

Amend to Include Executive Session

**THE CITY OF SOUTH EUCLID
SCHEDULE OF MEETING**

**February 11, 2019
8:00 PM**

1. **PLEDGE OF ALLEGIANCE**
2. **ROLL CALL**
3. **MINUTES OF MEETINGS:** JANUARY 28, 2019
4. **REPORT OF MAYOR**
5. **REPORT OF LAW DIRECTOR & DEPARTMENTAL HEADS**
6. **REPORT OF SCHOOL DISTRICT (1st Meeting of Month Only)**
7. **PUBLIC HEARINGS (OPEN MEETING) RELATED TO AGENDA ITEMS**
8. **REPORT OF COMMITTEES**

SAFETY COMMITTEE:

1. ORDINANCE 30-18 AMENDING SECTION ~~1510.01, "ADOPTION OF OHIO FIRE CODE" OF CHAPTER 1510 "CITY OF SOUTH EUCLID FIRE PREVENTION CODE";~~ **1530.04 "OPEN BURNING REGULATIONS IN RESIDENTIAL SETTINGS"; 1530.05 "PROHIBITED OPEN BURNING" AND 1530.06 "PERMISSION TO INDIVIDUALS AND NOTIFICATION TO THE FIRE DEPARTMENT AND OHIO EPA" OF CHAPTER 1530 "OPEN BURNING" OF PART FIFTEEN "FIRE PREVENTION CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. SECOND READING.**
2. ORDINANCE 01-19 AMENDING SECTION 1510.01, "ADOPTION OF OHIO FIRE CODE" OF CHAPTER 1510 "CITY OF SOUTH EUCLID FIRE PREVENTION CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. FIRST READING.

9. LEGISLATION REQUESTED BY CITY COUNCIL

1. RESOLUTION 02-19 URGING THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES TO IMMEDIATELY RESTORE THE SERVICES AND FUNDING FOR THE FEDERAL GOVERNMENT **TO CEASE AND DESIST FROM USING GOVERNMENT SHUTDOWNS AS A POLICY NEGOTIATING TOOL IN THE FUTURE** AND SIMULTANEOUSLY WORK TOGETHER TO FIND ADEQUATE AND APPROPRIATE METHODS AND POLICIES TO CONTROL THE BORDERS OF THE UNITED STATES. **SECOND READING.**

10. LEGISLATION REQUESTED BY THE MAYOR AND ADMINISTRATION

1. RESOLUTION 03-19 AUTHORIZING THE CITY ENGINEER TO PREPARE THE NECESSARY PLANS, SPECIFICATIONS, AND ADVERTISE FOR BIDS FOR THE 2019 CONCRETE STREET REPAIR PROGRAM IN THE CITY OF SOUTH EUCLID, OHIO; AND DECLARING AN EMERGENCY. FIRST READING.

- 2. RESOLUTION 04-19 A RESOLUTION TO ADOPT THE SOLID WASTE MANAGEMENT PLAN FOR THE CUYAHOGA COUNTY SOLID WASTE MANAGEMENT DISTRICT. FIRST READING.

- 3. ORDINANCE 02-19 AN ORDINANCE AMENDING SECTION 537.16 "ILLEGAL DISTRIBUTION OF CIGARETTES OR OTHER TOBACCO PRODUCTS TO MINORS" OF CHAPTER 537 "OFFENSES AGAINST PERSONS" OF PART FIVE "GENERAL OFFENSES CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. FIRST READING.

- 4. ORDINANCE 03-19 AN ORDINANCE AMENDING SECTION 537.161 "ILLEGAL DISTRIBUTION OF CIGARETTES" OF CHAPTER 537 "OFFENSES AGAINST PERSON" OF PART FIVE "GENERAL OFFENSE CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO. FIRST READING.

