

**STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF WALLED LAKE**

ORDINANCE NO. C-350-20

**AN ORDINANCE TO AMEND CHAPTER 50, “OFFENSES
AND MISCELLANEOUS PROVISIONS” TO ENACT
OFFENSES PERTAINING TO THE USE AND POSSESSION
OF TOBACCO, VAPOR AND ALTERNATIVE NICOTINE
PRODUCTS BY MINORS.**

THE CITY OF WALLED LAKE ORDAINS:

Section 1 of Ordinance. Purpose.

The purpose of this ordinance is to adopt penalties and offenses pertaining to use and possession of Tobacco, Vapor and Nicotine containing products by minors. Tobacco, vapor and nicotine products and other types of electronic cigarettes and/or synthetic nicotine products are a rapidly emerging and diversified product class with use among youth and young adults. The use of products containing nicotine poses health risks to youth and young adults including, but not limited to, nicotine addiction and risks associated with developing adolescent brains in ways that may affect the health and mental well-being of the user.

Section 2 of Ordinance. Amendment.

Chapter 50, “Offenses and Miscellaneous Provisions”, Article VIII. “Offenses Concerning Underaged Persons”, Division 6. “Tobacco” is hereby re-captioned and re-titled as “Division 6. Tobacco and Nicotine Containing Products” and is hereby further amended in its entirety to read as follows:

DIVISION 6. Tobacco and Nicotine Containing Products

Sec. 50-341. Definitions.

The following words, terms and phrases, when used in this Division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(a) “Alternative nicotine product” means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. Alternative nicotine product does not include a tobacco product, a vapor product, food, or a product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360fff-7.

(b) “Minor” means an individual who is less than 18 years of age.

(c) “Person who sells vapor products or alternative nicotine products at retail” means a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products or alternative nicotine products.

(d) “Person who sells tobacco products at retail” means a person whose ordinary course of business consists, in whole or in part, of the retail sale of tobacco products subject to state sales tax.

(e) “Public place” means a public street, sidewalk, or park or any area open to the general public in a publicly owned or operated building or public place of business.

(f) “Tobacco product” means a product that contains tobacco and is intended for human consumption, including, but not limited to, a cigarette, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in section 2 of the tobacco products tax act, 1993 PA 327, MCL 205.422, and a cigar.

(g) “Use a tobacco product, vapor product, or alternative nicotine product” means to smoke, chew, suck, inhale, or otherwise consume a tobacco product, vapor product, or alternative nicotine product.

(h) “Vapor product” means a noncombustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine or any other substance, and the use or inhalation of which simulates smoking. Vapor product includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine or other substance in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include a product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360fff-7.

Sec. 50-342. Purchase, possession, or use of tobacco, vapor, or alternative nicotine products by minor; prohibitions; false or fraudulent proof of age; penalties; participation in health promotion and risk reduction assessment program; applicability.

(1) Subject to subsection (6), a minor shall not do any of the following:

(a) Purchase or attempt to purchase a tobacco product.

(b) Possess or attempt to possess a tobacco product.

(c) Use a tobacco product in a public place.

(d) Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to purchase,

possessing, or attempting to possess a tobacco product.

(2) An individual who violates subsection (1) is guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation. Pursuant to a probation order, the court may also require an individual who violates subsection (1) to participate in a health promotion and risk reduction assessment program, if available. In addition, an individual who violates subsection (1) is subject to the following:

(a) For the first violation, the court may order the individual to do 1 of the following:

(i) Perform not more than 16 hours of community service.

(ii) Participate in a health promotion and risk reduction assessment program.

(b) For a second violation, in addition to participation in a health promotion and risk reduction assessment program, the court may order the individual to perform not more than 32 hours of community service.

(c) For a third or subsequent violation, in addition to participation in a health promotion and risk reduction assessment program, the court may order the individual to perform not more than 48 hours of community service.

(3) Subject to subsection (6), a minor shall not do any of the following:

(a) Purchase or attempt to purchase a vapor product or alternative nicotine product.

(b) Possess or attempt to possess a vapor product or alternative nicotine product.

(c) Use a vapor product or alternative nicotine product in a public place.

(d) Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a vapor product or alternative nicotine product.

(4) An individual who violates subsection (3) is responsible for a civil infraction or guilty of a misdemeanor as follows:

(a) For the first violation, the individual is responsible for a civil infraction and shall be fined not more than \$50.00. The court may order the individual to participate in a health promotion and risk reduction assessment program, if available. In addition, the court may order the individual to perform not more than 16 hours of community service.

(b) For the second violation, the individual is responsible for a civil infraction and shall be fined not more than \$50.00. The court may order the individual to participate in a health

promotion and risk reduction assessment program, if available. In addition, the court may order the individual to perform not more than 32 hours of community service.

(c) If a violation of subsection (3) occurs after 2 or more prior judgments, the individual is guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation. Pursuant to a probation order, the court may also require the individual to participate in a health promotion and risk reduction assessment program, if available. In addition, the court may order the individual to perform not more than 48 hours of community service.

(5) An individual who is ordered to participate in a health promotion and risk reduction assessment program under subsection (2) or (4) is responsible for the costs of participating in the program if ordered by the court.

