

CHARTER TOWNSHIP OF WATERFORD

ORDINANCE NO. 2019-001

SMOKING AND TOBACCO AND VAPOR PRODUCT ORDINANCE AMENDMENTS

An Ordinance to amend the Waterford Charter Township Code to add definitions of nicotine, tobacco, and vapor products, adopt the Michigan Clean Indoor Air Act by reference, amend the Code to prohibit use of tobacco and vapor products on school property, repeal the Code provisions on smoking in educational facilities, prohibit the sale and furnishing to and the purchase, possession, and use by minors of vapor products, and provide penalties for the added and amended Code provisions.

THE CHARTER TOWNSHIP OF WATERFORD ORDAINS:

Section 1 of Ordinance

That Section 11-001(a) in Article I, In General, of Chapter 11, Offenses, of the Waterford Charter Township Code is hereby amended to read as follows:

Sec. 11-001. Definitions and violations.

(a) Definitions. In addition to the rules of construction and definitions contained in Section 1-002 and this Chapter, definitions of words and phrases in The Michigan Penal Code, Public Act No.328 of 1931, as amended, MCL 750.1 - MCL 750.568, and in Chapter 752 of the Michigan Compiled Laws for Crimes and Offenses, MCL 752.1 et. seq. shall be deemed to apply when those words and phrases are used but not defined in this Chapter or Code. When used in this Chapter, the following words and phrases are defined as follows:

- (1) **Nicotine Product** means tobacco and any other product, substance, or device containing or used to deliver nicotine for human consumption, whether chewed, absorbed, dissolved, inhaled, or ingested by any other means.
- (2) **Tobacco Product** means a product that contains tobacco that is intended for human consumption, including but not limited to cigarettes, noncigarette smoking tobacco such as cigars or loose tobacco for smoking in a pipe or other device, and smokeless tobacco such as chewing tobacco, that is consumed by placement in the mouth, inhaling through the nostrils, or other means.
- (3) **Use a Tobacco Product** means carrying a lighted cigarette, cigar, pipe, or other smoking device, or smoking, inhaling, chewing, or placement within a person's mouth of a tobacco product.
- (4) **Vapor Product** means a product or device that employs a heating element, power source, electronic circuit, or other electric, chemical, or mechanical means, regardless of shape or size, that when used, produces vapor, fumes, or smoke from a nicotine product or other substance or solution. Vapor products include an electronic cigarette (E cigarette), electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container of a nicotine product, or other substance in a solution or other form that is intended to be used with or in an electronic cigarette (E cigarette), electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

Section 2 of Ordinance

The Waterford Charter Township Code is hereby amended by adding Sections 11-341 and 11-342 in a new Division 3, Indoor Smoking and Use of Vapor Products, in Article VII, Offenses Against Public Safety, of Chapter 11, Offenses, to read as follows:

ARTICLE VII OFFENSES AGAINST PUBLIC SAFETY

Division 3. Indoor Smoking and Use of Vapor Products.

Sec. 11-341. Michigan Clean Indoor Air Act Adoption by Reference; Civil Infraction.

- (a) As allowed by MCL 42.23, the Michigan Clean Indoor Air Act, which is Part 126 of the Public Health Code, MCL 333.12601 through MCL 333.12617, as amended, is adopted by reference as an ordinance of the Township to prohibit smoking in enclosed indoor areas that are defined as public places in the Michigan Clean Indoor Air Act.
- (b) This ordinance shall be known and may be cited as the Clean Indoor Air Ordinance.
- (c) Violation of this Clean Indoor Air Ordinance is a civil infraction, punishable as provided in Section 1-10(b) of this Code, with the fine for a first violation not to exceed \$100.00, and the fine for a second or subsequent violation not to exceed \$500.00.

Sec. 11-342. Indoor Use of Vapor Product; Civil Infraction.

- (a) No person shall use a vapor product, as defined in Section 11-001, in an enclosed indoor area that is defined as a public place in the Michigan Clean Indoor Air Act adopted as the Clean Indoor Air Ordinance in Section 11-341.
- (b) Violation of this Section is a civil infraction, punishable as provided in Section 1-10(b) of this Code, with the fine for a first violation not to exceed \$100.00, and the fine for a second or subsequent violation not to exceed \$500.00.

Section 3 of Ordinance

The Waterford Charter Township Code is hereby amended by adding Sections 11-358 and 11-359 to Division 1, General-Prohibited Conduct, in Article VIII, Offenses on School Grounds, of Chapter 11, Offenses, to read as follows:

Sec. 11-358. Use of Tobacco Products; Misdemeanor.

- (a) Except as provided in subsection (b), no person shall use a tobacco product, as defined in Section 11-001, on school property.
- (b) Subsection (a) does not apply to outdoor areas on school property on Saturdays, Sundays, and other days when there are no regularly scheduled school hours, or after 6:00 p.m. on days when there are regularly scheduled school hours.
- (c) Violation of this Section is a misdemeanor, punishable as provided in Section 1-10(a) of this Code, except that the fine shall not exceed \$50.00.