11. PUBLIC HEARINGS (OPEN MEETING) RELATED TO OPEN BUSINESS

12. COMMUNICATIONS OF CITY COUNCIL

13. ADJOURN TO EXECUTIVE SESSION for the purposes of discussing pending litigation.

14. ADJOURN

THE CITY OF SOUTH EUCLID

ORDINANCE NO.: 30-18
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

November 12, 2018
As amended in Committee January 28, 2019

AN ORDINANCE

AMENDING SECTION 1510.01, "~~ADOPTION OF OHIO FIRE CODE~~" OF CHAPTER 1510 "~~CITY OF SOUTH EUCLID FIRE PREVENTION CODE~~"; 1530.04 "~~OPEN BURNING REGULATIONS IN RESIDENTIAL SETTINGS~~"; 1530.05 "~~PROHIBITED OPEN BURNING~~" AND 1530.06 "~~PERMISSION TO INDIVIDUALS AND NOTIFICATION TO THE FIRE DEPARTMENT AND OHIO EPA~~" OF CHAPTER 1530 "~~OPEN BURNING~~" OF PART FIFTEEN "~~FIRE PREVENTION CODE~~" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, changes to the City of South Euclid Fire Code are necessary so that it is consistent with the Ohio State Fire Code, adopted in 2017; and to protect the health, safety and welfare of the residents of the City of South Euclid.

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

Section 1: That Section 1510.01, "~~Adoption of Ohio Fire Code~~" of Chapter 1510 "~~City of South Euclid Fire Prevention Code~~"; 1530.04 "~~Open Burning Regulations in Residential Settings~~"; 1530.05 "~~Prohibited Open Burning~~" and 1530.06 "~~Permission to Individuals and Notification to the Fire Department and Ohio EPA~~" of Chapter 1530 "~~Open Burning~~" of Part Fifteen "~~Fire Prevention Code~~" of the Codified Ordinances of the City of South Euclid, Ohio, be hereby amended to read as follows:

~~1510.01 ADOPTION OF OHIO FIRE CODE; CITY OF SOUTH EUCLID FIRE PREVENTION CODE DEFINED; FILE AND DISTRIBUTION COPIES.~~

- ~~—(a) Pursuant to Ohio R.C. 731.231, there is hereby adopted by the City the 2011-2017 edition of the Ohio Fire Code (OFC), as adopted by the Ohio Department of Commerce, Division of State Fire Marshal, published in Division 1301:7 of the Ohio Administrative Code (OAC).~~
- ~~—(b) The Ohio Fire Code, together with the provisions of this Part Fifteen of these Codified Ordinances, shall be known and may be cited as the City of South Euclid Fire Prevention Code. References throughout this Part Fifteen of these Codified Ordinances to "this Code" shall be deemed to mean the City of South Euclid Fire Prevention Code.~~
- ~~—(c) A complete copy of the Ohio Fire Code shall be kept on file in the library of the Fire Chief and in the offices of the Fire Prevention Bureau and shall be available to the Clerk of Council. The Clerk of Council shall provide copies of the Ohio Fire Code to the public, upon request, at cost.~~

~~1530.04 (RESERVED) OPEN BURNING IN UNRESTRICTED AREAS.~~
~~OPEN BURNING REGULATIONS IN RESIDENTIAL SETTINGS.~~

Open burning is allowed in the City of South Euclid in residential settings without permit with the following provisions:

(a) Location: The location for open burning shall not be less than 50 feet from any structure, unless it is covered in (b) as an exception. ~~The location for open burning shall not be less than 50 feet from any structure, and provisions shall be made to prevent the fire from spreading to within 50 feet (15,240 mm) of any structure. (Ohio Administrative Code Chapter 1301:7-7 Ohio Fire Code: 307.4)~~

(b) Provisions: Exceptions:

- (1) In an approved container such as a chiminea or a free standing fire pit. Said container must be approved and cannot be located on any combustible surface like a deck or wooden platform or under a combustible overhang. The approved container must be at least 15 feet from any combustible structure or combustible materials. (OFC 307.4; exception 1)
- (2) Open flame cooking devices such as charcoal burners and other open flame cooking devices are allowed. These devices shall not be operated on balconies or within 10 feet of combustible structure. (OFC 308.1.4)
- (3) Materials that are allowed to be burned in approved containers or in a recreational fire pit are clean, dry, seasoned hardwoods. The burning of yard waste, household garbage; and construction materials are prohibited.
- (4) Recreational fire pits shall be permitted as long as they are located at least 25 feet away from any and all combustible structure or combustible materials. Recreational fire pits must not exceed 3 feet in diameter and no more than 2 feet in height. Recreational fires shall be constantly attended until the fire is extinguished. A minimum of one portable fire

extinguisher having a minimum size of 4 A rating or other approved on site fire extinguishing equipment, such as dirt, sand, water barrel, or garden hose, shall be available for immediate utilization. (307.4.2)

