

Ordinance Amendment

State of Michigan county of Wayne Charter Township of Canton Chapter 46 an ordinance to amend Chapter 46, article viii, division 1, of the Canton Code of ordinances entitled "offenses involving underage persons" to revise section 46-505 and 46-506. The Charter Township of Canton ordains: section 1. Amendment to Code. Chapter 46 of the Charter Township of Canton Code ordinance, article viii, entitled "offenses involving underage persons," division 1, entitled "generally," sections 46-505 and 46-506, are hereby amended to read as follows: sec. 46-505. - sale of tobacco products, vapor products or alternative nicotine products to persons under 18 years of age. A person shall not sell, give or furnish any cigarette, cigar, chewing tobacco, tobacco snuff or tobacco in any form or vapor products or alternative nicotine products to a person under 18 years of age including but not limited to, through a vending machine. A person who violates this subsection or subsection (h) of this ordinance is guilty of a misdemeanor punishable by a fine as follows: for a first offense, not more than \$100.00. For a second offense, not more than \$500.00. For a third or subsequent offense, not more than \$2,500.00. A person who sells tobacco products, vapor products, or alternative nicotine products at retail shall post a sign as required by section 1 of public act no. 31 of 1915 (mcl 722.641), furnished by the State department of public health, that includes the following Statement: the purchase of tobacco products or vapor products or alternative nicotine products by a minor under 18 years of age and the provision of tobacco products or vapor products or alternative nicotine products 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. It is an affirmative defense to a charge pursuant to subsection (a) of this section 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 cigarettes, cigars, chewing tobacco, tobacco snuff, and other 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 which 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 Township attorney. The notice shall be served not less than 14 days before the date set for trial. A Township attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (c) of this section shall file and serve a notice of rebuttal, in writing, upon the court and the defendant. The notice shall be served not less than 7 days before the date set for trial, and shall contain the name and address of each rebuttal witness. Subsection (a) 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. 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: if the person 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. 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. Sec. 46-506.-possession or use of tobacco, vapor products or alternative nicotine products. Definitions. As used in this section, the following definitions shall apply: chewing tobacco means loose tobacco or a flat, compressed cake of tobacco which is inserted into the mouth to be chewed or sucked. Minor means an individual who is less than 18 years of age. 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. 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. 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. Tobacco product means a product that contains tobacco and is intended for human consumption, including, but not limited to, a cigarette, non-cigarette 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 snuff means shredded, powdered or pulverized tobacco which may be inhaled through the nostrils, chewed or placed against the gums. Vapor product or alternative nicotine products means a non-combustible product containing nicotine or not 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 not 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 than 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 ("FDA") under sub Chapter v of the federal food, drug, and cosmetic act, 21 USC 351 to 360ff-7. Possession or use in public place prohibited. A person under 18 years of age shall not possess or smoke 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 smoke vapor product or alternative nicotine products on a public highway, street, alley, park, or other lands used for public purposes, or in a public place of business or amusement, or 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. Penalty. A person who violates subsection (b) of this section shall be responsible for a State civil infraction or misdemeanor, punishable by a fine of not more than \$50.00 for each offense. Pursuant to a probation order, the court may require a person who violates subsection (b) of 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 cost of participating in the program. In addition, a person who violates this section is subject to the following: for the first violation the court may order the person to do one of the following: perform not more than 16 hours of community service in a hospice, nursing home or long term care facility. Participate in a health promotion and risk reduction program, as described in this subsection. For a second violation, in addition to participation in a health promotion risk reduction program, the court may order the person to perform not more than 32 hours of community service in a hospice, nursing home, or long term care facility. For a third or subsequent violation, 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. A person who is ordered to participate in a health promotion and risk reduction assessment program under subsection (c) is responsible for the costs of participating in the program. Subsections (b) and (c) do not apply to a minor participating in any of the following: 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. 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. 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. 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 (b) or (c). Section 2. Severability if any clause, sentence, section, paragraph or part of this ordinance, or the application of thereof to any person, firm, corporation, legal entity or circumstances, shall be for any reason adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this ordinance. It is hereby declared to the legislative intent of this body that the ordinance is severable, and that the ordinance would have been adopted had such invalid or unconstitutional provisions not have been included in this ordinance. Section 3. Repeal of conflicting ordinances all ordinance or parts of ordinance in conflict herewith is hereby repealed only to the extent necessary to give this ordinance full force and effect. Section 4. Savings clause all rights and duties which have matured penalties which have been incurred, proceedings which have begun and prosecution for violations of law occurring before the effective date of this ordinance are not affected or abated by this ordinance. Section 5. Publication the clerk for the Charter Township of Canton shall cause this ordinance to be published in the manner required by law. Section 6. Effective date this ordinance, as amended, shall be effective upon publication as required by law. Certification the foregoing ordinance was duly adopted by the Township Board of Trustees of the Charter Township of Canton at its regular meeting called and held on the 27th day of August, 2019, and was ordered to be given publication in the manner required by law. Michael Siegrist, Clerk introduced: august 13, 2019 adopted: August 27, 2019 published: September 5, 2019 effective: September 5, 2019. All ordinances can be reviewed in full at www.canton-mi.org or in person at the Canton Township Administration Building.