the device. "Electronic Smoking Device" does not include drugs, devices, or combination products authorized for sale as a cessation product by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

(B) "Flavored Shisha Tobacco Product" means a Flavored Tobacco Product smoked or intended to be smoked in a Hookah. "Flavored Shisha Tobacco Product" includes, and may be referred to as, Hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh.

(C) "Flavored Tobacco Product" means any Tobacco Product that imparts a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a Tobacco Product, including, but not limited to, any taste or smell relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. There shall be a rebuttable presumption that a Tobacco Product is a "Flavored Tobacco Product" if:

(1) The Tobacco Product uses text or images, or both, on the Tobacco Product's labeling or packaging to explicitly or implicitly indicate that the Tobacco Product imparts a taste or smell other than tobacco; or

(2) A public statement or claim made or disseminated by the manufacturer or retailer of a Tobacco Product, or by any person authorized or permitted by the manufacturer or retailer to make or disseminate public statements concerning such Tobacco Product, that such Tobacco Product has or produces a taste or smell other than tobacco; or

(3) There are actions directed to consumers that would reasonably be expected to cause consumers to believe that the Tobacco Product imparts a taste or smell other than tobacco.

(D) "Hookah" means a type of water pipe that is used to smoke Shisha Flavored Tobacco Products or any other Tobacco Product, which has a long, flexible tube to draw aerosol through water. This device has

components that may include heads, stems, bowls, and hoses.

(E) "Hookah Bar" means a restaurant, tavern, brew pub, club, nightclub, bar, or any food service operation or retail food establishment that generates revenue from the sale for on-site consumption of Shisha Flavored Tobacco Products or Tobacco Products used with a Hookah; provided, that the restaurant, tavern, brew pub, club, nightclub, bar, or food service operation or retail food establishment has a valid smoking exemption from the Ohio Department of Health pursuant to section 3794.03 of the Ohio Revised Code and rule 3701-52-05 of the Ohio Administrative Code.

(F) "Person" means any individual, firm, corporation, business trust, estate, trust, association, syndicate, partnership, cooperative, governmental agency or any other entity recognized by law. "Person" does not include a wholesale dealer as defined in section 5743.01(B) of the Ohio Revised Code, a distributor as defined in section 5743.01(K)(2) or (K)(3) of the Ohio Revised Code, or a vapor distributor as defined in section 5743.01 (V)(1), (V)(4) or (V)(5) of the Ohio Revised Code when the dealer or distributor is acting in a dealer or distributor capacity.

(G) "Tobacco Product" means any product that is made from or derived from tobacco or that contains any form of nicotine, natural or synthetic, that 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, an electronic smoking device, a cigar, little cigars, pipe tobacco, chewing tobacco, smokeless tobacco, snuff, or snus. The term "Tobacco Product" also means any component or accessory used in the consumption of a Tobacco Product, such as filters, rolling papers, pipes, blunt or hemp wraps, Hookahs, flavor enhancers, mouthpieces, and pipes and substances used in Electronic Smoking Devices, whether or not they contain nicotine. "Tobacco Product" does not include drugs, devices, or combination products authorized for sale as a cessation product by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

#### **715.03 – Distribution of Tobacco Products without a license.**

(A) No person shall give, sell, or otherwise distribute Tobacco Products in the City of Columbus without a valid license issued by the Columbus Board of Health.

(B) Whoever violates this section is to be assessed a civil penalty pursuant to Section 715.99.

#### **715.04 – Illegal distribution of Flavored Tobacco Products.**

(A) No person shall give, sell, or otherwise distribute Flavored Tobacco Products in the City of Columbus.

(B) Division (A) does not apply to the distribution of Flavored Shisha Tobacco Products within Hookah Bar establishments if all of the following conditions are met:

(1) The Hookah Bar has a valid license to sell Tobacco Products issued pursuant to Section 248.02 of the Columbus City Health Code.

(2) The Hookah Bar is operating in accordance with all relevant state and local laws relating to onsite consumption of tobacco products.

(3) All Flavored Shisha Tobacco Products are sold to be consumed on site and may not be taken off premises.

(C) Violations of division (A) alleged to have been committed by a valid Retail Tobacco Product Sales Licensee or Temporary Retail Tobacco Product Sales Licensee shall be enforced pursuant to

provisions of Chapter 248 of the Columbus City Health Code.

(D) Whoever violates this section is to be assessed a civil penalty pursuant to Section 715.99.

**715.05 – Severability.**

The provisions of Chapter 715 are hereby declared to be severable, and if any part of this Chapter is held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this Chapter that can be given effect.

**715.99 – Enforcement and Civil Penalty.**

(A) The Columbus Public Health Department shall enforce all applicable provisions of this Chapter and all regulations adopted by the Board of Health pursuant hereto.

(B) A violation of any section of this Chapter constitutes a civil infraction and civil penalties shall be imposed as provided for in Chapter 248 of the Columbus City Health Code.

(C) Anyone issued a civil penalty pursuant to this Chapter has the right to appeal in accordance with provisions of Columbus City Health Code Section 203.08.

(D) In addition to any civil penalties imposed pursuant to this Chapter, the Columbus Department of Public Health may deny an application to obtain a Retail Tobacco Product Sales License or a Temporary Retail Tobacco Product Sales License to one found violating any provision of this Chapter in accordance with the rules and regulations found in Chapter 248 of the Columbus City Health Code.

(E) Fines are to be deposited into a "Tobacco Enforcement and Education Fund" to be administered by the Columbus Health Department, reinvested for enforcement, community education, and compliance efforts towards state and local tobacco product sales and use laws.

(F) Nothing in this Chapter shall be construed so as to prohibit enforcement of relevant provisions of Chapter 2927 of the Ohio Revised Code.

**SECTION 2.** That Sections 2329.13 and 2329.14 of the Columbus City Codes are hereby repealed.

**SECTION 3.** That this Council does hereby authorize the Columbus Board of Health to promulgate rules and regulations to carry out the purpose and intent of Section 1 of this ordinance in order to protect the public health, safety and welfare.

**SECTION 4.** That Section 2 and Section 3 of this ordinance shall take effect and be in full force 30 days from and after its passage and approval by the Mayor of the City of Columbus and that Section 1 of this ordinance shall take effect and be in full force on January 1, 2024.