

ORDINANCE NO. 80-747

AN ORDINANCE AMENDING CHAPTER 22 OF THE CODE OF ORDINANCES BY PROHIBITING USE OF ELECTRONIC CIGARETTES ON SCHOOL PROPERTY DURING SCHOOL HOURS; PROHIBITING SALE OF ELECTRONIC CIGARETTES TO A PERSON UNDER 18 YEARS OLD; AND PROHIBITING A PERSON UNDER 18 YEARS OLD FROM POSSESSING ELECTRONIC CIGARETTES.

THE CITY OF WARREN ORDAINS:

SECTION 1. That Section 22-239 of Chapter 22, Article X, of the Code of Ordinances of the City of Warren, Michigan

**WHICH PRESENTLY READS AS FOLLOWS:**

Sec. 22-239. - *Tobacco* products on school property.

(a) 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, Public Act. No. 451 of 1976, being MCL 380.1 to 380.1852; a joint high school district formed under Part 3a of Public Act. No. 451 of 1976, being MCL 380.171 to 380.187; 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) Tobacco product means a preparation of *tobacco* to be inhaled, chewed, or placed in a person's mouth.
- (4) Use of *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.

(b) No person shall use a *tobacco* product on school property except as otherwise provided. The violation of this section is a misdemeanor which shall, upon conviction, be punished by a fine not exceeding fifty dollars (\$50.00), plus costs and other sanctions for each violation.

(c) Subsection (b) shall 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.

(Ord. No. 80-527, § 17, 1-13-98)

**IS HEREBY AMENDED TO READ AS FOLLOWS:**

Sec. 22-239. - Tobacco products on school property.

(a) 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, Public Act. No. 451 of 1976, being MCL 380.1 to 380.1852; a joint high school district formed under Part 3a of Public Act. No. 451 of 1976, being MCL 380.171 to 380.187; 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) Tobacco product means any product or substance that contains tobacco and is intended for human consumption, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, dipping tobacco, dissolvable tobacco, snus, and chewing tobacco; or any product or substance that is used in creating vapor (aerosol) containing nicotine or other toxicants meant for human consumption, including, but not limited to, all electronic cigarettes (e-cigarettes), e-cigars, e-hookah, vape pens, personal vaporizers, electric pipes, and liquid nicotine product (e-liquid, e-fluid, e-juice, etc.). This does not include any product approved by the Food and Drug Administration for sale as a drug or medical device and used by a person with a valid prescription for its use.
- (4) Use of tobacco product means any of the following:
  - a. Possessing a lighted cigar, lighted cigarette, lighted pipe, or other lighted tobacco product.
  - b. Activating an electronic cigarette or other device used for creating vapor containing nicotine or other toxicants.

- c. Inhaling or chewing a tobacco product.
  - d. Placing a tobacco product in a person's mouth.
- (b) A person shall not use a tobacco product on school property, except as otherwise provided. A violation of this section is a civil infraction which, upon conviction, is punishable by a fine not exceeding fifty dollars (\$50.00), plus costs and other sanctions for each violation.
- (c) Subsection (b) shall 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.

Cross-reference – Restrictions on the Sale and Distribution of Tobacco Products, 81 Fed. Reg. 28974 (May 10, 2016) (to be codified at 21 C.F.R. pts 1100, 1140, and 1143).

(Ord. No. 80-527, § 17, 1-13-98)

SECTION 2. That Section 22-254 of Chapter 22, Article X, of the Code of Ordinances of the City of Warren, Michigan

**WHICH PRESENTLY READS AS FOLLOWS:**

Sec. 22-254. - Providing tobacco products to persons under eighteen; signs required for sale of tobacco products at retail.

- (a) A person shall not sell, give or furnish any cigarette, cigar, chewing tobacco, in any other form to a person under eighteen (18) years of age.
- (b) A person who sells tobacco products at retail shall post the sign required by the Youth Tobacco Act, Public Act 314 of 1988, as amended found at MCL 722.641.
- (c) A person who violates any provision of this section is responsible for a municipal civil infraction which shall result in a fine of one hundred dollars (\$100.00) for each offense, plus costs and other sanctions.

(Ord. No. 80-527, § 17, 1-13-98)

**IS HEREBY AMENDED TO READ AS FOLLOWS:**

Sec. 22-254. - Providing tobacco products to persons under eighteen (18) years old; signs required for sale of tobacco products at retail.

- (a) Except as defined in subsection (c), tobacco product, as used in this section, any product or substance that contains tobacco and is intended for human consumption, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, dipping tobacco, dissolvable tobacco, snus, and chewing tobacco; or any product or substance that is used in creating vapor (aerosol) containing nicotine or other toxicants meant for human consumption, including, but not limited to, all electronic cigarettes (e-cigarettes), e-cigars, e-hookah, vape pens, personal vaporizers, electric pipes, and liquid nicotine product (e-liquid, e-fluid, e-juice, etc.). This does not include any product approved by the Food and Drug Administration for sale as a drug or medical device and used by a person with a valid prescription for its use.
- (b) A person shall not sell, give, or furnish any tobacco product to a person under eighteen (18) years old.
- (c) A person who sells tobacco products, as defined by MCL 722.644, as amended, at retail shall post the sign required by the Youth Tobacco Act, MCL 722.641, as amended.
- (d) A person who violates any provision of this section is responsible for a misdemeanor which, is punishable by a fine not exceeding fifty dollars (\$50.00), plus costs and other sanctions.