(5) Fire pits. Recreational fires conducted in gas-fired recreational pits shall not be conducted within 15 feet of a structure or combustible materials. (OFC 307.4.2.1)

(6) Portable outdoor fireplaces. Portable outdoor fireplaces shall be used in accordance with the manufacturer's instructions and shall not be operated within 15 feet (~~3048 mm~~) of a structure or combustible material. (OFC 307.4.3)

1530.05 PROHIBITED OPEN BURNING.

Any open burning including fires in approved containers, open flame cooking devices and recreational fires that is offensive or objectionable because of odor or smoke emissions, or when atmospheric conditions or local circumstances make such fires hazards, shall be prohibited.

(307.1.1). If the smoke is contributing factor to a resident's breathing disorder it will be considered offensive.

(a). Extinguishment authority: The fire code official is authorized to order the extinguishment by the permit holder, another person responsible or the fire department of the open burning that becomes offensive, adds to a hazardous, or becomes an objectionable situation. (307.3). The following provisions of penalty will be utilized:

(1). First offense: A response by the fire department will result in the extinguishment of the fire. The resident will receive a verbal warning from the fire department apparatus on scene and provided a copy of the city open burning ordinance.

(2). Second offense: A response by the fire department will result in the extinguishment of the fire. The resident will receive a verbal warning from the fire department apparatus on scene and provided a copy of the city open burning ordinance. The Fire Prevention Bureau will be notified by the responding fire apparatus crew of the violation. The Fire Prevention Bureau will contact the resident. The resident will be explained the city open burning ordinance and be given a written warning.

(3). Third offense: At the discretion of the Fire Chief the violation will be turned over to the South Euclid Judicial courts as a misdemeanor of the third degree.

1530.06 Permission to individuals and notification to the Fire Department and the Ohio EPA.

1530.99 PENALTY.

Whoever violates any provision of this chapter is guilty of a misdemeanor of the third degree and subject to fines not more than five hundred dollars (\$500.00) or ~~imprisoned~~ jailed not more than sixty days, or both.

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 adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance is deemed to be an emergency measure necessary for the immediate preservation of the public peace, health and safety and for further reason that it is important to reduce the risk of injury to persons within the City, this Ordinance should be enacted at the earliest possible time. Wherefore, this Ordinance shall take effect and be in force from and after the earliest allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2019.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

THE CITY OF SOUTH EUCLID

ORDINANCE NO.: 01-19
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

February 11, 2019

AN ORDINANCE
AMENDING SECTION 1510.01, "ADOPTION OF OHIO FIRE CODE" OF
CHAPTER 1510 "CITY OF SOUTH EUCLID FIRE PREVENTION CODE" OF
THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, changes to the City of South Euclid Fire Code are necessary so that it is consistent with the Ohio State Fire Code, adopted in 2017, and to protect the health, safety and welfare of the residents of the City of South Euclid.

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

Section 1: That Section 1510.01, "Adoption of Ohio Fire Code" of Chapter 1510 "City of South Euclid Fire Prevention Code" of the Codified Ordinances of the City of South Euclid, Ohio, be hereby amended to read as follows:

**1510.01 ADOPTION OF OHIO FIRE CODE; CITY OF SOUTH EUCLID
FIRE PREVENTION CODE DEFINED; FILE AND DISTRIBUTION
COPIES.**

(a) Pursuant to Ohio R.C. 731.231, there is hereby adopted by the City the ~~2014~~ 2017 edition of the Ohio Fire Code (OFC), as adopted by the Ohio Department of Commerce, Division of State Fire Marshal, published in Division 1301:7 of the Ohio Administrative Code (OAC).

(b) The Ohio Fire Code, together with the provisions of this Part Fifteen of these Codified Ordinances, shall be known and may be cited as the City of South Euclid Fire Prevention Code. References throughout this Part Fifteen of these Codified Ordinances to "this Code" shall be deemed to mean the City of South Euclid Fire Prevention Code.

(c) A complete copy of the Ohio Fire Code shall be kept on file in the library of the Fire Chief and in the offices of the Fire Prevention Bureau and shall be available to the Clerk of Council. The Clerk of Council shall provide copies of the Ohio Fire Code to the public, upon request, at cost.

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 adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Ordinance is deemed to be an emergency measure necessary for the immediate preservation of the public peace, health and safety and for further reason that it is important to reduce the risk of injury to persons within the City, this Ordinance should be enacted at the earliest possible time. Wherefore, this Ordinance shall take effect and be in force from and after the earliest allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2019.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 02-19
INTRODUCED BY: Fiorelli
REQUESTED BY: Gelfand

January 28, 2019
To be amended by Council on February 11, 2019

A RESOLUTION

URGING THE PRESIDENT AND THE CONGRESS OF THE UNITED STATES TO IMMEDIATELY RESTORE THE SERVICES AND FUNDING FOR THE FEDERAL GOVERNMENT, **TO CEASE AND DESIST FROM USING GOVERNMENT SHUTDOWNS AS A POLICY NEGOTIATING TOOL IN THE FUTURE**, AND SIMULTANEOUSLY WORK TOGETHER TO FIND ADEQUATE AND APPROPRIATE METHODS AND POLICIES TO CONTROL THE BORDERS OF THE UNITED STATES.

WHEREAS, the Federal Government ~~is in its 6th week of a~~ **was in a Shutdown for 35 days from December 2018 through January 2019 while the Congress and the President of the United States were negotiating U.S. border control policy; and**

WHEREAS, the Shutdown was suspended for 3 weeks as negotiations between the Congress and the President are expected to continue; and

WHEREAS, the Federal Government remains under threat of another Shutdown on February 15, 2019, if the Congress and the President cannot come to an agreement; and

WHEREAS, the United States has authority under the Constitution to control its borders; and

WHEREAS, given traditional and technological methods, there is not one exclusive way for the United States to control its sovereign borders; and

WHEREAS, the reason for the Federal Government Shutdown is that members of the elected branches of the Federal Government cannot agree on a specific method of border control; and

WHEREAS, federal workers live in South Euclid and throughout Northeast Ohio; and

WHEREAS, some federal workers ~~are~~ **had been** furloughed and others ~~have~~ **had** been working and have not received pay for at least 2 pay cycles; and

WHEREAS, the Constitution and laws of the United States require that people who work must get paid;

WHEREAS, Deuteronomy 24:14-15 commands: "Thou shalt not oppress a hired servant that is poor and needy, whether he be of thy brethren, or of thy strangers that are in thy land within thy gates. In the same day thou shalt give him his wages, neither shall the sun go down upon it; for he is poor, and setteth his heart upon it; lest he cry against thee unto the Lord and it be sin in thee"; and

WHEREAS, the welfare of the people of South Euclid and the ability of the City of South Euclid to provide services depend on a functional and funded Federal Government; and

WHEREAS, agencies of the Federal Government, including the Department of Housing and Urban Development, the Department of Transportation, the Department of Agriculture, the Department of Justice, the Federal Emergency Management Agency, the NASA, and other departments and agencies, provide grants, services, support, and jobs to the City of South Euclid and the people of South Euclid; and

WHEREAS, the people of South Euclid and throughout the country lose confidence and patience with our Federal Government when it is not functioning and paying its workers; and

WHEREAS, whatever differences of opinions there are about border control among the elected members of the federal legislative and executive branches should be worked out through the legislative processes prescribed by our Constitution; and

WHEREAS, there is no good reason to deny services to the people and pay to the federal workers of our country; and

WHEREAS, the federal legislative and executive branches are able to work on federal border control policy while the Federal Government is funded and operational; and

WHEREAS, this resolution constitutes an emergency measure for the immediate preservation of public peace, property, health or safety, now, therefore,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: That the Council strongly **condemns the recent Federal Government Shutdown and** urges the President and the Congress of the United States to ~~immediately restore~~ **continue to provide** the services and funding for the Federal Government and simultaneously work together to find adequate and appropriate methods and policies to control the borders of the United States.