Sec. 11-359. Use of Vapor Product; Civil Infraction.

- (a) Except as provided in subsection (b), no person shall use a vapor product, as defined in Section 11-001, on school property.

- (b) Subsection (a) does not apply to outdoor areas on school property on Saturdays, Sundays, and other days when there are no regularly scheduled school hours, or after 6:00 p.m. on days when there are regularly scheduled school hours.
- (c) Violation of this Section is a civil infraction, punishable as provided in Section 1-10(b) of this Code, with the fine for a first violation not to exceed \$50.00, and the fine for a second or subsequent violation not to exceed \$100.00.

Section 4 of Ordinance

The Waterford Charter Township Code is hereby amended to repeal Division 2, Smoking in Educational Facilities, and Sections 11-371, 11-372, 11-373, and 11-374 in that Division, of Article VIII, Offenses on School Grounds, in Chapter 11, Offenses, with this repeal based on the Michigan Clean Indoor Air Act adopted by reference as the Clean Indoor Air Ordinance in Section 1 of this Ordinance as Code Section 11-341.

Section 5 of Ordinance

That Sections 11-383, 11-386, 11-387, and 11-388 in Division 1, Generally, of Article IX, Offenses Involving Minors, in Chapter 11, Offenses, of the Waterford Charter Township Code are amended to read as follows:

Sec. 11-383. Furnishing alcohol, controlled substances, tobacco products or vapor products to minors; Misdemeanor.

- (a) A person shall not sell, give or furnish alcoholic liquor or beverages or a controlled substance, as regulated under Act 318 of 1978, the Public Health Code, to a person under the age of twenty-one (21) years, except in the case of prescription drugs where the person is licensed to dispense such controlled substance under a physician's prescription. A violation of this subsection is a misdemeanor punishable as provided in Section 1-010(a) if this Code, unless the charging of the violation is not allowed under Section 701 of the Michigan Liquor Control Code of 1998, as amended, MCL 436.1701.
- (b) A person shall not sell, give or furnish a tobacco product or vapor product to a person under the age of eighteen (18) years. This subsection does not apply to the handling or transportation of a tobacco product or vapor product by a person under 18 years of age under the terms of that minor's employment. Violation of this subsection is a misdemeanor punishable by a fine of not more than \$50.00.

Sec. 11-386. Tobacco and Vapor Products -- Definitions.

As used in Sections 11-383, 11-387 and 11-388, vapor product has the meaning defined in Section 11-001 and tobacco product has the same meaning as defined in the Youth Tobacco Act, MCL 722.644, as amended, which is a product that contains tobacco and is intended for human consumption, including but not limited to, cigarettes, non-cigarette smoking tobacco, or smokeless tobacco such as chewing tobacco (loose tobacco or a tobacco which may be inhaled through the nostrils, chewed or placed against the gums.)

Sec. 11-387. Purchase, possession, or use of tobacco products or vapor products by minor prohibited; Misdemeanor.

- (a) Except as provided in this section and in MCL 722.642, as amended, a person under the age of eighteen (18) years 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) Subsection (a) 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 Township attorney'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 a Township police officer as part of an enforcement action.
 - (3) Compliance checks in which the minor attempts to purchase tobacco products 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 Township police department.
- (c) Subsection (a) 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.
- (d) This section does not prohibit the individual from being charged with, convicted of, or sentenced for any other violation of law arising out of the violation of subsection (a).

Sec. 11-388. Purchase, possession, or use of tobacco and vapor products by minor--Penalty and sanctions.

An individual who violates Section 11-387 is guilty of a misdemeanor punishable by a fine of not more than fifty dollars (\$50.00) for each violation. Pursuant to a probation order, the court may also require an individual who violates Section 11-387 to participate in a health promotion and risk reduction assessment program if available. An individual who is ordered to participate in a health promotion and risk reduction assessment program under this section is responsible for the costs of participating in the program. In addition, an individual who violates Section 11-387 is subject to the following:

- (a) For the first violation, the court may order the individual to do the following:
 - (1) Perform not more than sixteen (16) hours of community service in a hospice, nursing home, or long-term care facility
 - (2) Participate in a health promotion and risk reduction program, as described in this subsection.
- (b) For a second violation, in addition to participating in a health promotion and risk reduction program, the court may order the individual to perform not more than thirty-two (32) hours of community service in a hospice, nursing home, or long-term care facility.
- (c) For a third or subsequent violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than forty-eight (48) hours of community service in a hospice, nursing home, or long-term care facility.

Section 6 of Ordinance

Should any section, subdivision, sentence, clause or phrase of this ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole or any part thereof other than the part as invalidated.

Section 7 of Ordinance

This Ordinance shall take effect immediately upon publication.

CERTIFICATION

I certify that this Ordinance was adopted by the Board of Trustees of the Charter Township of Waterford at a regular meeting held on _____, 2019.

CHARTER TOWNSHIP OF WATERFORD

Date

By: _____
, Township Clerk

Introduced:

Adopted:

Published: