

AN ORDINANCE AMENDING/SUPPLEMENTING THE CODIFIED ORDINANCES OF THE VILLAGE OF RICHFIELD 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's and Richfield'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 counterparts and 23.7% of pregnant women in Summit County age 18 to 21 smoked while pregnant; and

WHEREAS, research shows that increasing the tobacco sales age to 21 across the U.S. could result in 249,000 fewer premature deaths, 286,000 fewer pre-term births, and 438,000 fewer babies with low birth weight; 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, 75% of adults support raising the tobacco sales age to 21, including 70% of smokers, and five states and more than 270 U.S. cities have already done so; and

WHEREAS, military leaders are supportive of raising the tobacco age to 21 due to tobacco's negative impact on military readiness; and

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

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio, that:

SECTION 1. Part Seven of the Codified Ordinances of the Village of Richfield be and hereby is amended to enact a new Chapter 733 "Sales of Tobacco Products," providing as follows:

**"CHAPTER 733
TOBACCO PRODUCTS**

733.01 DEFINITIONS.

(a) "Electronic Smoking Device" means any device that can be used to deliver aerosolized or vaporized nicotine 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 be 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.

(b) "Tobacco Product Paraphernalia" means 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.

(c) "Tobacco Product" means 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.

733.02 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 twenty-one 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 twenty-one 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 any 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) All manufacturers, producers, distributors, wholesalers, or retailers of cigarettes, other tobacco products, or Tobacco Product Paraphernalia shall comply with any applicable certification requirements promulgated by the Summit County Combined General Health District.

(e) 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 \$1,000 will be issued for all subsequent violations.

(f) 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.

(g) 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 the regulations by the Summit County Combined General Health District relating to the enforcement of this ordinance."

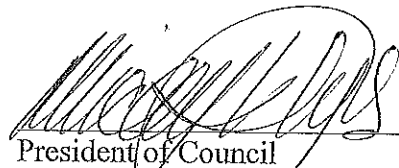
SECTION 2. The Mayor and the Finance Director are hereby authorized to execute a contract with the Summit County Combined General Health District pursuant to Ohio Revised Code Section 3709.281, memorializing the Village of Richfield's agreement that the Summit County Combined General Health District shall enforce

the provisions of the new enacted Chapter 733 of the Richfield Codified Ordinances, including the issuance of civil penalties for violation, after adopting enforcement regulations. The agreement shall be substantially in accordance with the agreement attached as Exhibit A, and there shall be no compensation paid to the Summit County Combined General Health District by the Village for enforcement.


SECTION 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

SECTION 4. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it will safeguard the health of Village residents; wherefore, provided this Ordinance receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect and be in force immediately upon passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 10-16-18



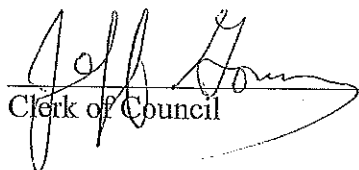
President of Council



Mayor

Dated: 10/16/18

ATTEST:



Clerk of Council

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE SUMMIT COUNTY COMBINED GENERAL HEALTH DISTRICT AND THE VILLAGE OF RICHFIELD FOR THE PROVISION OF PUBLIC HEALTH SERVICES

This **INTERGOVERNMENTAL AGREEMENT** (hereinafter "Agreement") is made and entered into by and between the Summit County Combined General Health District d.b.a. Summit County Public Health (hereinafter "SCCGHD"), an Ohio general health district, with its office located at 1867 West Market Street, Akron, Ohio 44313 and the Village of Richfield, Ohio, (hereinafter "the Village"), a charter municipal corporation, with its offices located at 4410 West Streetsboro Road, Richfield, Ohio 44286, as duly authorized by Village Council Ordinance 68-2018 (hereinafter, "the Ordinance") enacted on October 16, 2018.

WHEREAS, the Village passed the Ordinance on October 16, 2018, and

WHEREAS, pursuant to R.C. 3709.281, SCCGHD may perform any function or render any service on behalf of the Village Council upon the execution of a written agreement, and

WHEREAS, the parties intend to make clear their intention for the enforcement of the Ordinance.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, the parties agree to the following:

1. SCCGHD shall enforce the Ordinance, on behalf of the Village pursuant to R.C. 3709.281 and shall comply with all requirements placed upon SCCGHD provided in the Ordinance.
2. Pursuant to the Ordinance, the SCCGHD may issue civil penalties for violations of Section 139.09 of the Codified Ordinances of the Village of Richfield, and shall collect fines in amounts provided in that section. All fines collected by SCCGHD 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.
3. Prior to any enforcement of the Ordinance, SCCGHD must adopt regulations relating to the enforcement of the Ordinance.
4. SCCGHD shall not be entitled to any compensation for enforcement of the Ordinance pursuant to this Agreement.

