

DEWITT CHARTER TOWNSHIP
CLINTON COUNTY, MICHIGAN

DEWITT CHARTER TOWNSHIP YOUTH TOBACCO AND VAPING ORDINANCE

ORDINANCE No. 2019-10-09

PREAMBLE

AN ORDINANCE TO AMEND CHAPTER 26 OF THE CODE OF ORDINANCES RELATING TO OFFENSES BY AMENDING ARTICLE I, SECTION 26-1 "DEFINITIONS" ; ARTICLE VIII, SECTIONS 26-201 "SALE OR FURNISHING OF TOBACCO PRODUCTS TO MINORS"; AND 26-202 "POSSESSION AND USE OF TOBACCO PRODUCTS BY MINORS"; AND ADDING SECTION 26-205, "TOBACCO PRODUCTS, VAPOR PRODUCTS ALTERNATIVE NICOTINE PRODUCTS" ; RELATING TO YOUTH POSSESSION AND USE OF TOBACCO PRODUCTS, VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS; TO REGULATE THE RETAIL SALE OF TOBACCO PRODUCTS, VAPOR PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, AND LIQUID NICOTINE CONTAINERS TO ESTABLISH PENALTIES FOR VIOLATION; AND TO PROVIDE AN EFFECTIVE DATE HEREOF.

THE CHARTER TOWNSHIP OF DEWITT, CLINTON COUNTY, MICHIGAN, ORDAINS:

SECTION 1 TITLE.

This ordinance shall be known as the "DeWitt Charter Township Youth Tobacco and Vaping Ordinance."

SECTION 2. LEGISLATIVE FINDINGS.

WHEREAS, the Board of Trustees recognizes that on June 4, 2019, the State of Michigan enacted Public Act 17 and Public Act 18 of Public Acts of 2019, which amended the Youth Tobacco Act of Michigan, codified in MCL 722.641 *et seq.*

SECTION 3. PURPOSE.

The purpose of this Ordinance is to provide for the health, safety, and welfare of the public by prohibiting the selling, giving, or furnishing of tobacco products, vapor products, and alternative nicotine products to minors. Further, this Ordinance prohibits the purchase, possession, or use of tobacco products, vapor products, and alternative nicotine products by minors; to regulate the retail sale of tobacco products, vapor products, alternative nicotine products, and liquid nicotine containers; and to establish penalties.

SECTION 4. TOBACCO PRODUCTS, VAPOR PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS.

(A) Definitions. As used in this section:

"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.

"Minor" means an individual who is less than 18 years of age.

"Liquid Nicotine " means a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use is 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.

"Liquid Nicotine Container" means a bottle or other container holding liquid nicotine in any concentration but does not include a cartridge containing liquid nicotine if the cartridge is prefilled and sealed by the manufacturer of the cartridge and is not intended to be opened by the consumer.

"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.

"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.

"Public Place" means a public street, sidewalk, park, any outside area open to the general public, any public conveyance or private vehicle located in an area open to the general public, or any area open to the general public in a publicly owned or operated building or public place of business. Public place shall also include the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility, including the juvenile detention facility or the property upon which the facility is located.

"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.

"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.

"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.

SECTION 5. SELLING, GIVING, OR FURNISHING TOBACCO PRODUCTS, VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS TO MINOR PROHIBITED.

- (A) 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. This section 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. A person charged under this section may offer an affirmative defense pursuant to MCL 722.641(5) subject to rebuttal as provided in MCL 722.641(6).
- (B) 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:
 - (1) If the individual appears to be under 21 years of age, examining a government-issued photographic identification that establishes that the individual is at least 18 years of age.
 - (2) 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.
- (C) A person who violates subsections (A) or (B) is guilty of a misdemeanor punishable by a fine as follows:
 - (1) For a first offense, not more than \$100.00.
 - (2) For a second offense, not more than \$500.00
- (D) A person who sells tobacco products at retail shall not sell a cigarette separately from its package. This section does not apply to a person who sells tobacco products at retail in a tobacco specialty retail store or other retail store that deals exclusively in the sale of tobacco products and smoking paraphernalia. A person who violates this subsection is guilty of a misdemeanor, punishable by a fine of not more than \$500.00.

- (E) A person shall not sell a liquid nicotine container unless the liquid nicotine container meets the child-resistant effectiveness standards of 16 CFR 1700.15(b). A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation.
- (F) 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. A person who violates this subsection is responsible for a municipal civil infraction and shall be fined not more than \$500.00.

SECTION 6. PROHIBITED CONDUCT BY MINOR FOR TOBACCO PRODUCTS, VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS; VIOLATION AND PENALTIES; PARTICIPATION IN HEALTH PROMOTION AND RISK REDUCTION ASSESSMENT PROGRAM; COSTS; COMMUNITY SERVICE; EXCEPTIONS; OTHER VIOLATIONS.

