

ORDINANCE NO. _____
YOUTH TOBACCO ORDINANCE

AN ORDINANCE TO PROTECT THE HEALTH, WELFARE AND SAFETY OF THE RESIDENTS OF THE VILLAGE OF QUINCY.

THE VILLAGE OF QUINCY ORDAINS:

Section 1. Definitions.

As used in this ordinance:

- (a) "Minor" means an individual under 18 years of age.
- (b) "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.
- (c) "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.
- (d) "Tobacco product" means a product that contains tobacco and is intended for human consumption, including but not limited to, cigarettes, 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 cigars.
- (e) "Use a tobacco product" means to smoke, chew, suck, inhale, or otherwise consume a tobacco product.

Section 2. Prohibited conduct by minor; violation as a civil infraction; penalty; participation in health promotion and risk reduction assessment program; costs; community service; exceptions; other violations.

- (1) Subject to subsection (3), 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) Uses 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 civil infraction punishable by a fine of not less than \$50.00 for each violation, with a second offense within six months being

punishable by not less than \$100, and a third offense within six months being punishable by a fine of up to \$500. 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. An individual who is ordered to participate in a health promotion and risk reduction assessment program under this subsection is responsible for the costs of participating in the program. 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 in a hospice, nursing home, or long-term care facility.
 - (ii) Participate in a health promotion and risk reduction program, as described in this subsection.
- (b) For a second violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 32 hours of community service in a hospice, nursing home, or long-term care facility.
- (c) For a third or subsequent violation, in addition to participation in a health promotion and risk reduction program, the court may order the individual to perform not more than 48 hours of community service in a hospice, nursing home, or long-term care facility.

(3) Subsection (1) does 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 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 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 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 satisfying federal substance abuse block grant youth tobacco access requirement, if the compliance checks are conducted under the direction of a substance abuse coordinating agency as defined in section 6103. of the public health code, 1978 PA 368, MCL 333.6103, and with the prior approval of the state police or a local police agency.

(4) Subsection (1) does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment.

(5) This section does not prohibit the individual from being charged with, convicted of, or sentenced for any other violation of law arising out of the violation of subsection (1).

Section 3. Selling, giving, or furnishing tobacco products to minor prohibited; misdemeanor; penalty; sign required; copies of sign; affirmative defense; notice; rebuttal testimony; notice of rebuttal; exception.

- (1) A person shall not sell, give, or furnish a tobacco product to a minor. A person who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$50.00 for each violation.
- (2) A person who sells tobacco 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 community health that includes the following statement:

"The purchase of tobacco products by a minor under 18 years of age and the possession of tobacco products by a minor are prohibited by law. A minor unlawfully purchasing or using tobacco products is subject to a criminal penalties".
- (3) If the sign required under subsection (2) is more than 6 feet from the point of sale, it shall be 5-1/2 inches by 8-1/2 inches and the statement required under subsection (2) shall 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 shall be 2 inches by 4 inches and the statement required under subsection (2) shall be printed in 20-point boldfaced type.
- (4) It is an affirmative defense to charge under subsection (2) 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 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 prosecuting attorney. The notice shall be served not less than 14 days before the date set for trial.
- (5) A prosecuting attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (4) 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.
- (6) Subsection (1) does not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment.

Section 4. Selling cigarette separately prohibited; exception; violation as misdemeanor; penalty.

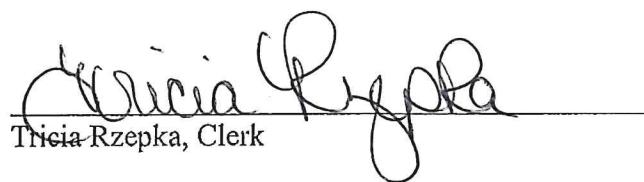
- (1) Except as otherwise provided in subsection (2), a person who sells tobacco products at retail shall not sell a cigarette separately from its package.
- (2) Subsection (1) does not apply to a person who sells tobacco products at retail in a tobacco speciality retail store or other retail store that deals exclusively in the sale of tobacco products and smoking paraphernalia.
- (3) A person who violates subsection (1) is guilty of a misdemeanor, punishable by a fine of not more than \$500.00 for each offense.

Section 5. Noninterference with right of parent or guardian.

This act does not interfere with the rights of a parent or legal guardian in the rearing and management of his or her minor children or wards within the bounds of his or her own private premises.

Section 6. This Ordinance shall take effect twenty-one days after its adoption and publication as prescribed by law.

The foregoing ordinance was duly adopted at a regular meeting of the Council of the Village of Quincy of which a quorum was present on June 18, 2013.



Tricia Rzepka, Clerk