

**CITY OF ALBION  
ORDINANCE #2019-05**

AN ORDINANCE TO CREATE SECTION(S) 58-228 PROHIBITION ON  
SELLING, GIVING, OR FURNISHING A TOBACCO PRODUCT, VAPOR  
PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT TO A MINOR, AND 58-  
229 PROHIBITION ON POSSESSION, ATTEMPTED POSSESSION, OR USE  
OF TOBACCO PRODUCTS, VAPOR PRODUCTS, OR ALTERNATIVE  
NICOTINE PRODUCTS BY A MINOR

**Purpose and Finding:**

The Michigan Legislature recently enacted Public Act 18 of 2019 which consolidated the statutes which prohibit selling tobacco products to minors and minor in possession and/or use of tobacco products with new sections that now address vapor products and alternative nicotine products. The use of vapor products has become a new trend with youth, particularly on school property and schools statewide have been working to deal with the issue. This ordinance adopts the state statute language and allows for local prosecution of the new state laws at the local level. This will allow local law enforcement to work locally to curtail both the sale of these products to minors as well as the general use or possession of these products by minors. This ordinance is recommended to promote the health, safety, and general welfare of the citizens of Albion.

THE CITY OF ALBION ORDAINS:

Section 1:

**Sec 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 6 feet from the point of sale, it must be 5-1/2 inches by 8-1/2 inches and the statement required under subsection (2) must be printed in 36-point boldfaced type. If the sign required under subsection (2) is 6 feet or less from the point of sale, it must be 2 inches by 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 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 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.
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 7 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 18 years of age by doing 1 of the following:
  - a. 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.
  - 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 18 years of age or older.

State law reference: MCL 722.641

**Sec. 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.**

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 1 of the following:
    - i. Perform not more than 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 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 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 \$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 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 \$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 32 hours of community service.
  - c. If a violation of subsection (3) occurs after 2 or more prior judgments, the individual 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 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 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 (1) and (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 (1) and (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 (1) or (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 18 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 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 2: The provisions of this Ordinance are severable and the invalidity of

any phrase, clause, or part of this Ordinance shall not affect the validity or effectiveness of the remainder of the Ordinance;

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.

This Ordinance shall take effect on September 2, 2019 after publication.

First Reading:

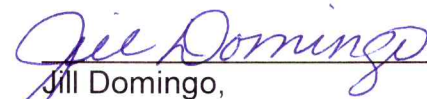
Second Reading & Adoption:

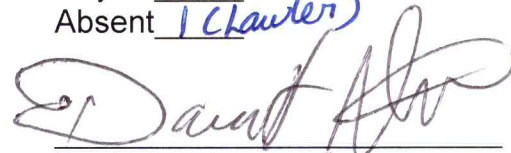
July 1, 2019

July 15, 2019

Ayes 6  
Nays 0  
Absent 1 (Brown)

Ayes 6  
Nays 0  
Absent 1 (Cawley)

  
Jill Domingo,  
Clerk

  
David Atchison,  
Mayor.