

# **Charter Township of Orion**

## **Ordinance No. 158**

### **Tobacco, Alternative Nicotine Products, and Vapor Products**

Adopted October 21, 2019

**AMENDED**  
February 18, 2020

# **Ordinance No. 158 Tobacco, Alternative Nicotine Products & Vapor Products**

**AN ORDINANCE TO PROTECT THE SAFETY AND WELFARE OF THE PEOPLE OF THE TOWNSHIP OF ORION BY PREVENTING THE POSSESSION OR USE OF TOBACCO, VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS BY MINORS; TO PROHIBIT THE SALE OF TOBACCO, VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS TO MINORS; AND TO INCLUDE AND PROVIDE PENALTIES FOR VIOLATIONS.**

## **Section I – Definitions**

“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.

“Liquid nicotine” means a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use in 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” means an individual, partnership, fiduciary, association, corporation, retailer or other legal entity.

“Retailer” means any person who sells tobacco products, vapor products, or alternative 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.

“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.

## **Section II – Tobacco Products, Alternative Nicotine Products, and Vapor Products**

(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 to a person under eighteen (18) years of age, including, but not limited to, through a vending machine.

(b) A 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, nicotine, or vapor products by a minor under eighteen (18) years of age and the sale 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.”

(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-

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point boldface 2 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.

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.

- (d) A retailer shall not display for sale in Orion Township 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 so that a customer wanting access to the vapor product must ask an employee for assistance.
- (e) Penalties for violation of this section are specified in Sec. VII.

## **Section III – Liquid Nicotine Containers**

- (a) A person shall not sell in this state a liquid nicotine container unless the liquid nicotine container meets the child-resistant effectiveness standards of 16 CFR 1700.15(b).
- (b) A person who violates Sec. III(a) shall be guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation.

## **Section IV – Use or Possession of Tobacco Products by Minor in Public**

A person under eighteen (18) years of age shall not possess, attempt to possess, or smoke any tobacco product, alternative nicotine product, or vapor product on a public highway, street, alley, park or other lands used for public purposes, or in a public place of business or amusement. A minor shall not use a false ID to possess or attempt to possess any tobacco product, alternative nicotine product, or vapor product. Penalties for violation of this section are prescribed in Sec. VII.

## **Section V – 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.

## **Section VII – Violation and Penalties**

- (a) A person who violates Section II(a), (b), (c) or (d) of this Ordinance is guilty of a misdemeanor.
- (b) A person who violates Sec. IV is responsible for a municipal civil infraction or a misdemeanor, depending upon the number of violations. The following penalties shall apply in the event of a determination of responsibility for an infraction under this section:
  - (1) For the first violation, the individual is responsible for a state civil infraction and shall be fined not more than fifty dollars (\$50.00). The court may order the individual 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 sixteen (16) hours of community service.
  - (2) For the second violation, the individual is responsible for a state civil infraction and shall be fined not more than fifty dollars (\$50.00). The court may order the individual 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 thirty-two (32) hours of community service.
  - (3) If a violation of subsection (3) occurs after two (2) or more prior judgments, the individual 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 the individual to participate in a health promotion and risk reduction assessment program, if available.

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## **Section VIII – Severability**

The various parts, sections and clauses of this Ordinance are declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected

## **Section IX – Savings**

All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this Ordinance takes effect, are saved and may be consummated according to the law when they were commenced.

## **Section X – Repealer**

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

## **Section XI – Effective Date**

This Ordinance shall be published in a newspaper of general circulation in the Township of Orion, and shall become effective upon publication, as provided by law.