Section 2: That the Clerk of Council is directed to transmit a copy of this resolution to the President of the United States, the Vice President of the United States, U.S. Senators Sherrod Brown and Rob Portman, Congresswoman Marcia Fudge, Governor Mike DeWine, Ohio Senator Kenny Yuko, Ohio Representative Kent Smith, County Executive Armond Budish, County Councilwoman Sunny Simon, the National Conference of Mayors, and the National League of Cities.

Section 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: That this Resolution is deemed to be an emergency measure necessary for the immediate preservation for the public peace, health, and safety and for further reason that a vital function of the municipal government is effected hereby. Wherefore, this Resolution shall take effect and be in force from and after the earliest period allowed by law and upon signature of the Mayor.

Passed this _____ day of _____, 2019.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 03-19
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

February 11, 2019

A RESOLUTION

AUTHORIZING THE CITY ENGINEER TO PREPARE THE NECESSARY PLANS, SPECIFICATIONS, AND ADVERTISE FOR BIDS FOR THE 2019 CONCRETE STREET REPAIR PROGRAM IN THE CITY OF SOUTH EUCLID, OHIO; AND DECLARING AN EMERGENCY.

WHEREAS, the City must continue efforts to revitalize community infrastructure including major roadways; and

WHEREAS, Monticello Boulevard is a County Road, which must be maintained by the City; and

WHEREAS, Cuyahoga County has approved funding for this project in their 2019 County Department of Public Works County Road 50/50 Funding Program with the County committing \$102,000 for the project; and

WHEREAS, the City's estimated cost of \$126,900 will be allocated through the 2019 City Road Fund.

NOW THEREFORE BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: That the City Engineer is hereby authorized to prepare the necessary plans, specifications, bid profiles, and advertise for bids for the 2019 Concrete Street Repair Program within the City of South Euclid, Ohio.

Section 2: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 28, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: That this Resolution is deemed to be an emergency measure necessary for the immediate preservation of the peace, health, safety and welfare of the residents and for the further reason that advertising for bids as early as possible will likely obtain the best results for the City. This Resolution shall take effect upon passage and approval.

Passed this _____ day of _____, 2019.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

CITY OF SOUTH EUCLID, OHIO

RESOLUTION NO.: 04-19
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

February 11, 2019

A RESOLUTION

A RESOLUTION TO ADOPT THE SOLID WASTE MANAGEMENT PLAN FOR THE CUYAHOGA COUNTY SOLID WASTE MANAGEMENT DISTRICT

WHEREAS, the City of South Euclid is located within the jurisdiction of the Cuyahoga County Solid Waste Management District; and

WHEREAS, the Cuyahoga County Solid Waste Management District Policy Committee prepared and adopted a final draft of the Cuyahoga County Solid Waste Management Plan Update in accordance with Ohio Revised Code Sections 3734.53, 3734.54 and 3734.55; and

WHEREAS, the District provided a copy of the Cuyahoga County Solid Waste Management Plan Update (2019-2033) for ratification to each of the legislative authorities of the District; and

WHEREAS, the City of South Euclid must decide whether it approves of said Solid Waste Management Plan Update no later than April 11, 2019.

NOW THEREFORE BE IT RESOLVED by the Council of the City of South Euclid, Ohio:

Section 1: The City of South Euclid approves the Cuyahoga County Solid Waste Management Plan Update.

Section 2: The Clerk is hereby directed to send the District a copy of this resolution/ordinance to the attention of Diane T. Bickett, Executive Director, Cuyahoga County Solid Waste Management District, 4750 East 131 Street, Garfield Heights, OH 44105.

Section 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 28, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4: That this Resolution is deemed to be an emergency measure necessary for the immediate preservation of the peace, health, safety and welfare of the residents and for the further reason that advertising for bids as early as possible will likely obtain the best results for the City. This Resolution shall take effect upon passage and approval.

