

**CITY OF ALBION
ORDINANCE #2022-08**

AN ORDINANCE TO AMEND CHAPTER 58, ARTICLE VIII, BY AMENDING SECTION 58-228, SELLING, GIVING, OR FURNISHING A TOBACCO PRODUCT, VAPOR PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT TO A MINOR PROHIBITED, AND SECTION 58-229, PURCHASING OR ATTEMPT TO PURCHASE, POSSESSION OR ATTEMPT TO POSSESS, OR USE OF TOBACCO BY A MINOR PROHIBITED; USE OF FRAUDULENT IDENTIFICATION PROHIBITED, DEFINITIONS

Purpose and Finding:

This Ordinance modifies the existing furnishing tobacco and alternative nicotine products to minors ordinance as well as the existing minor in possession of tobacco or alternative nicotine products ordinance. Recently, the State of Michigan adopted Act 167 of 2022 which raised the minimum age for minors to purchase tobacco, vapor, and alternative nicotine products from 18 to 21. Public Act 167 of 2022 took immediate effect on July 21, 2022. As such, it is necessary to update our local corresponding ordinances to avoid conflict with state law. Approval is recommended.

THE CITY OF ALBION ORDAINS:

Section 1. Chapter 58, of the Codified Ordinances of the City of Albion, is hereby amended, by amending Article VIII, by amending Section 58-228 as follows:

SECTION 58-228. SELLING, GIVING, OR FURNISHING A TOBACCO PRODUCT, VAPOR PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT TO A MINOR PROHIBITED

1. A person shall not sell, give, or furnish a tobacco product, vapor product, or alternative nicotine product to a minor, including, but not limited to, through a vending machine. A person who violates this subsection or subsection (7) is guilty of a misdemeanor punishable by a fine as follows:
 - a. For a first offense, not more than \$100.00.
 - b. For a second or subsequent offense, not more than \$500.00.
2. A person who sells tobacco products, vapor products, or alternative nicotine 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 health and human services that includes the following statement:

- a. "The purchase of a tobacco product, vapor product, or alternative nicotine product by a minor under 18 years of age and the provision of a tobacco product, vapor product, or alternative nicotine product to a minor are prohibited by law. A minor who unlawfully purchases or uses a tobacco product, vapor product, or alternative nicotine product is subject to criminal penalties."
3. If the sign required under subsection (2) is more than six (6) feet from the point of sale, it must be five and one-half inches by eight and one-half inches and the statement required under subsection (2) must be printed in 36-point boldfaced type. If the sign required under subsection (2) is six (6) feet or less from the point of sale, it must be two (2) inches by four (4) inches and the statement required under subsection (2) must be printed in 20-point boldfaced type.
4. It is an affirmative defense to a charge under subsection (1) 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, vapor products, or alternative nicotine products, as applicable, to persons under twenty-one (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 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 fourteen (14) days before the date set for trial.
5. If the city attorney proposes to offer testimony to rebut the affirmative defense described in subsection (4) 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.
6. Subsection (1) does not apply to the handling or transportation of a tobacco product, vapor product, or alternative nicotine product by a minor under the terms of the minor's employment.
7. Before selling, offering for sale, giving, or furnishing a tobacco product, vapor product, or alternative nicotine product to an individual, a person shall verify that the individual is at least twenty-one (21) years of age by doing one of the following:
 - a. If the individual appears to be under twenty-seven (27) years of age, examining a government-issued photographic identification that establishes that the individual is at least twenty-one (18) years of age.
 - b. 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 twenty-one (21) years of age or older.

State Law Reference: MCL 722.641

Section 2. Chapter 58, of the Codified Ordinances of the City of Albion, is hereby amended, by amending Article VIII, by amending Section 58-229 as follows:

SECTION 58-229. PURCHASING OR ATTEMPT TO PURCHASE, POSSESSION OR ATTEMPT TO POSSESS, OR USE OF TOBACCO BY A MINOR PROHIBITED; USE OF FRAUDULENT IDENTIFICATION PROHIBITED, DEFINITIONS

1. Subject to subsection (6), a minor shall not do any of the following:
 - a. Purchase or attempt to purchase a tobacco product.
 - b. Possess or attempt to possess a tobacco product.
 - c. Use a tobacco product in a public place.
 - d. 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.
2. An individual who violates subsection (1) is guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation. Pursuant to a probation order, the court may also require an individual who violates subsection (1) to participate in a health promotion and risk reduction assessment program, if available. In addition, an individual who violates subsection (1) is subject to the following:
 - a. For the first violation, the court may order the individual to do one of the following:
 - i. Perform not more than sixteen (16) hours of community service.
 - ii. Participate in a health promotion and risk reduction assessment program.

