

**STATE OF MICHIGAN
COUNTY OF WAYNE
CITY OF ALLEN PARK**

ORDINANCE #07-2022

AN ORDINANCE OF THE CITY OF ALLEN PARK CODE OF ORDINANCES; AMENDING CHAPTER 26, “OFFENSES”, ARTICLE VIII, “OFFENSES AFFECTING UNDERAGE PERSONS”, DIVISION 4, “TOBACCO AND TOBACCO PRODUCTS”, BY THE REPEAL AND READOPTION OF DIVISION 4, “TOBACCO, VAPOR AND NICOTINE PRODUCTS”, AND ALL SECTIONS THEREIN, TO UPDATE THE DIVISION.

The City of Allen Park Ordains:

SECTION 1. Amendment to Code.

That Chapter 26, “Offenses”, Article VIII, “Offenses Affecting Underage Persons”, Division 4, “Tobacco and Tobacco Products”, and all sections therein, are hereby repealed and readopted to hereafter read as follows:

**Chapter 26, Offenses
Article VIII, Offenses Affecting Underage Persons
Division 4, Tobacco, Vapor and Nicotine Products**

Sec. 26-524. - 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:

Minor means an individual under 21 years of age.

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, or park or any area open to the general public in a publicly owned or operated building or public place of business.

Tobacco product means a product that contains tobacco and is intended for human consumption, including, but not limited to, cigarettes, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in section 2 of the tobacco products tax act, Public Act No. 327 of 1993 (MCL 205.422), and cigars.

Tobacco product also means any vapor product or alternative nicotine products means a noncombustible product containing nicotine or not 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 not in a solution or other form. 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 in a solution or other form than 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 (FDA) under subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 USC 351 to 360FFF-7.

Use a tobacco product means to smoke, chew, suck, inhale, or otherwise consume a tobacco product.

Sec. 26-525. - Selling, giving, or furnishing tobacco products to minor prohibited; misdemeanor; penalty; sign required; copies of sign; affirmative defense; notice; rebuttal testimony; notice of rebuttal; exception.

- (a) A person shall not sell, give, or furnish a tobacco product to a minor. A person who violates this section is guilty of a misdemeanor punishable by a fine of not more than \$500.00 for each violation.
- (b) A person who sells tobacco 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 state a department of community health that includes the following statement:

"The purchase of tobacco products by a minor under 21 years of age and the provision of tobacco products to a minor are prohibited by law. A minor unlawfully purchasing or using tobacco products is subject to criminal penalties."

- (c) If the sign required under subsection (b) of this section is more than six feet from the point of sale, it shall be 5½ inches by 8½ inches and the statement required under subsection (b) of this section shall be printed in 36-point boldfaced type. If the sign required under subsection (b) of this section is six feet or less from the point of sale, it shall be two inches by four inches and the statement required under subsection (b) of this section shall be printed in 20-point boldfaced type.
- (d) It is an affirmative defense to a charge under subsection (a) of this section 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 to persons under 21 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 and serve notice of the defense, in writing, upon the court and the prosecuting attorney. The notice shall be served not less than 14 days before the date set for trial.

- (e) A prosecuting attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (d) of this section shall file and serve a notice of rebuttal, in writing, upon the court and the defendant. The notice shall be served not less than seven days before the date set for trial and shall contain the name and address of each rebuttal witness.
- (f) Subsection (a) of this section does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment.

Sec. 26-526. – Possession or use of tobacco, vapor products or alternative nicotine products by persons under 21.

- (a) Definitions.

As used in this section, the following definitions shall apply:

Chewing tobacco means loose tobacco or a flat, compressed cake of tobacco which is inserted into the mouth to be chewed or sucked.

City building means any building and other adjacent real estate or structure owned, managed, operated, and/or leased by the City of Allen Park.

Educational facilities mean a building, facility, or structure and other real estate owned, leased, or otherwise controlled by a public school district, a private school, any building used for instruction of enrolled students, including but not limited to any day-care center, nursery school, public or private school, college, university, medical school, law school, or career and technical education school.

Health facilities mean places that provide health care. They include hospitals, clinics, outpatient care centers, specialized care centers.

Tobacco snuff means shredded, powdered or pulverized tobacco which may be inhaled through the nostrils, chewed or placed against the gums.

