



## Legislation Text

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**File #:** O-569-19, **Version:** 2

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Councilman Sykes  
(Amendment)

### **Enacting new Section 537.28 entitled “Restrictions on the Sale of Vapor Products and Electronic Smoking Devices” of the Toledo Municipal Code.**

#### **SUMMARY & BACKGROUND:**

Toledo City Council has become aware of a public health epidemic across the country related to the use of “vapes” and other vaping products. Particularly of concern are the disproportional effects this epidemic has had on youth that cannot legally engage in the use of nicotine delivery systems, including vapor products. Thus far, the Center for Disease Control has confirmed 2,290 cases of lung injury associated with vaping products, particularly those used with illicit substances, in 49 states. These lung injuries have caused at least 47 deaths. Therefore, Council finds it necessary to take action that makes it substantially more difficult for vaping products to end up in the hands of Toledo youth. A 2018 study from the Truth Initiative found that 74% of smokers between the ages 12 and 17 self-reported that they obtained JUUL brand vapor products from physical retail locations. A review of compliance checks that have been completed by the FDA in Ohio reveals that non-specialized retailers such as gas stations, convenience stores, grocery stores and similar businesses have a far greater number of violations relating to sale to minors. In Toledo alone, the FDA has performed at least 890 compliance checks since 2011. Of those, hundreds of violations involving the sale of products to minors occurred, but of those hundreds, only 6 violations occurred at locations that specialize in tobacco products. Of those 6, only 1 violation occurred at a location specializing in vapor products. Therefore, the majority of incidents of minors purchasing smoking devices occur at non-specialized businesses.

NOW, THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That a new Toledo Municipal Code Section 537.28 is hereby enacted to read as follows:

#### **537.28 Restrictions on Sale of Flavored Vapor Products and Flavored Electronic Smoking Devices.**

##### **(a) Definitions:**

- (1) "Characterizing Flavor" means a taste or aroma, other than the taste or aroma of tobacco, emitted either prior to or during consumption of a tobacco product. "Characterizing Flavor" includes tastes or aromas relating to food or drink of any sort, menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverages, herbs, or spices.
- (2) "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 an electronic cigarette, electronic cigar, electronic hookah, vaping pen, or electronic pipe. "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 any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g).

- (3) "Flavored Electronic Smoking Device" means any Electronic Smoking Device with a Characterizing Flavor.
- (4) "Flavored Vapor Product" means any Vapor Product with a Characterizing Flavor.
- (5) "Pre-Filled Flavored Vapor Cartridge" means a cartridge containing Flavored Vapor Product that is filled and sealed at the point of manufacture.
- (6) "Retail Vapor Product Specialty Business" means a commercial establishment in which the sale of Vapor Products and Electronic Smoking Devices accounts for more than 60% of the total gross receipts for the establishment.
- (7) "Vapor Product" means a product, other than a cigarette or other tobacco product as defined in Chapter 5743 of the Ohio Revised Code, that contains or is made or derived from nicotine and that is intended and marketed for human consumption, including by smoking, inhaling, snorting, or sniffing. "Vapor Product" includes any component, part, or additive that is intended for use in an Electronic Smoking Device, a mechanical heating element, battery, or electronic circuit and is used to deliver the product. "Vapor Product" does not include any product that is a drug, device, or combination product, as those terms are defined or described in 21 U.S.C. 321 and 353(g). "Vapor product" includes any product containing nicotine, regardless of concentration.

(b) Only Retail Vapor Product Specialty Businesses may engage in the sale of Flavored Vapor Products or Flavored Electronic Smoking Devices. Pre-Filled Flavored Vapor Cartridges shall not be sold in the City.

(c) Whoever violates this section is guilty of illegal distribution of Flavored Vapor Products, Flavored Electronic Smoking Devices, or Pre-Filled Flavored Vapor Cartridges, a misdemeanor of the fourth degree. If the offender has previously been convicted of a violation of this section, then illegal distribution Flavored Vapor Products, Flavored Electronic Smoking Devices or Pre-Filled Flavored Vapor Products is a misdemeanor of the third degree. A minimum fine shall be fixed by the court as follows:

- (1) If a first time offender is an organization as defined in Section 501.11(d), the court shall impose a fine of not less than two hundred fifty dollars (\$250.00).
- (2) If the offender is an organization and has previously been convicted of a violation of this section, then the court shall impose a fine of not less than five hundred dollars (\$500.00).
- (3) If a first time offender is not an organization, the court shall impose a fine of not less than fifty dollars (\$50.00).
- (4) If an offender is not an organization and has previously been convicted of a violation of this section, then the court shall impose a fine of not less than one hundred dollars (\$100.00).

SECTION 2. That this ordinance shall be in full force and effect from and after the earliest date

allowed by law.

Passed: December 10, 2019: yeas 11, nays 1.

Attest:

Gerald E. Dendinger  
Clerk of Council

Matt Cherry  
President of Council

Approved:

December 11, 2019  
Wade Kapszukiewicz  
Mayor