Passed this _____ day of _____, 2019.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

ORDINANCE NO.: 02-19
 INTRODUCED BY: Fiorelli
 REQUESTED BY: Mayor

February 11, 2019

AN ORDINANCE
 AN ORDINANCE AMENDING SECTION 537.16 "ILLEGAL DISTRIBUTION OF
 CIGARETTES OR OTHER TOBACCO PRODUCTS TO MINORS" OF CHAPTER 537
 "OFFENSES AGAINST PERSONS" OF PART FIVE "GENERAL OFFENSES CODE" OF
 THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO

WHEREAS, The Council of the City of South Euclid, Ohio desires to protect minors from the dangers of Alternative nicotine products and electronic cigarettes;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:
Section 1: That Section 537.16 "Illegal Distribution of Cigarettes or other Tobacco Products to Minors" of Chapter 537 "Offenses Against Persons" of Part Five "General Offenses Code" of the Codified Ordinances of the City of South Euclid, Ohio be amended as follows:

"537.16 ILLEGAL DISTRIBUTION OF CIGARETTES, ALTERNATIVE NICOTINE PRODUCTS, OR OTHER TOBACCO PRODUCTS TO MINORS.

(a) Definitions. As used in this section:

- (1) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape, and whether or not such tobacco is flavored, adulterated or mixed with any other ingredient.
- (2) "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.
- (3) "Sale" means delivery, barter, exchange, transfer or gift, or an offer thereof, and each transaction made by any person, whether as principal, proprietor, agent, servant or employee.
- (4) "Smoke" means to burn any substance containing tobacco, including a lighted cigarette, cigar, pipe or other device used to burn tobacco.
- (5) "Tobacco product" means the proceeds, yield or final form of anything made up wholly or in part of the genus of the plant known as nicotiana. Such products include, but are not limited to, cigars, pipe tobacco, chewing tobacco and snuff.
- (6) "Use tobacco" means to chew or maintain any substance containing tobacco, including smokeless tobacco, in the mouth, to derive the effects of tobacco.
- (7) "Vending machine" means any mechanical or electronic device designed to do both of the following:
 - A. Receive a coin, bill or token made for that purpose;
 - B. In return for the insertion or deposit of a coin, bill or token, automatically dispense property, provide a service or grant a license.

(8) "Alternative Nicotine Product" means an electronic cigarette or any other product or device that consists of or contains nicotine that can be ingested into the body by any means, including, but not limited to, chewing, smoking, absorbing, dissolving, or inhaling.

(9) "Electronic Cigarette" means any electronic product or device that produces a vapor that delivers nicotine or any other substance to the person inhaling from the device to simulate smoking and that is likely to be offered to or purchased by consumers as an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe.

(b) Sale of Cigarettes, Alternative Nicotine Products and Tobacco Products to Minors.

- (1) No manufacturer, producer, distributor, wholesaler or retailer of cigarettes, **alternative nicotine products** or other tobacco products, or any agent, employee or representative of a manufacturer, producer, distributor, wholesaler or retailer of cigarettes, **alternative nicotine products** or other tobacco products, shall do any of the following:
 - A. Give, sell or otherwise distribute cigarettes, **alternative nicotine products** or other tobacco products to any person under eighteen years of age.
 - B. Give away, sell or distribute cigarettes, **alternative nicotine products** or other tobacco products in any place that does not have posted in a conspicuous place a sign stating that giving, selling or otherwise distributing cigarettes, **alternative nicotine products** or other tobacco products to a person under eighteen years of age is prohibited by law.
- (2) No person shall sell or offer to sell cigarettes, **alternative nicotine products** or other tobacco products by or from a vending machine except in the following locations.
 - A. In an area either:
 1. Within a factory, business, office or other place not open to the general public; or
 2. To which persons under the age of eighteen years are not generally permitted access.
 - B. In any other place not identified in paragraph (a)(1) hereof, upon all of the following conditions:

1. 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 cigarettes, **alternative nicotine products** and other tobacco products purchased from the vending machine will be readily observed by the person who owns or operates the place or by 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 immediate vicinity, plain view and control of the person who owns or operates the place, or an employee of such person.

2. The vending machine is inaccessible to the public when the place is closed.

(c) Possession and Use of Cigarettes, **alternative nicotine products** and Tobacco Products by Minors.

(1) No person shall give, sell, transfer or otherwise distribute cigarettes, **alternative nicotine products** or other tobacco products to any person under eighteen years of age.

(2) No person under eighteen years of age shall smoke, use cigarettes, **alternative nicotine products** or other tobacco products, or possess any substance containing tobacco.