Cross-reference – Restrictions on the Sale and Distribution of Tobacco Products, 81 Fed. Reg. 28974 (May 10, 2016) (to be codified at 21 C.F.R. pts 1100, 1140, and 1143).

(Ord. No. 80-527, § 17, 1-13-98)

SECTION 3. That Section 22-255 of Chapter 22, Article X, of the Code of Ordinances of the City of Warren, Michigan

**WHICH PRESENTLY READS AS FOLLOWS:**

Sec. 22-255. - Use and possession of *tobacco* products by persons under eighteen.

- (a) A person less than eighteen (18) years of age shall not purchase *tobacco* products, consume *tobacco* products or possess *tobacco* products except as provided in subsection (e).
- (b) A person who violates this section is responsible for a municipal civil infraction which shall result in the assessment of a fine of one hundred dollars (\$100.00) for a first offense, plus costs and other sanctions. Pursuant to a 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:
  - (1) For the first violation, the court may order the person to do one of the following:
    - a. Perform not more than sixteen (16) hours of community service in a hospice, nursing home, or long-term care facility; or
    - b. Participate in a health promotion risk reduction program, as described in this section.
  - (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, or long-term care facility.
  - (3) 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 forty-eight (48) hours of community service in a hospice, nursing home, or long-term care facility.
- (c) A person who furnishes fraudulent identification to a person less than eighteen (18) years of age, or a person less than eighteen (18) years of age who uses a fraudulent identification to purchase *tobacco* products, is guilty of a misdemeanor, punishable by a fine not to exceed five hundred

dollars (\$500.00) or imprisonment for a term not exceed ninety (90) days, or both, plus costs and other sanctions for each violation.

- (d) This section shall not be construed to prohibit a person less than eighteen (18) years of age from possessing *tobacco* products during regular working hours and in the course of his or her employment if employed by a person licensed to sell *tobacco* products, transport *tobacco* products, or otherwise deal with *tobacco* products in the regular course of business. This subsection shall not be construed to exempt from liability minors in possession of *tobacco* products for personal use or consumption at any time.

**IS HEREBY AMENDED TO READ AS FOLLOWS:**

Sec. 22-255. - Use and possession of tobacco products by persons under eighteen (18) years old.

- (a) As used in this section:

(1) Tobacco product means any product or substance that contains tobacco and is intended for human consumption, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, dipping tobacco, dissolvable tobacco, snus, and chewing tobacco; or any product or substance that is used in creating vapor (aerosol) containing nicotine or other toxicants meant for human consumption, including, but not limited to, all electronic cigarettes (e-cigarettes), e-cigars, e-hookah, vape pens, personal vaporizers, electric pipes, and liquid nicotine product (e-liquid, e-fluid, e-juice, etc.). This does not include any product approved by the Food and Drug Administration for sale as a drug or medical device and used by a person with a valid prescription for its use.

- (b) A person who violates this section is responsible for a municipal civil infraction which shall result in the assessment of a fine of one hundred dollars (\$100.00) for a first offense, plus costs and other sanctions. Pursuant to a 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:

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

- a. Perform not more than sixteen (16) hours of community service in a hospice, nursing home, or long-term care facility; or

- b. Participate in a health promotion risk reduction program, as described in this section.
- (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, or long-term care facility.
- (3) 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 forty-eight (48) hours of community service in a hospice, nursing home, or long-term care facility.
- (c) A person who (1) furnishes fraudulent identification to a person under eighteen (18) years old; or (2) is under eighteen (18) years old and uses a fraudulent identification to purchase tobacco products, is guilty of a misdemeanor, punishable by a fine not to exceed five hundred dollars (\$500.00) or imprisonment for a term not exceed ninety (90) days, or both, plus costs and other sanctions for each violation.
- (d) This section does not prohibit a person under 18 years old from possessing tobacco products, during regular working hours and in the course of his or her employment, if employed by a person licensed to sell, possess, or transport tobacco products in the regular course of business. This subsection does not exempt a person under eighteen 18 years old from liability under subsection (b), (c), and (d) of this section, if they possess tobacco products for personal use or consumption.

Cross-reference – Restrictions on the Sale and Distribution of Tobacco Products, 81 Fed. Reg. 28974 (May 10, 2016) (to be codified at 21 C.F.R. pts 1100, 1140, and 1143).

SECTION 4. This Ordinance shall take effect on January 11, 2017.

I HEREBY CERTIFY that the foregoing Ordinance No. 80-747 was adopted by the Council of the City of Warren at its meeting held on December 20, 2016.

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PAUL WOJNO  
City Clerk

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