Vapor product or alternative nicotine products means a noncombustible product containing nicotine or not 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 not in a solution or other form. 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 in a solution or other form than 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 (FDA) under subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 USC 351 to 360FFF-7.

(b) Possession or use in public and other designates places prohibited.

A person under 21 years of age shall not possess, use, or smoke cigarettes or cigars, or possess or chew, suck, or inhale chewing tobacco or tobacco snuff, or possess or use tobacco in any other form, or possess or smoke any vaping product or alternative nicotine products in any other form, on a public highway, street, alley, park, or other lands used for public purposes, in a public place of business or amusement, in any city building, in any schools or educational facilities, or health facilities.

(c) Penalty.

A person under 21 years of age who violates subsection (b) of this section is responsible for a municipal civil infraction and is subject to the municipal civil infraction penalty proscribed herein at section 1-14 (b) and may be prosecuted in the local district court. Any person charged with violating this section shall be accompanied to the district court hearing on said charges by their parent or legal guardian. If the court determines it is appropriate, eligible juveniles may be referred to a diversion program. Pursuant to a probation order, the court may require a person who violates subsection (b) of this section to participate in a health promotion and risk reduction assessment program, if available. A probationer who is ordered to participate in a health promotion and risk reduction assessment program under this section is responsible for the cost of participating in the program. In addition, a person who violates this section is subject to the following:

(1) For the first violation the court may order the person to do one of the following:

- a. Perform not more than 16 hours of community service.
- b. Participate in a health promotion and risk reduction program, as described in this subsection.

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

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

(d) Exemptions.

Subsection (b) does not apply to a person under 21 years of age participating in any of the following:

(1) An undercover operation in which a person under 21 years of age purchases or receives a tobacco or vapor product under the direction of the person's employer and with the prior

approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(2) An undercover operation in which a person under 21 years of age purchases or receives a tobacco or vapor 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 product by a person under 21 years of age was not under the direction of the state police or the local police agency and was not part of the undercover operation.

(3) Compliance checks in which a person under 21 years of age attempts to purchase tobacco or vapor 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 abuse coordinating agency as defined in section 6103 of the public health code, 1978 PA 368, MCL 333.6103, and with the prior approval of the state police or a local police agency.

(4) To the handling or transportation of a tobacco product by a person under 21 years of age under the terms of that person's employment.

Sec. 26-527. - Selling cigarette separately prohibited; exception; violation as misdemeanor; penalty.

- (a) Except as otherwise provided in subsection (b) of this section, a person who sells tobacco products at retail shall not sell a cigarette separately from its package.
- (b) Subsection (a) of 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.
- (c) A person who violates subsection (a) of this section is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 for each offense.

Sec. 26-528. - Noninterference with right of parent or guardian.

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

SECTION 2. Repeal. All ordinance or parts of ordinances in conflict herewith are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 3. Saving Clause.

Nothing in this Ordinance or in the code hereby adopted shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquiring or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this Ordinance.

SECTION 4. Severability.

Should any word, sentence, phrase or any portion of this Ordinance be held in a manner invalid by any court of competent jurisdiction or by any state agency having authority to do so for any reason whatsoever, such holdings shall be construed and limited to such work, sentence, phrase, or any portion of the Ordinance held to be so invalid shall not be construed as affecting the validity of any of the remaining words, sentences, phrases or portions of this Ordinance.

SECTION 5. Codification; Scrivener's Errors:

- (a). Section 1 of this Ordinance shall be codified, and all other sections shall not be codified.
- (b). The sections, divisions and provisions of this Ordinance may be renumbered or re-lettered as deemed appropriate by the Code codifier.
- (c). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Administrator, or designee, without the need for a public hearing.

SECTION 6. Publication.

The Clerk for the City of Allen Park shall cause this ordinance to be published in the manner required by law.

SECTION 7. Adoption.

This Ordinance is hereby declared to have been adopted by the City Council of the City of Allen Park, County of Wayne, State of Michigan, at a regular meeting, called and held on the **13th** day of **December, 2022**.

GAIL McLEOD, Mayor
City of Allen Park

MICHAEL I. MIZZI, City Clerk
City of Allen Park