- b. For a second violation, in addition to participation in a health promotion and risk reduction assessment program, the court may order the individual to perform not more than thirty-two (32) hours of community service.
 - c. For a third or subsequent violation, in addition to participation in a health promotion and risk reduction assessment program, the court may order the individual to perform not more than forty-eight (48) hours of community service.
- 3. Subject to subsection (6), a minor shall not do any of the following:
 - a. Purchase or attempt to purchase a vapor product or alternative nicotine product.
 - b. Possess or attempt to possess a vapor product or alternative nicotine product.
 - c. Use a vapor product or alternative nicotine product in a public place.
 - d. 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 vapor product or alternative nicotine product.
- 4. An individual who violates subsection (3) is responsible for a civil infraction or guilty of a misdemeanor as follows:
 - a. For the first violation, the individual is responsible for a civil infraction and shall be fined not more than fifty (\$50.00) dollars. 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.
 - b. For the second violation, the individual is responsible for a civil infraction and shall be fined not more than fifty (\$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.
 - c. If a violation of subsection three (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 (\$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. In addition,

the court may order the individual to perform not more than forty-eight (48) hours of community service.

5. An individual who is ordered to participate in a health promotion and risk reduction assessment program under subsection (2) or (4) is responsible for the costs of participating in the program.
6. Subsections one (1) and three (3) do not apply to a minor participating in any of the following:
 - a. An undercover operation in which the minor purchases or receives a tobacco product, vapor product, or alternative nicotine 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.
 - b. An undercover operation in which the minor purchases or receives a tobacco product, vapor product, or alternative nicotine 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, vapor product, or alternative nicotine 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.
 - c. 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 use disorder coordinating agency and with the prior approval of the state police or a local police agency.
7. Subsections one (1) and three (3) do not apply to the handling or transportation of a tobacco product, vapor product, or alternative nicotine product by a minor under the terms of the minor's employment.
8. 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 subsection one (1) or three (3).
9. *Definitions:* As used in sections 58-228 and 58-229, the following terms shall have the following meanings:
 - a. *"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, food, or a

product regulated as a drug or device by the United States Food and Drug Administration under 21 USC 351 to 360fff-7.

- b. *"Minor"* means an individual who is less than twenty-one (21) years of age.
- c. *"Person who sells vapor products or alternative nicotine products at retail"* means a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products or alternative nicotine products.
- d. *"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.
- e. *"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.
- f. *"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 two (2) of the Tobacco Products Tax Act, 1993 PA 327, MCL 205.422, and a cigar.
- g. *"Use a tobacco product, vapor product, or alternative nicotine product"* means to smoke, chew, suck, inhale, or otherwise consume a tobacco product, vapor product, or alternative nicotine product.
- h. *"Vapor product"* means 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. 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 or other substance 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 21 USC 351 to 360fff-7.

State Law Reference: MCL 722.642

Section 3. Severability. This ordinance and each article, section, subsection, paragraph, subparagraph, part, provision, sentence, word and portion thereof are

hereby declared to be severable, and if they or any of them are declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

Section 4. Repeal. Any ordinance(s) inconsistent with this ordinance are hereby repealed.

This Ordinance shall take effect on October 19, 2022 after publication.

First Reading:

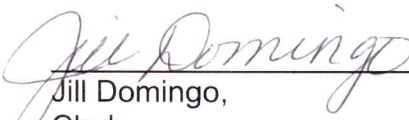
Second Reading & Adoption:

September 6, 2022

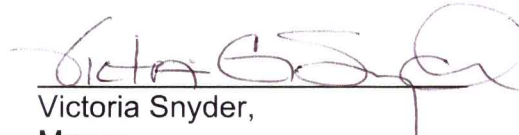
September 19, 2022

Ayes 7
Nays 0
Absent 0

Ayes 7
Nays 0
Absent 0



Jill Domingo,
Clerk



Victoria Snyder,
Mayor