Miscellaneous Terms

- A. **Term and Termination.** The term of this Agreement shall be effective upon the date of execution and shall continue until terminated by one or more parties. This Agreement may be canceled by either party upon 30-days written notice of such cancellation

EXHIBIT A

transmitted in accordance with the terms and conditions set forth in Section F of this Agreement. Upon cancellation of this Agreement, SCCGHD shall retain no authority to enforce the Ordinance

- B. Equal Opportunity Employment. The Village and SCCGHD expressly represent that they are Equal Employment Opportunity employers as defined in and are in compliance with all Equal Employment Opportunity statutes, rules, regulations, and executive orders and amendments.
- C. Non-Discrimination. The Village and SCCGHD agree that, in the hiring of employees for the performance of their duties under this Intergovernmental Agreement, the Village, SCCGHD, or their subcontractors, or any person acting on the behalf of the Village, SCCGHD, or their subcontractors shall not discriminate by reason of race, creed, sex, disability, or military status as defined in section 4112.01 of the Ohio Revised Code, color or gender identity as defined in Section 101.02(f) in the Codified Ordinances of the County of Summit, or sexual orientation as defined in Section 101.02(r) in the Codified Ordinances of the County of Summit against any citizen of the State of Ohio in the employment of labor or workers who are qualified and available to perform the work to which the employment relates. The Village and SCCGHD further agree that the Village, SCCGHD, or their subcontractors, or any person on behalf of the Village, SCCGHD, or their subcontractors, in any manner, shall not discriminate against or intimidate any employee hired for the performance of duties under this Intergovernmental Agreement on account of race, creed, sex, disability, or military status as defined in section 4112.01 of the Ohio Revised Code, color or gender identity as defined in Section 101.02(f) in the Codified Ordinances of the County of Summit, or sexual orientation as defined in Section 101.02(r) in the Codified Ordinances of the County of Summit. The Village and SCCGHD certify that they do not maintain and they will not permit their employees from performing services at any segregated facilities. The Village and SCCGHD agree to comply with all applicable federal, state, and local laws, orders, rules, and regulations, as amended, regarding discrimination.
- D. Assignment. Neither party shall assign its rights or delegate its duties hereunder without the prior written consent of the other party. Subject to such consent, this Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.
- E. Relationship of Parties. At no time shall the relationship between the parties under this Agreement be construed, held out or considered a joint venture or principal-agent.
- F. Notice. Any notice required or permitted under this Agreement shall be given in writing and shall be deemed to have been given when posted in the United States mail by certified mail addressed to the following.

Notices to the Village:

Mayor
Village of Richfield
4410 West Streetsboro Road
Richfield, Ohio 44286

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with a copy to

William R. Hanna, Director of Law
Walter | Haverfield LLP
The Tower at Erieview
1301 East Ninth Street, Suite 3500
Cleveland, OH 44114

Notices to SCCGHD:

Public Health Commissioner
Summit County Public Health
1867 West Market Street
Akron, Ohio 44313

- G. Entire Agreement, Modification and Severability. This written Agreement represents the entire agreement between the parties and supersedes all previous agreements, written and oral, pertaining to the provision of the services contemplated by this Agreement. This Agreement shall not be modified except in writing signed by both parties. In the event any provision of this Agreement is determined to be invalid by a court of competent jurisdiction, such determination shall not affect the validity of other provisions in the Agreement, which shall be severable.
- H. Reservation of Rights. A delay or failure in enforcing any right or remedy afforded hereunder or by law must not prejudice or operate to waive that right or Agreement remedy or any other right or remedy, including any remedy, for a future breach of this Agreement, whether of a like or a different character.
- I. Governing Law. This Agreement is to be governed by and construed in accordance with the laws of the State of Ohio. Any suit brought to enforce any provision of this Agreement or arising from this Agreement must be litigated in the Akron Municipal Court or in the Summit County Court of Common Pleas and each party agrees to submit itself to the jurisdiction and venue of those courts.
- J. No Authority to Bind. Neither party has the power or authority to bind the other party to contracts or other obligations.
- K. Review by Legal Counsel. Each party has had the opportunity to review this Agreement with the assistance of legal counsel.
- L. Force Majeure. Neither party must be considered in default in the performance of any obligation hereunder, except the obligation to make payment, to the extent that the performance of such obligation is prevented or delayed by fire, flood, explosion, strike, war, insurrection, embargo, government requirement, civil or military authority, act of God, or any other event, occurrence or condition which is not caused, in whole or in part by that party, and which is beyond the reasonable control of that party. The parties must take all reasonable action to minimize the effects of any such event, occurrence, or condition.
- M. Headings. The headings contained in the Agreement are for the convenience of reference only and will not define or limit any of the terms or provisions hereof.

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- N. Remedies/Waiver. The remedies contained in this Agreement will be cumulative and additional to any other remedies provided in law or equity. If the Village or SCCGHD fails to perform an obligation, and SCCGHD or the Village waives that failure, such waiver is limited to the particular failure so waived and shall not be deemed to waive other failures. Waiver by SCCGHD or the Village is not effective unless it is in writing signed by SCCGHD or the Village. A delay or failure of SCCGHD or the Village in enforcing any right or remedy afforded hereunder or by law must not prejudice or operate to waive that right or remedy or any other right or remedy, including any remedy for a future breach of this Agreement, whether of a like or a different character.
- O. Compliance with Laws. The Village and SCCGHD agree to abide by all Federal, State of Ohio, and Local laws, statutes, ordinances, resolutions, rules and regulations applicable to this Agreement, including but not limited to those obligations addressed either directly or indirectly in this Agreement.
- P. Counterparts. This Agreement may be executed in any number of identical counterparts, notwithstanding that the Parties have not signed the same counterpart, with the same effect as if the Parties had signed the same document. All counterparts will be construed as and constitute one and the same agreement. In executing this Agreement, each of the Parties represents and warrants that they are authorized by their respective principals to enter into this Agreement and to give it binding legal effect.

All other terms of this Agreement shall remain in full force and effect.

Intending to be legally bound, the parties hereto execute this Intergovernmental Agreement.

**SUMMIT COUNTY COMBINED GENERAL
HEALTH DISTRICT**

VILLAGE OF RICHFIELD, OHIO

Donna Skoda, Health Commissioner Date

Bobbie Beshara, Mayor Date

Approved as to form and correctness:

William R. Hanna, Director of Law Date