

**NOTICE OF ADOPTION
CITY OF NEW BALTIMORE
MACOMB COUNTY, MICHIGAN
ORDINANCE NO. 220**

TO AMEND CITY OF NEW BALTIMORE CODE OF ORDINANCES BY REPEALING CHAPTER 32, DIVISION 2 - TOBACCO PRODUCTS, SECTION 32-256 THROUGH 32-259, AND REPLACING IT WITH AN ORDINANCE SETTING FORTH DEFINITIONS, AND PROHIBITED CONDUCT REGARDING THE SALE, POSSESSION AND USE OF TOBACCO, NICOTINE AND DEVICES USED FOR THEIR INGESTION, TO PROVIDE FOR PENALTIES, REPEALER, SEVERABILITY, AND EFFECTIVE DATE.

THE CITY OF NEW BALTIMORE ORDAINS:

Section 1. Preamble.

WHEREAS, in order to preserve, promote and protect public health, safety and welfare and to advance the legitimate rational regulation of nicotine and tobacco products, including furnishing, giving, selling, possession and use, in order to promote the safety and well being of minors, the safety and well being of members of the public, the City enacts the ordinance hereinafter.

Section 2. Chapter 32, Division 2 - Tobacco Products, Sections 32-256 through 32-259, as it currently exists, is hereby repealed in its entirety and replaced with the following:

Division 2 - TOBACCO AND VAPOR PRODUCTS

This Chapter shall be known and cited as the "City of New Baltimore Tobacco Products and Vapor Products Ordinance."

Sec. 32-256. Purpose and Findings.

- A. The purpose of this chapter is to protect the public health, safety, and welfare of the property and persons in the City by prohibiting persons under 18 years of age from possessing tobacco products and vapor products, and prohibiting the sale of tobacco products and vapor products to persons under 18 years of age.
- B. Persons under age 18 are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. However, tobacco -less products - commonly referred to as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," or "electronic nicotine delivery systems" - allow the user to simulate cigarette smoking and ingest nicotine. These products may be purchased by minors and are being marketed without age restrictions or health warnings and come in different flavors that appeal to young people.

C. Studies by the FDA have determined that e-cigarettes can increase nicotine addiction among young people and contain chemical ingredients known to be harmful, which may expose users and the public to potential health risks. The use of e-cigarettes and similar devices has increased significantly in recent years, as evidenced by the fact that:

- (1) Between 2011 and 2012 the percentage of all youth in grades 6 to 12 who had tried electronic smoking devices doubled.
- (2) 6.8% of all youth between 6th and 12th grade report trying electronic smoking devices.
- (3) 10% of high school students have tried electronic smoking devices.
- (4) 9.3% of youth who have used electronic smoking devices have never smoked conventional cigarettes.
- (5) Between 2010 and 2011, rates of both awareness and use of unregulated electronic smoking devices by adults also increased significantly.
- (6) The 2014 survey conducted by Monitoring the Future, released on December 16, 2014 by the National Institute on Drug Abuse, revealed recent use by 8.7% of eighth graders, 16.2% of tenth graders, and 17.1% of twelfth graders.

D. Existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances including:

- (1) Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel, and chromium.
- (2) PM2.5, acrolein, tin, toluene, and aluminum, which are associated with a range of negative health effects such as skin, eye, and respiratory irritation, neurological effects, damage to reproductive systems, and even premature death from heart attacks and stroke.
- (3) Inconsistent labeling of nicotine levels in electronic smoking device products.
- (4) In one instance, diethylene glycol, an ingredient used in antifreeze and toxic to humans.

E. Some cartridges used by electronic smoking devices can be re-filled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine, and as a result:

- (1) In one instance, diethylene glycol, an ingredient used in antifreeze and toxic to humans.