(3) No person under eighteen years of age shall order, pay for, purchase, share the cost of, or attempt to purchase, share the cost of; or attempt to purchase, cigarettes, **alternative nicotine products** or other tobacco products.

(4) No person under eighteen years of age shall knowingly show or give false information concerning his or her name, age or other identification for the purpose of purchasing or otherwise obtaining cigarettes, **alternative nicotine products** or other tobacco products in any place in the City where cigarettes, **alternative nicotine products** or other tobacco products are sold.

(5) No person shall knowingly furnish any other identification of any person under eighteen years of age for the purpose of obtaining, or with the intent to obtain, cigarettes, **alternative nicotine products** or other tobacco products for a person under eighteen years of age, by purchase or as a gift.

(d) Immunity. No person may be found guilty of a violation of the provisions of this section, where age is an element of the offense, if any court determines that the individual buying, at the time of so doing, exhibited to the aforesaid person or his or her agent or employee, a driver's license or commercial driver's license or a State-issued identification card showing that such individual was then of legal age to buy cigarettes, **alternative nicotine products** or other tobacco products; if the aforesaid person, or his or her agent or employee, attempted to ascertain the true age of the individual buying by checking the identification presented at the time of purchase, to ascertain that the description of the identification presented compared with the visual description of the buyer and that the identification presented had not been altered in any way; and if the aforesaid person had reason to believe that the individual buying was of legal age.

(e) Penalty.

(1) Whoever violates any of the provisions of subsection (b) hereof is guilty of illegal distribution of cigarettes, **alternative nicotine products** or other tobacco products, a misdemeanor of the fourth degree. If the offender has previously been convicted of a violation of this section, then illegal distribution of cigarettes, **alternative nicotine products** or other tobacco products is a misdemeanor of the third degree.

(2) Whoever violates any of the provisions of subsection (c) hereof is guilty of possession and use of cigarettes, **alternative nicotine products** or other tobacco products by a minor, a misdemeanor of the fourth degree.

(Ord. 33-98. Passed 6-8-98.)

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 adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This ordinance shall take effect and be enforced from and after the earliest period allowed by law and upon signature of the mayor.

Passed this _____ day of _____, 2019.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law

THE CITY OF SOUTH EUCLID

ORDINANCE NO.: 03-19
INTRODUCED BY: Fiorelli
REQUESTED BY: Mayor

February 11, 2019

AN ORDINANCE
AN ORDINANCE AMENDING SECTION 537.161 "ILLEGAL DISTRIBUTION OF CIGARETTES"
OF CHAPTER 537 "OFFENSES AGAINST PERSON" OF PART FIVE "GENERAL OFFENSE
CODE" OF THE CODIFIED ORDINANCES OF THE CITY OF SOUTH EUCLID, OHIO.

WHEREAS, The Council of the City of South Euclid, Ohio desires to protect minors from the dangers of Alternative nicotine products and electronic cigarettes;

NOW THEREFORE, BE IT ORDAINED by the Council of the City of South Euclid, Ohio:
Section 1: That Section 537.161 "Illegal Distribution of Cigarettes" of Chapter 537 "Offenses Against Persons" of Part Five "General Offenses Code" of the Codified Ordinances of the City of South Euclid, Ohio be amended as follows:

"537.161 ILLEGAL DISTRIBUTION OF CIGARETTES.

(a) No person shall knowingly sell or distribute cigarettes, **alternative nicotine products** and other tobacco products in a smaller quantity than that placed in the pack or other container by the manufacturer of such cigarettes, **alternative nicotine products** or other tobacco products.

(b) Whoever violates any provisions of this section is guilty of illegal distribution of cigarettes, **alternative nicotine products** or other tobacco products, a misdemeanor of the fourth degree. If the offender has previously been convicted of a violation of this section, then illegal distribution of cigarettes, **alternative nicotine products** or other tobacco products is a misdemeanor of the third degree."
(Ord. 61-10. Passed 12-20-10.)

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 adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees on or after November 25, 1975, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This ordinance shall take effect and be enforced from and after the earliest period allowed by law and upon signature of the mayor.

Dennis Fiorelli, President of Council

Attest:

Approved:

Keith A. Benjamin, Clerk of Council

Georgine Welo, Mayor

Approved as to form:

Michael P. Lograsso, Director of Law