



CITY of NOVI CITY COUNCIL

Agenda Item M
August 12, 2019

SUBJECT: Consideration to adopt Ordinance No. 19-158.01, an ordinance to amend the City of Novi Code of Ordinances, at Chapter 22, "Offenses," Article IX, "Offenses Pertaining to Underaged Persons," in order to amend Division 3, "Tobacco Products," to include vape, electronic cigarettes, and nicotine products; to amend Section 22-263, "Use of Tobacco on School Property," vape, electronic cigarettes, and nicotine products; and to include and provide penalties for violations. **SECOND READING**

SUBMITTING DEPARTMENT:

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION: This draft ordinance is intended to address the proliferation of the use of "vape" products (e-cigarettes) by minors. The City already has in place ordinances that prohibit the sale of tobacco to minors, as well as the use of tobacco on school property. Those ordinance provisions are generally limited to traditional types of tobacco and nicotine, however, and are not broadly enough written to include vapor products or other alternative nicotine products.

This proposed draft ordinance, which was reviewed and unanimously approved by the Ordinance Review Committee at its June 3, 2019 meeting, does the following:

- Broadens the definition of prohibited conduct to include the sale of vapor products and alternative nicotine products to minors. The language used in the draft ordinance is similar to the definitions created for the recently-enacted Public Acts 17 and 18 of 2019, which address such products at the state level. The updated definitions are made part of the City Code provisions that address the sale to minors, as well as the use of such products on school property.
- Alters the penalties for both the sale of such products to minors and use of such products on school property. Right now, those violations would be a misdemeanor, punishable by a fine of not more than \$50. As proposed, a violation would be changed as follows:
 - Use on school property would be made a municipal civil infraction, with civil penalties of \$50 plus community service for the first offense, \$100 plus 32 hours of community service for the second offense, and \$150 plus 48 hours of community service for a third or subsequent violation.
 - For a retailer (a person who owns or operates the store where the product is sold), a municipal civil infraction with a first offense civil fine of no less than \$1,000 and no more than \$2,500, with repeat offenses being civil fines of no less than \$2,500 and no more than \$5,000.
 - For "a person" who conducts the sale, a civil infraction with a \$50 fine for the first offense, with every subsequent offense being a misdemeanor with the typical penalties under the Code of a \$500 and up to 90 days in jail.

Note that the penalties in the recently adopted state law (Public Acts 17 and 18 of 2019) remain a misdemeanor for the sale of such products to a minor, with the first offense being subject to a fine of not more than \$100, not more than \$500 for a second offense, and not more than \$2,500 thereafter.

The ORC believed that the penalties should be even more substantial. The City has the ability to increase fines beyond \$500 only if the violation is made a civil infraction, which is why the ORC draft proposes the change to civil infractions generally—with the exception of a second and subsequent offense by the person who sells the product being left a misdemeanor. The ORC also thought it was appropriate to make the use of vapor products on school property a civil infraction, rather than a criminal misdemeanor.

City Council introduced the draft ordinance at its July 22, 2019 meeting. The only change for second reading was re-inserting language from the existing state law regarding affirmative defenses that can be asserted by a retailer.

RECOMMENDED ACTION: Adoption of Ordinance No. 19-158.01, an ordinance to amend the City of Novi Code of Ordinances, at Chapter 22, "Offenses," Article IX, "Offenses Pertaining to Underaged Persons," in order to amend Division 3, "Tobacco Products," to include vape, electronic cigarettes, and nicotine products; to amend Section 22-263, "Use of Tobacco on School Property," vape, electronic cigarettes, and nicotine products; and to include and provide penalties for violations. **SECOND READING**

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE CITY OF NOVI CODE OF ORDINANCES, AT CHAPTER 22, "OFFENSES," ARTICLE IX, "OFFENSES PERTAINING TO UNDERAGED PERSONS," IN ORDER TO AMEND DIVISION 3, "TOBACCO PRODUCTS," TO INCLUDE VAPE, ELECTRONIC CIGARETTES, AND NICOTINE PRODUCTS; TO AMEND SECTION 22-263, "USE OF TOBACCO ON SCHOOL PROPERTY," VAPE, ELECTRONIC CIGARETTES, AND NICOTINE PRODUCTS; AND TO INCLUDE AND PROVIDE PENALTIES FOR VIOLATIONS.