- (2) Poisonings from electronic smoking devices have increased dramatically in the last three and half years from "one [a month] in September 2010 to 215 a month in February 2014."
 - (3) Analysis of reports of poisonings from electronic smoking devices finds that calls reporting exposure to electronic smoking devices are much more likely to involve adverse health effects when compared to calls reporting exposure to conventional cigarettes.
- F. Clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over 400 brands of electronic smoking devices that are on the market and for this reason, consumers currently have no way of knowing:
- (1) Whether electronic smoking devices are safe.
 - (2) What types or concentrations of potentially harmful chemicals the products contain.
 - (3) What dose of nicotine the products deliver.
- G. The World Health Organization has strongly advised consumers against the use of electronic smoking devices until they are "deemed safe and effective and of acceptable quality by a competent national regulatory body."
- H. The World Medical Association has determined that electronic smoking devices "are not comparable to scientifically-proven methods of smoking cessation" and that "neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established."
- I. In September of 2013, 40 state attorneys general (including Michigan's) signed a letter to the Commissioner of the United States Food and Drug Administration, outlining their concerns with e-cigarettes and requesting the implementation of regulations that would address the advertising, ingredients, and sale to minors of e-cigarettes at the federal level.
- J. It is the intent of the City Council, in enacting this article, to provide for the public health, safety, and welfare by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; by reducing the potential for children to associate the use of electronic smoking devices with a normative or healthy lifestyle; and by prohibiting the sale or distribution of electronic smoking devices to minors.
- K. Therefore, the City Council determines that prohibiting the sale, giving, or furnishing of e-cigarettes to minors and prohibiting the purchase, possession, or use of e-cigarettes by minors is in the City's best interests and will promote the public health, safety, and welfare. For purposes of this article, the City is adopting the term "vapor product" to

address e-cigarettes and all similar devices, because this term has been defined by the Michigan House and Senate in Senate Bills 667 and 668, enrolled in June of 2014, as part of proposed amendments to the Youth Tobacco Act, being Public Act 31 of 1915.

Sec. 32-257. Definitions.

For the purpose of construction and application of this article, the following definitions shall apply:

MINOR. An individual who is less than 18 years of age.

PERSON WHO SELLS VAPOR PRODUCTS AT RETAIL. A person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products.

PERSON WHO SELLS TOBACCO PRODUCTS AT RETAIL. 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.

POSSESS A TOBACCO PRODUCT OR VAPOR PRODUCT. Shall mean either actual physical control of the tobacco product or vapor product without necessarily owning that product, or the right to control the product even though it is in a different room or place than where the person is physically located.

PUBLIC PLACE. A public street, sidewalk, or park or any area open to the general public, a publicly owned or operated building or premises, or in a public place of business.

TOBACCO PRODUCT. A product that contains tobacco and is intended for human consumption, including but not limited to cigarettes, non-cigarette smoking tobacco, or smokeless tobacco, as those terms are defined in Section 2 of the Tobacco Products Tax Act, cigars, chewing tobacco, and flavored tobacco (shisha). Tobacco product does not include a vapor product or a product regulated as a drug or device by the United States Food and Drug Administration.

USE OF A TOBACCO PRODUCT OR VAPOR PRODUCT. To smoke, chew, suck, inhale, or otherwise consume a tobacco product or vapor product.

VAPOR PRODUCT. A noncombustible product containing nicotine 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 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 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.

Sec. 32-258. Prohibited Conduct.

- A. Subject to division (C) of this section, a minor shall not do any of the following:
- (1) Purchase or attempt to purchase a tobacco product or vapor product.
 - (2) Possess or attempt to possess a tobacco product or vapor product.
 - (3) Use a tobacco product or vapor 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 or vapor product.
- B. An individual who violates division (A) of this section is subject to the following:
- (1) The first violation is a municipal civil infraction, punishable by a fine of \$500 for each violation, except that the fine will be \$50 for each violation cited on a single municipal civil infraction citation if the individual completes a health promotion and risk reduction program approved by the Police Department or 42-2 District Court, either within 30 days of receiving the citation or prior to entering a plea of responsibility at the 42-2 District Court.
 - (2) A second violation or subsequent violation shall be a misdemeanor, punishable by a fine up to \$500. The court may order the individual to complete a health promotion and risk reduction program and perform not more than 40 hours of community service.
- C. Division (A) of this section does not apply to a minor participating in any of the following:
- (1) An undercover operation in which the minor purchases or receives a tobacco product or vapor 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.
 - (2) An undercover operation in which the minor purchases or receives a tobacco product 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 tobacco product or vapor 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.

