

ORDINANCE NO. ORD-16-17

First Reading: July 18, 2016
Public Hearing: August 4, 2016

Approved: August 4, 2016
Published: August 11, 2016
Effective: January 1, 2017

TOBACCO REGULATION

AN ORDINANCE TO ADD A NEW SECTION 9:328a, TO AMEND SECTIONS 9:328, 9:329 AND 9:333, AND TO REPEAL SECTIONS 9:330, 9:331, AND 9:332 OF CHAPTER 118, TOBACCO REGULATION, OF TITLE IX OF THE CODE OF THE CITY OF ANN ARBOR

The City of Ann Arbor Ordains:

Section 1. That Chapter 118, of Title IX of the Code of the City of Ann Arbor be amended to add a new section 9:328a to read as follows:

9:328a. Findings.

That the City Council of the City of Ann Arbor hereby finds:

That tobacco use is the number one cause of preventable death in Michigan and continues to be an urgent public health challenge, as evidenced by the following:

- 16,200 Michigan adults die from smoking-related diseases every year;
- Nearly one in ten Michigan youth who are alive today will die from early from smoking-related diseases;iv, v, vi and
- Tobacco use can cause disease in nearly all organ systems and is responsible for 87% of lung cancer deaths, 79% of all chronic obstructive pulmonary disease deaths, and 32% of coronary heart disease deaths; vii

That every year smoking costs Michigan nearly \$9.4 billion dollars in direct healthcare expenses and lost productivity;

That for the first time in 20 years, the adult smoking rate in Washtenaw County increased, from 12.3% in 2010 to 14.8% in 2015;

That nearly 95 percent of people who smoke start by age 21;

That individuals who begin smoking at an early age are more likely to develop a severe addiction to nicotine than those who start at a later age;

That the younger people start smoking, the greater their risk of many adverse health outcomes, such as hospitalizations and lifetime risk of respiratory disease, chronic obstructive pulmonary disease, and lung cancer;

That tobacco use continues to be a significant public health concern for youth in the City of Ann Arbor, as evidenced by 9.2% of Washtenaw County high school students reporting that they have ever smoked a cigarette;

That curbing tobacco use, particularly for youth, is especially important to the City of Ann Arbor;

That the City of Ann Arbor created smokefree outdoor public places in 2014 in an effort to curb tobacco use among City residents;

That the University of Michigan Ann Arbor has the second largest undergraduate student population in Michigan (over 28,000 students in 2015 – 2016);

That raising the minimum legal age for tobacco sales is important to protect the particularly large population of individuals under the age of 21 in the City of Ann Arbor;

That the majority of youth under age 18 obtain tobacco through social sources as evidenced by:

- 41.4% of Washtenaw County high school students, including 53.7% of 11th graders, report easy access to cigarettes;
- 10.9% of Washtenaw County high school students who smoke usually give someone money to purchase their cigarettes;
- 37.0% of Washtenaw County high school students who smoke usually receive their cigarettes by asking someone they know for them; and
- 17.4% of Washtenaw County high school students who smoke usually get their cigarettes from someone who was 18 years or older;

That the closer youth are to age 18, the easier it is for them to buy tobacco products from retailers as evidenced by:

- The percentage of Washtenaw County high school students who usually buy their cigarettes from stores more than triples between 9th and 11th grade (4.2% of 9th graders usually buy their cigarettes at the store versus 15.6% of 11th graders);

That studies have shown that young adults between ages 18 and 20 are more likely than adults over the age of 21 to purchase tobacco for minors;

That raising the minimum legal age of access reduces the ability for youth under age 18 to appear legally old enough to buy tobacco products and decreases the probability that nonsmoking youth will have social contact and networks that contain smokers;

That the Institute of Medicine found that raising the minimum legal age of access to 21 will likely delay initiation and reduce tobacco prevalence across all ages with the largest proportionate reduction in initiation likely occurring among adolescents of ages 15-17;

That tobacco use continues to be a significant public health concern for young adults as evidenced by the following:

- 13.5% of young adults between the ages of 18 and 24 in Washtenaw County smoke; and
- 18-to-24-year-olds are far more likely to use electronic smoking devices compared to all Washtenaw adults (7.3% versus 4.3%);

That most individuals transition from experimental to regular smoking before age 21;

That tobacco companies target young adults between the ages of 18 to 24 to increase the frequency with which they use tobacco products to encourage them to transition into habitual users;

That research has repeatedly found that raising the minimum age of access is an effective strategy for reducing tobacco use among youth and young adults as evidenced by:

- Research has overwhelmingly demonstrated that minimum legal drinking age laws decreased alcohol consumption rates in the United States, especially among youth and young adults;
- An evaluation of Needham, MA's law raising the minimum tobacco sales age to 21 found that within five years the prevalence of youth smoking reduced by nearly half (12.9% in 2006 versus 6.7% in 2010); and
- The Institute of Medicine found that a nationwide law raising the minimum age of legal access to 21 would save almost a quarter of a million lives of people born between 2000 and 2019;

That smoking disproportionately affects African Americans in Washtenaw County, who are nearly 1.75 times more likely to smoke (25.9% of African Americans smoke versus 14.8% of all Washtenaw adults);

That raising the minimum age of purchase may also address racial and ethnic inequities as communities of color are more likely to begin smoking after age 18;

That as of April 22, 2016, at least 140 jurisdictions in 13 states have laws raising the minimum legal sale age for tobacco products to 21;

That nationally, 70.5% of people, including 57.8% of people who currently smoke, support raising the minimum age of legal access to 21; and

That, the minimum sale age for alcohol in Michigan is 21 years of age, and persons under 21 years of age have visibly different drivers' licenses. Raising the minimum sale age for tobacco would streamline identification checks and would establish a uniform age for the purchase of both products.