THE CITY OF NOVI ORDAINS:

PART I. That Chapter 22, "Offenses," Article IX, "Offenses Pertaining to Underaged Persons," Division 3, "Tobacco Products," of the City of Novi Code of Ordinances is hereby amended to read as follows.

DIVISION 3. - TOBACCO PRODUCTS, [ALTERNATIVE NICOTINE PRODUCTS, AND VAPOR PRODUCTS](#)

Sec. 22-241. - Sale of tobacco, [alternative nicotine, or vapor](#) products to minors.

(a) A person ~~or retailer~~ shall not sell, give, or furnish, ~~nor authorize or allow others to sell, give, or furnish~~ any [tobacco product, alternative nicotine product, or vapor product](#) ~~cigarette, cigar, chewing tobacco, tobacco snuff, tobacco product, or any nicotine product~~ to a person under eighteen (18) years of age. ~~A person who violates this section is guilty of a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00) for each offense.~~

(b) A ~~person or retailer~~ who sells tobacco, [alternative nicotine, 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 produced by the department of public health that includes the following statement:

"The purchase of tobacco, ~~or~~ nicotine, [or vapor](#) products by a minor under eighteen (18) years of age and the provision of tobacco products to a minor are prohibited by law. A minor unlawfully purchasing or using tobacco, ~~or~~ nicotine, [or vapor](#) products is subject to [criminal penalties](#) ~~penalty~~."

(c) If the sign required under subsection (b) is more than six (6) feet from the point of sale, it shall be five and one-half (5½) inches by eight and one-half (8½) inches, and the statement required under subsection (b) shall be printed in thirty-six-point boldface

type. If the sign required under subsection (b) is six (6) feet or less from the point of sale, it shall be two (2) inches by four (4) inches, and the statement required under subsection (b) shall be printed in twenty-point boldface type.

(d) A sign distributed by the Michigan Department of Public Health pursuant to 1988 PA 314, as amended, MCL 722.641, et seq.; MSA 25.281, et seq., shall be deemed to comply with this section.

~~(e) A person who violates this section is either responsible for a municipal civil infraction or is guilty of a misdemeanor as provided below, and the following fines, penalties, and costs shall apply in the event of a determination of responsibility for a civil infraction or a finding of guilt as to a misdemeanor:~~

~~(1) The civil fine for a first offense violation shall be no less than fifty dollars (\$50.00), plus costs and other sanctions.~~

~~(2) For any offense that is a repeat offense within the City, the offense shall be a misdemeanor and the provisions of Section 1-11(c)(1) of this Code of Ordinances shall apply.~~

~~(3) Each act of violation, and on each day upon which any such violation shall occur, shall constitute a separate offense.~~

~~(4) In addition to ordering the defendant determined to be responsible for a municipal civil infraction to pay a civil fine, or if the defendant is found guilty of a misdemeanor to pay the fine stated herein, the court shall be authorized to issue any judgment, writ, or order necessary to enforce, or enjoin violation of, this section, and to order a retailer or owner of a retail business who violates this section to attend and pay for a tobacco/nicotine health effects and sales compliance class, if available.~~

~~(f) A person or retailer who violates this section at whose business the selling, giving, or furnishing of any tobacco product, alternative nicotine product, or vapor product occurs in violation of this section is responsible for a municipal civil infraction. The following civil fines and penalties shall apply in the event of a determination of responsibility for a municipal civil infraction under this section:~~

~~(1) The civil fine for a first offense violation shall be no less than one thousand dollars (\$1,000.00) and no more than two thousand five hundred dollars (\$2,500.00), plus costs and other sanctions.~~

~~(2) The civil fine for any offense which is a repeat offense within the City shall be no less than two thousand five hundred dollars (\$2,500.00) and no more than five thousand dollars (\$5,000.00), plus costs and other sanctions for each offense.~~

~~(3) Each act of violation, and on each day upon which any such violation shall occur, shall constitute a separate offense.~~

(4) In addition to ordering the defendant determined to be responsible for a municipal civil infraction to pay a civil fine, the court shall be authorized to issue any judgment, writ or order necessary to enforce, or enjoin violation of, this section, and to order a retailer or owner of a retail business who violates this section to attend and pay for a tobacco/nicotine health effects and sales compliance class, if available.