(6) Subsections (1) and (3) do not apply to a minor participating in any of the following:

(a) An undercover operation in which the minor purchases or receives a tobacco product, vapor product, or alternative nicotine product under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the minor purchases or receives a tobacco product, vapor product, or alternative nicotine product under the direction of the state police or a local police agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product, vapor product, or alternative nicotine product by the minor was not under the direction of the state police or the local police agency and was not part of the undercover operation.

(c) Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, if the compliance checks are conducted under the direction of a substance use disorder coordinating agency and with the prior approval of the state police or a local police agency.

(7) Subsections (1) and (3) do not apply to the handling or transportation of a tobacco product, vapor product, or alternative nicotine product by a minor under the terms of the minor's employment.

(8) This section does not prohibit an individual from being charged with, convicted of, or sentenced for any other violation of law that arises out of the violation of subsection (1) or (3).

Sec. 50-343. Interference with Parental Rights or Legal Guardian.

This Division does not interfere with the right of a parent or legal guardian in the rearing and management of his or her minor children or wards within the bounds of his or her own private premises.

Sec. 50-344. Sale of Tobacco, Vapor, or Alternative Nicotine Products to Minor; Prohibition; Penalties; Signage; Affirmative Defense and Rebuttal; Age Verification; Requirements

(1) A person shall not sell, give, or furnish a tobacco product, vapor product, or alternative nicotine product to a minor, including, but not limited to, through a vending machine. A person who violates this subsection or subsection (8) is guilty of a misdemeanor punishable by a fine as follows:

(a) For a first offense, not more than \$100.00.

(b) For a second offense, not more than \$500.00.

(2) A person who sells tobacco products, vapor products, or alternative nicotine products at retail shall post, in a place close to the point of sale and conspicuous to both employees and customers, a sign produced by the department of health and human services that includes the following statement:

“The purchase of a tobacco product, vapor product, or alternative nicotine product by a minor under 18 years of age and the provision of a tobacco product, vapor product, or alternative nicotine product to a minor are prohibited by law. A minor who unlawfully purchases or uses a tobacco product, vapor product, or alternative nicotine product is subject to criminal penalties.”

(3) If the sign required under subsection (2) is more than 6 feet from the point of sale, it must be 5- ½ inches by 8- ½ inches and the statement required under subsection (2) must be printed in 36-point boldfaced type. If the sign required under subsection (2) is 6 feet or less from the point of sale, it must be 2 inches by 4 inches and the statement required under subsection (2) must be printed in 20-point boldfaced type.

(4) Licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products shall obtain copies of the sign from the department of health and human services.

(5) It is an affirmative defense to a charge under subsection (1) that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the sale of tobacco products, vapor products, or alternative nicotine products, as applicable, to persons under 18 years of age and that the defendant enforced and continues to enforce the policy. A defendant who proposes to offer evidence of the affirmative defense described in this subsection shall file notice of the defense, in writing, with the court and serve a copy of the notice on the prosecuting attorney. The defendant shall serve the notice not less than 14 days before the date set for trial.

(6) A prosecuting attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (5) shall file a notice of rebuttal, in writing, with the court and serve a copy of the notice on the defendant. The prosecuting attorney shall serve the notice not less than 7 days before the date set for trial and shall include in the notice the name and address of each rebuttal witness.

(7) Subsection (1) does not apply to the handling or transportation of a tobacco product, vapor product, or alternative nicotine product by a minor under the terms of the minor’s employment.

(8) Before selling, offering for sale, giving, or furnishing a tobacco product, vapor product, or

alternative nicotine product to an individual, a person shall verify that the individual is at least 18 years of age by doing 1 of the following:

(a) If the individual appears to be under 27 years of age, examining a government-issued photographic identification that establishes that the individual is at least 18 years of age.

(b) For sales made by the internet or other remote sales method, performing an age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes that the individual is 18 years of age or older.

Sec. 50-345. Sale of vapor or alternative nicotine products; display and storage requirements; penalties.

A person who sells vapor products or alternative nicotine products at retail shall not display for sale a vapor product unless the vapor product is stored for sale behind a counter in an area accessible only to employees or within a locked case so that a customer wanting access to the vapor product must ask an employee for assistance. A person who violates this section is responsible for a civil infraction and shall be fined not more than \$500.00.

Section 3. Severability

If any section, clause or provision of this ordinance shall be declared to be unconstitutional, void, illegal or ineffective by any court of competent jurisdiction, such section, clause or provision declared to be unconstitutional, void or illegal shall thereby cease to be a part of this ordinance; but the remainder of this ordinance shall stand and be in full force and effect.

Section 4. Savings

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this ordinance takes effect are saved and may be consummated according to the law in force when they are commenced.

Section 5. Repealer.

All other ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 6. Effective Date.

The provisions of this ordinance are hereby ordered to take effect following publication in the manner prescribed by the Charter of the City of Walled Lake.

AYES:
NAYS:
ABSENTS:
ABSTENTIONS:

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

JENNIFER A. STUART, City Clerk
CITY OF WALLED LAKE

LINDA S. ACKLEY, Mayor
CITY OF WALLED LAKE

Introduced: February 18, 2020
Adopted: May 19, 2020
Effective: June 25, 2020

CERTIFICATION

I, the undersigned, the qualified and acting City Clerk of the City of Walled Lake, Oakland County, Michigan, do certify that the foregoing is a true and complete copy of the Ordinance adopted by the City Council of the City of Walled Lake at a meeting held on the 19th day of May, 2020, the original of which is on file in my office.

JENNIFER A. STUART, City Clerk
City of Walled Lake