- (3) 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 abuse coordinating agency as defined in the Public Health Code, 1978 PA 368, MCL 333.6103, and with the prior approval of the state police or a local police agency.
- D. Division (A) of this section does not apply to the handling or transportation of a tobacco product or vapor product by a minor under the terms of that minor's employment.
- E. 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 division (A) of this section.

Sec. 32-259. Parental Responsibility.

A primary caretaker having custody or control of a minor who violates Sec. 32-258 shall be responsible for a municipal civil infraction and a fine of \$500 for knowingly allowing or, through lack of supervision, allowing the minor to violate Sec. 32-258. The fine will be \$50 if the primary caretaker completes a health promotion and risk reduction program approved by the Police Department or 42-2 District Court, either within 30 days of receiving the citation or prior to entering a plea of responsibility at the 42-2 District Court.

Sec. 32-260. Sales of Individual Cigarettes.

- A. Except as otherwise provided in division (B) of this section, a person who sells tobacco products at retail shall not sell a cigarette separately from its package.
- B. Division (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 division (A) of this section is guilty of a misdemeanor, punishable by a fine of not more than \$500 for each offense.

Sec. 32-261. Furnishing to Minors.

- A. A person shall not sell, give, or furnish a tobacco product or vapor product to a minor, including, but not limited to, through a vending machine. A person who violates this subsection or division (H) of this section is guilty of a misdemeanor punishable by a fine of not more than \$50 for each violation.

- B. A person who sells tobacco products or vapor products at retail shall post, in a place close to the point of sale and conspicuous to both employees and customers, a sign that includes the following statement:

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

- C. If the sign required under division (B) of this section is more than six feet from the point of sale, it shall be 5-1/2 inches by 8-1/2 inches and the statement required under division (B) shall be printed in 36-point boldfaced type. If the sign required under division (B) is six feet or less from the point of sale, it shall be two inches by four inches and the statement required under division (B) shall be printed in 20-point boldfaced type.
- D. The signs required by division (C) of this section may be procured from the Department of Community Health pursuant to state law. The seller may add the "vapor product" language to the sign if the Department of Community Health does not or will not include it.
- E. It is an affirmative defense to a charge under division (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 and vapor products 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 and serve notice of the defense, in writing, with the court and serve a copy of the notice on the city attorney. The defendant shall serve the notice not less than 14 days before the date set for trial.
- F. If the City Attorney proposes to offer testimony to rebut the affirmative defense described in division (E) of this section, the City Attorney shall file a notice of rebuttal, in writing, with the court and serve a copy of the notice on the defendant. The City Attorney shall serve the notice not less than seven days before the date set for trial and shall include in the notice the name and address of each rebuttal witness.
- G. Division (A) of this section does not apply to the handling or transportation of a tobacco product or vapor product by a minor under the terms of the minor's employment.
- H. Before selling, offering for sale, giving, or furnishing a vapor product to an individual, a person shall verify that the individual is at least 18 years of age by doing one of the following:
- (1) 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.

- (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.

Section 3. Severability. If any article, section, subsection, sentence, clause, phrase, or portion of this ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of remaining provisions, it being the intent of the city that this ordinance shall be fully severable.

Section 4. Repealer. All ordinances or parts of ordinances in conflict herewith are repealed only to the extent to give this ordinance full force and affect.

Section 5. Effective Date. This ordinance being deemed an emergency ordinance shall be effective immediately upon adoption and publication due to the emergency nature of the same.

CERTIFICATION

I, Marcella Shinska, City Clerk for the City of New Baltimore, County of Macomb, State of Michigan, do hereby certify that Ordinance No. 220 was adopted by the City Council of New Baltimore, assembled in regular session on December 10, 2018. Said Ordinance was posted in the following places:

Notice of said posting was published in the Voice Newspaper December 26, 2018.

Marcella Shinska, City Clerk