(5) In addition to any remedies provided for in this section, any equitable or other remedies available may be sought.

(g) The ticket or notice of violation shall specify whether the ticket or notice is to a person or retailer.

(eh) It is an affirmative defense to a charge pursuant to subsection (a) that the defendant/respondent had in force at the time of arrest and continues to have in force a written policy to prevent the sale of ~~cigarettes, cigars, chewing tobacco, tobacco snuff,~~ tobacco products, vapor products, or nicotine products to persons under eighteen (18) years of age, and that the defendant/respondent enforced and continues to enforce the policy. A defendant/respondent 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 fourteen (14) days before the date set for trial.

(if) A prosecuting attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (e) shall file and serve a notice of rebuttal, in writing, upon the court and the defendant/respondent. The notice shall be served not less than seven (7) days before the date set for trial, and shall contain the name and address of each rebuttal witness.

Sec. 22-242. - Use or possession of tobacco products by minor in public.

(a) A person under eighteen (18) years of age shall not possess or smoke any tobacco product, alternative nicotine product, or vapor product~~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 chew any nicotine product,~~ on a public highway, street, alley, park or other lands used for public purposes, or in a public place of business or amusement, or on school property. ~~A person who violates this section is guilty of a misdemeanor, punishable by a fine of not more than fifty dollars (\$50.00) for each offense. Pursuant to probation order, the court may require a person who violates 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 costs of participating in the program. In addition, a person who violates this section is subject to the following:~~

(b) A person who violates subsection (a) is responsible for a municipal civil infraction. The following civil fines and penalties shall apply in the event of a determination of responsibility for a municipal civil infraction under this section:

- (1) For the first violation, a fine of up to fifty dollars (\$50.00) and the court may order the individual to either perform not more than 16 hours of community service in a hospice, nursing home, or long-term facility, or participate in a health promotion and risk reduction program.
- (2) For a second violation, a fine of up to one hundred dollars (\$100.00) and in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 32 hours of community service in a hospice, nursing home, or long-term care facility.
- (3) For a third or subsequent violation, a fine of up to one hundred fifty dollars (\$150.00) and 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 in a hospice, nursing home, or long-term care facility.
- (4) In addition, the defendant shall be otherwise subject to the penalties and provisions of section 1-11(a)-(e) of this Code.

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

~~a. Perform not more than sixteen (16) hours of community service in a hospice, nursing home, long-term care facility or other community service specified by the court.~~

~~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 and risk reduction program, the court may order the person to perform not more than thirty two (32) hours of community service in a hospice, nursing home, long-term care facility or other community service specified by the court.~~

~~(3) For a third or subsequent violation, in addition to participating in a health promotion and risk reduction program, the court may order the person to perform not more than forty eight (48) hours of community service in a hospice, nursing home, long-term care facility or other community service specified by the court.~~

Sec. 22-243. - Interference with rights 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 or her minor children or wards within the bounds of his or her own private premises.

Sec. 22-244. - Definitions.

As used in this division:

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, or a product regulated as a drug or device by the United States Food and Drug Administration under Subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 USC 351 to 360FFF-7.

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

~~*Person who sells tobacco, alternative nicotine, or vapor 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.~~

Person means an individual, partnership, fiduciary, association, corporation, retailer or other legal entity. For purposes of Section 22-241, *person* shall also mean the individual who actually completes the prohibited sale to a minor.

Retailer means ~~any~~ **any** person who sells tobacco products or nicotine products to individuals for personal consumption, or who **owns or** operates a facility where tobacco products or nicotine products are sold.

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. Tobacco product does not include a vapor product, an alternative nicotine product, or a product regulated as a drug or device by the United States Food and Drug Administration under Subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 USC 351 to 360FFF-7.

