

CITY OF MONROE
ORDINANCE 19-003

CHAPTER 659 - TOBACCO
ARTICLE I - SALE TO AND POSSESSION BY MINORS

An Ordinance to amend Article I, Sale to and Possession by Minors, of Chapter 659, Tobacco, of the Code of the City of Monroe.

THE CITY OF MONROE ORDAINS:

SECTION 1. AMENDMENT OF ARTICLE I OF CHAPTER 659 OF THE CODE OF THE CITY OF MONROE

Article I, Sale to and Possession by Minors, of Chapter 659, Tobacco, of the Code of the City of Monroe is hereby amended as follows:

Article I - Sale to and Possession by Minors

§ 659-1 Definitions.

As used in this article, the following terms shall have the meanings indicated:

ALTERNATIVE NICOTINE PRODUCT

A noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, ingested, injected, or consumed by any other means.

CHEWING TOBACCO

Loose tobacco or a flat, compressed cake of tobacco that is inserted into the mouth to be chewed or sucked.

PROSECUTING ATTORNEY

The City Attorney for the City of Monroe, the Assistant City Attorney for the City of Monroe, and any other attorney employed, retained or utilized to prosecute violations of this article by the City of Monroe.

TOBACCO PRODUCT

A product that contains tobacco and is intended for human consumption, including, but not limited to cigarettes, cigars, non-cigarette smoking tobacco, chewing tobacco, smokeless tobacco, tobacco snuff, or tobacco in any other form.

TOBACCO SNUFF

Shredded, powdered or pulverized tobacco that may be inhaled through the nostrils, chewed, or placed against the gums.

VAPOR PRODUCT

A noncombustible product containing nicotine 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 in a solution or other form, including, but not limited to 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 that is intended to be used with such a product or device.

§ 659-2 Attempted purchase, use or possession by minors.

- A. Subject to subsection B below, no person under 18 years of age shall:
- (1) Purchase or attempt to purchase cigarettes, cigars, chewing tobacco, smokeless tobacco, non-cigarette smoking tobacco, tobacco products, tobacco snuff, alternative nicotine products, vapor products, or tobacco in any other form;
 - (2) Possess or attempt to possess cigarettes, cigars, chewing tobacco, smokeless tobacco non-cigarette smoking tobacco, tobacco products, tobacco snuff, alternative nicotine products, vapor products, or tobacco in any other form;
 - (3) Use or Attempt to use cigarettes, cigars, chewing tobacco, smokeless tobacco, non-cigarette smoking tobacco, tobacco products, tobacco snuff, alternative nicotine products, vapor products, or tobacco in any other form on a public highway, street, parking lot, alley, park or other lands used for public purposes or in a public place of business or amusement; or
 - (4) 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, possession or attempt to possess cigarettes, cigars, chewing tobacco, smokeless tobacco, non-cigarette smoking tobacco, tobacco products, tobacco snuff, alternative nicotine products, vapor products, or tobacco in any other form.
- B. Subsection A shall not apply to a minor participating in any of the following:
- (1) An undercover operation in which the minor purchases or receives a tobacco product, alternative nicotine product, or vapor 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.

- (2) An undercover operation in which the minor purchaser or receives a tobacco product, alternative nicotine product, or vapor product under the direction of a police agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of a tobacco product, alternative nicotine product or vapor product by the minor was not under the direction of the police agency and was not part of the undercover operation.
- (3) The handling or transportation of a tobacco product, alternative nicotine product, or vapor product by a minor under the terms of that minor's employment, provided that such employment does not involve use of any tobacco product, alternative nicotine product, or vapor product.
- (4) The exceptions contained in subsections (1)-(3) immediately preceding does not prohibit an individual from being charged with, convicted of, or sentenced for any other violation of law arising out of the violation of this Article.

§ 659-3 Sale to minors.

No person shall sell, give or furnish any cigarettes, cigars, chewing tobacco, smokeless tobacco, non-cigarette smoking tobacco, tobacco products, tobacco snuff, alternative nicotine products, vapor products, or tobacco in any other form to a person under 18 years of age.

§ 659-4 Posting of tobacco age warning signs.

- A. A person who sells tobacco products, alternative nicotine products, or vapor products at retail shall post, in a place close to the point of sale and conspicuous to both employees and customers, a sign that includes the following statement:

The purchase of tobacco products, alternative nicotine products, or vapor products by a minor under 18 years of age and the provision of tobacco products to a minor are prohibited by law. A minor unlawfully purchasing or using tobacco products is subject to criminal penalties.

- B. If the sign required under this section is more than six feet from the point of sale, it shall be 5 1/2 inches by 8 1/2 inches in size, and the statement required under this section shall be printed in thirty-six-point boldface type. If the sign required under this section is six feet or less from the point of sale, it shall be two inches by four inches in size, and the statement required under this section shall be printed in twenty-point boldface type.

§ 659-5 Affirmative defense; rebuttal.

- A. It is an affirmative defense to a charge pursuant to § 659-3 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, alternative nicotine products, or vapor products to a person 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 herein shall file and serve notice of the defense, in writing, upon the court and the prosecuting attorney. This notice shall be served not less than 14 days before the date set for trial.
- B. A prosecuting attorney who proposes to offer testimony to rebut the affirmative defense described in 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 seven days before the date set for trial, and shall contain the name and address of each rebuttal witness.

§ 659-6 Violations and penalties.

- A. A person who violates § 659-2 is guilty of a misdemeanor and shall be subject to a fine of not more than \$50 for each offense. Pursuant to a probation order, the court may require a person who violates § 659-2 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 § 659-2 is subject to the following, at the discretion of the court:
 - (1) For a first violation, the court may order the person to do the following:
 - (a) Perform not more than 16 hours of community service in a hospice, nursing home or long-term care facility; and/or
 - (b) Perform not more than 16 hours of community service picking up tobacco product refuse and litter in the City under the direction of the Department of Parks and Recreation or the Department of Public Services; and/or
 - (c) Participate in a health promotion and 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:

- (a) Perform not more than 32 hours of community service in a hospice, nursing home or long-term care facility; and/or
 - (b) Perform not more than 32 hours of community service picking up tobacco product refuse and litter in the City under the direction of the Department of Parks and Recreation or the Department of Public Services.
- (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:
 - (a) Perform not more than 48 hours of community service in a hospice, nursing home or long-term care facility; and/or
 - (b) Perform not more than 48 hours of community service picking up tobacco product refuse and litter in the City under the direction of the Department of Parks and Recreation or the Department of Public Services.
- B. A person who violates § 659-3 is guilty of a misdemeanor and shall be fined not more than \$50 for each offense.
- C. A person who violates § 659-4 is responsible for a municipal civil infraction and shall be subject to the provisions of § 1-27E.

SECTION 2. SAVINGS CLAUSE.

All proceedings pending and all rights and liabilities existing, acquired or incurred at the time this Ordinance takes effect are saved and may be consummated according to the law in force when they are/were commenced.

SECTION 3. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this Ordinance is declared unconstitutional by a court of competent jurisdiction, such decision or holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall be in full force and effect Twenty (20) days after final passage and publication.

Dated at City of Monroe, MI
February 4, 2019
Michelle J. LaVoy, Clerk-Treasurer