The tobacco industry knows that raising minimum age to 21 will hurt sales and worked to roll age back from 21 to 18.

Studies conducted by tobacco companies recognize that if "a man has never smoked by the age of 18, the odds are three-to-one he never will. By the age of 21, the odds are twenty-to-one."

Additionally, studies by tobacco companies have acknowledged that if they don't capture new users by their early 20's, it's unlikely that they ever will.

Specifically, a Philip Morris report concluded, "Raising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market."

Section 2: That Section 9:328 of Chapter 118, of Title IX of the Code of the City of Ann Arbor be renumbered and amended to read as follows:

9:328 9:328b. - Providing tobacco products or electronic smoking devices to persons under ~~18~~ 21.

(a) A person shall not sell, give or furnish a tobacco product in any form to a person under 21 years of age. "Tobacco Product" means any product that contains tobacco, is derived from tobacco, or contains synthetically produced nicotine and is intended for human consumption. "Tobacco Product" does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. A person shall not sell, give or furnish any cigarette, cigar, chewing tobacco, snuff or tobacco in any other form to a person under ~~18~~ 21 years of age.

(b) A person shall not sell, give or furnish any electronic smoking device to a person under 21 years of age. "Electronic Smoking Device" means an electronic and/or battery-operated device, which when used resembles the smoking of a tobacco product and delivers an inhaled dose of nicotine or other substances. Any such smoking device includes, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic Smoking Device" does not include any product specifically approved by the United States

Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

(a) Subsection (a) shall not apply to:

(i) A Transportation Company as defined in Public Act 327 of 1993 as amended (MCL 205.422), provided the Transportation Company holds a valid state license issued pursuant to Public Act 327 of 1993 as amended (MCL 205.421 et seq.)

(ii) A Vending Machine Operator as defined in Public Act 327 of 1993 as amended (MCL 205.422), provided the Vending Machine Operator holds a valid state license issued pursuant to Public Act 327 of 1993 as amended (MCL 205.421 et seq.)

(b) Any person who is not subject to the restrictions in subsection (a) shall not sell, give, or furnish any cigarette, cigar, chewing tobacco, snuff, or tobacco in any other form to a person under 18 years of age.

Section 3: That Section 9:329 of Chapter 118, of Title IX of the Code of the City of Ann Arbor be amended to read as follows:

9:329. - Sign required.

(a) A person who sells tobacco products at retail shall post the sign required by Public Act 31 of 1915 as amended (MCL 722.641 et seq.).

(b) A person who sells tobacco products and or electronic smoking devices at retail and who is subject to the requirements of subsection 9:328(a) shall post a sign adjacent to the sign required by Public Act 31 of 1915 as amended (MCL 722.641 et seq), which includes the following statement:

“Under City of Ann Arbor ordinance, this store is prohibited from selling or providing a tobacco product to any person under 21 years of age.”

(c) A person who sells electronic smoking devices at retail shall post a sign which includes the following statement:

“Under City of Ann Arbor ordinance, this store is prohibited from selling or providing electronic smoking devices to any person under 21 years of age.”

(b)(d) The size, design, and typeface requirements for the sign required by subsections (b) and (c) shall be the same as for the sign required by subsection (a).

Section 4: That Section 9:330 of Chapter 118, of Title IX of the Code of the City of Ann Arbor be repealed as follows:

~~9:330. Affirmative defense.~~

~~It is an affirmative defense to a charge pursuant to section 9:328 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 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 and serve notice of the defense, in writing, upon the court and the city attorney. The notice shall be served not less than 14 days before the date set for trial.~~

Section 5: That Section 9:331 of Chapter 118, of Title IX of the Code of the City of Ann Arbor be repealed as follows:

~~9:331. Rebuttal testimony.~~

~~A city attorney who proposes to offer testimony to rebut the affirmative defense described in section 9:330 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.~~

Section 6: That Section 9:332 of Chapter 118, of Title IX of the Code of the City of Ann Arbor be amended to read as follows:

~~9:332. Possession or use of tobacco in public by persons under 18.~~

~~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, on a public highway, street, alley, park, or other lands used for public purposes, or in a public place of business or amusement.~~

Section 7: That Section 9:333 of Chapter 118, of Title IX of the Code of the City of Ann Arbor be amended to read as follows:

9:333. - Penalties.

~~Persons convicted of violating section 9:332 may be punished by a fine of not more than \$20.00 or, in the discretion of the court, may be required to perform community service. Other violations- Violations of this chapter are punishable by a fine of not more than \$500.00.~~

Section 8: In the event any court of competent jurisdiction shall hold any provision of this Ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision thereof.

Section 9: This Ordinance shall take effect on January 1, 2017.

As Amended by Ann Arbor City Council on July 18, 2016

CERTIFICATION

I hereby certify that the foregoing ordinance was adopted by the Council of the City of Ann Arbor, Michigan, at its regular session of August 4, 2016.

Jacqueline Beaudry, City Clerk

Date

Christopher Taylor, Mayor

I hereby certify that the foregoing ordinance received legal publication on the Ann Arbor City Clerk's webpage on August 11, 2016.

Jacqueline Beaudry, City Clerk