(A) A minor shall not do any of the following:

- (1) Purchase or attempt to purchase a tobacco product.
- (2) Possess or attempt to possess a tobacco product.
- (3) Use a tobacco product in a public place.
- (4) 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.

(B) A minor who violates subsection (A) shall be punished as follows:

- (1) For a first offense, the minor is guilty of a misdemeanor punishable by a fine of not more than \$50.00. The court may also require the minor to participate in a health and risk reduction assessment program and order up to 16 hours of community service.
- (2) For a second offense, the minor is guilty of a misdemeanor punishable by a fine of not more than \$50.00. The court may also require the minor to participate in a health and risk reduction assessment program and order up to 32 hours of community service.
- (3) For a third or subsequent offense, the minor is guilty of a misdemeanor punishable by a fine of not more than \$50.00. The court may also require the minor to participate in a health and risk reduction assessment program and order up to 48 hours of community service.

(C) A minor shall not do any of the following:

- (1) Purchase or attempt to purchase a vapor product or alternative nicotine product.
- (2) Possess or attempt to possess a vapor product or alternative nicotine product.
- (3) Use a vapor product or alternative nicotine product.
- (4) 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.

(D) A minor who violates subsection (C) is responsible for a municipal civil infraction or guilty of a misdemeanor as follows:

- (1) For the first violation, the minor is responsible for a municipal civil infraction and shall be fined not more than \$50.00. The court may order the minor to participate in a health promotion and risk reduction assessment program, if available. In addition, the court may order the minor to perform not more than 16 hours of community service.
- (2) For the second violation, the minor is responsible for a municipal civil infraction and shall be fined not more than \$50.00. The court may order the minor 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.
- (3) If a violation of subsection (C) occurs after 2 or more prior judgments, the minor 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 minor 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.

(E) A minor who is ordered to participate in a health promotion and risk reduction assessment program under subsection (B) or (D) is responsible for the costs of participating in the program.

(F) Subsections (A) and (C) do not apply to the following:

- (1) 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.
- (2) Undercover operations or compliance checks conducted in accordance with MCL 722.642(6)(a)-(c).
- (3) A minor charged with violating sections (A) or (C) may be charged with, convicted of, or sentenced for any other violation of law arising out of the violation of Section (A) or (C).

SECTION 7. SAVINGS CLAUSE.

Except as expressly amended herein, all other provisions of the DeWitt Charter Township Code and Ordinances shall remain in full force and effect.

SECTION 8. REPEAL.

All Township Codes and Ordinances or parts of Code and Ordinances of the Charter Township of DeWitt inconsistent herewith shall be and are hereby repealed, provided that

this Ordinance shall not be construed to repeal expressly or by implication any provision of the Township Zoning Ordinance. The adoption of this Ordinance shall not, however, invalidate any prosecution or other legal proceeding taken in connection with a similar subject matter under ordinances existing at the time such action was initiated.

SECTION 9. SEVERABILITY.

It is the legislative intent of the Township Board adopting this Ordinance that all provisions hereof shall be liberally construed to protect the public health, safety, and general welfare of the inhabitants of the Township and all other persons affected by this Ordinance. Consequently, should any provision of this Ordinance be held to be unconstitutional, invalid or of no effect, such holding shall not be construed as affecting the validity of any of the remaining provisions of this Ordinance, it being the intent of the DeWitt Charter Township Board that this Ordinance shall stand and remain in effect, notwithstanding the invalidity of any provision hereof.

SECTION 10. EFFECTIVE DATE.

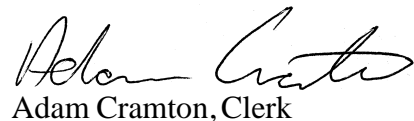
This Ordinance shall become effective thirty (30) days from and after its' adoption and publication as provided by law.

First Reading:	October 28, 2019
First Publication:	November 3, 2019
Second Reading:	November 12, 2019
Second Publication (Posting):	<u>November 17, 2019</u>
Effective Date:	December 17, 2019



Adam Cramton, Clerk

I, Adam Cramton, Clerk of the Charter Township of DeWitt, hereby certify that the foregoing constitutes a true and complete copy of Ordinance No. 2019-10-09, duly adopted by the Board of Trustees of the Charter Township of DeWitt, Clinton County, Michigan, on the 12th day of November, 2019, and that the same was posted and published as required by law on the 17th day of November, 2019.



Adam Cramton, Clerk

State law reference: Similar provisions, MCL 722.641 *et seq.*