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

Vapor product means 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 under Subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 USC 351 to 360FFF-7.

[NEW SECTION] PART II. That Chapter 22, "Offenses," Article X, "Offenses on School Property," Section 22-263, "Use of Tobacco Products on School Property," of the City of Novi Code of Ordinances is hereby amended to read as follows.

Sec. 22-263. - Use of tobacco products, alternative nicotine products, and vapor products on school property.

- (a) Except as otherwise provided in subsection (d), a person shall not use a tobacco product, alternative nicotine product, or vapor product on school property or in vehicles on school property.
- (b) ~~A person who violates subsection (a) is guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars (\$500.00). A person who violates subsection (a) is responsible for a municipal civil infraction. The following civil fines and penalties shall apply in the event of a determination of responsibility for a municipal civil infraction under this section:~~
- (1) For the first violation, a fine of up to fifty dollars (\$50.00) and the court may order the individual to either perform not more than 16 hours of community service in a hospice, nursing home, or long-term facility, or participate in a health promotion and risk reduction program.
 - (2) For a second violation, a fine of up to one hundred dollars (\$100.00) and in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 32 hours of community service in a hospice, nursing home, or long-term care facility.
 - (3) For a third or subsequent violation, a fine of up to one hundred fifty dollars (\$150.00) and 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 in a hospice, nursing home, or long-term care facility.
 - (4) In addition, the defendant shall be otherwise subject to the penalties and provisions of section 1-11(a)-(e) of this Code.
- (c) The provisions of section 22-251 notwithstanding, as used in this section:
- (1) "School district" means a school district, local act school district or intermediate school district, as those terms are defined in the school code of 1976, Act No. 451 of the Public Acts of 1976, being sections 380.1 to 380.1852 of the Michigan Compiled Laws; a joint high school district formed under part 3a of Act No. 451 of the Public Acts of 1976, being sections 380.171 to 380.187 of the Michigan Compiled Laws; or a consortium or cooperative arrangement consisting of any combination of these.
 - (2) "School property" means a building, facility, or structure and other real estate owned, leased, or otherwise controlled by a school district.
 - (3) The definitions contained in Section 22-244 of this Code are hereby adopted by reference.
 - (3) ~~"Tobacco product" means a preparation of tobacco to be inhaled, chewed, or placed in a person's mouth.~~
 - (4) ~~"Use a tobacco product" means any of the following:~~
 - a. ~~The carrying by a person of a lighted cigar, cigarette, pipe or other lighted smoking device.~~

- ~~b.—The inhaling or chewing of a tobacco product.~~
- ~~c.—The placing of a tobacco product within a person's mouth.~~

- (d) Subsection (a) does not apply to that part of school property consisting of outdoor areas including, but not limited to, an open-air stadium, during either of the following time periods:
- (1) Saturdays, Sundays and other days on which there are no regularly scheduled school hours.
 - (2) After 6:00 p.m. on days during which there are regularly scheduled school hours.

PART III. Severability. Should any section, subdivision, clause, or phrase of this Ordinance be declared by the courts to be invalid, the validity of the Ordinance as a whole, or in part, shall not be affected other than the part invalidated.

PART IV. Savings Clause. The amendment of the Novi Code of Ordinances set forth in this Ordinance does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture or punishment, pending or incurred prior to the amendment of the Novi Code of Ordinances set forth in this Ordinance.

PART V. Repealer. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

PART VI. Effective Date. The provisions of this Ordinance are ordered to take effect following publication in the manner prescribed by the Charter of the City of Novi.

PART VII. Adoption. This ordinance is hereby declared to have been adopted by the Novi City Council in a meeting thereof duly held and called on the ___ day of _____, 2019, in order to be given publication in the manner prescribed by the Charter of the City of Novi.

Moved by _____ and supported by _____.

Robert J. Gatt, Mayor

Cortney Hanson, City Clerk

Certificate of Adoption

I hereby certify that the foregoing is a true and complete copy of the ordinance adopted at the regular meeting of the Novi City Council held on the _____ day of _____, 2019.

Cortney Hanson, City Clerk