City of Birmingham
A Walkable Community

MEMORANDUM

Police Department

DATE: **June 11, 2014**

TO: **Joseph A. Valentine, Interim City Manager**

FROM: **Donald A. Studt, Chief of Police**

SUBJECT: **Amendment to Chapter 74, Article IX, Division 2, Sections 74.421-74.425, Prohibition of Possession/Use of Electronic Cigarettes by Minors**

The City Attorney has prepared the attached revision of Chapter 74 to include a prohibition of possession/use of electronic cigarettes by minors.

We recommend the City Commission move to adopt this amendment.

SUGGESTED ACTION:
To adopt the changes to Part II of the City Code Chapter 74, Article IX, Division 2, Sections 74.421-74.425 to prohibit possession/use of electronic cigarettes by minors.

CITY OF BIRMINGHAM

ORDINANCE NO. _____

AN ORDINANCE TO AMEND PART II OF THE CITY CODE CHAPTER 74, OFFENSES, ARTICLE IX, OFFENSES INVOLVING MINORS, DIVISION 2. SMOKING, SECTIONS 74.421 THROUGH SECTION 74.425.

THE CITY OF BIRMINGHAM ORDAINS:

Part II of City Code Chapter 74, Offenses, Article IX, Offenses Involving Minors, Division 2, Smoking, Sections 74.421 through74.425 shall be amended to read:

Sec. 74-421. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Chewing tobacco means loose tobacco or a flat, compressed cake of tobacco which is inserted into the mouth to be chewed or sucked.

Nicotine means a colorless, oily, water-soluble, highly toxic alkaloid found in tobacco.

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, Act No. 451 of the Public Acts of Michigan of 1976 (MCL 380.1 et seq.), as amended, or a consortium or cooperative arrangement consisting of any combination of these.

School property means a building, facility or structure or other real estate owned, leased or otherwise controlled by a school district.

Smoking or *smoke* means the carrying by a person of a lighted cigar, cigarette, pipe or other lighted smoking device, including, but not limited to electronic cigarettes or inhalants.

Tobacco product means a preparation of tobacco to be inhaled, chewed or placed in a person's mouth.

Tobacco snuff means shredded, powdered or pulverized tobacco which may be inhaled through the nostrils, chewed or placed against the gums.

Use a tobacco product and/or nicotine product means any of the following:

(1) The carrying by a person of a lighted cigar, cigarette, pipe, ~~or~~ other lighted smoking device and/or electronic cigarette.

(2) The inhaling or chewing of a tobacco product.

(3) The placing of a tobacco product in one's month.

(Ord. No. 1572, § 9.170, 10-11-93)

Cross reference— Definitions generally, § 1-2.

Sec. 74-422. Possession of tobacco by minors.

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 or nicotine in any other form, on a public highway, street, alley, park or other lands used for public purposes, in a public place of business or amusement or on school property.

(Ord. No. 1572, § 9.171, 10-11-93)

Sec. 74-423. Smoking on school property.

(a) Except as otherwise provided in this section, a person shall not use a tobacco product or nicotine on school property.

(b) This section shall not apply to the part of a school property consisting of outdoor dining areas including, but not limited to, an open air stadium, during either of the following time periods:

(1) Saturdays, Sundays or 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. 1572, § 9.172, 10-11-93)

Sec. 74-424. Penalty.

(a) A person who violates this division is guilty of a misdemeanor, punishable by a fine of not more than $50.00 for each offense.

(b) In addition to the fine stated in subsection (a) of this section, a minor who violates section 74-422 may be required by the court to participate in a health promotion and risk reduction assessment program, if available. A minor 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 minor who violates section 74-422 is subject to the following:

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

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

b. Participate in a health promotion and risk reduction program, as described in this subsection.

(2) For a second violation, in addition to participation in a health promotion and risk reduction program, the court may order the minor to perform not more than 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 minor to perform not more than 48 hours of community service in a hospice, nursing home or long-term care facility.

(Ord. No. 1572, § 9.172, 10-11-93; Ord. No. 1663, 1-26-98)

Sec. 74-425. Sale of tobacco products to minors; prohibition, penalty; public health department sign.

(a) A person shall not sell, give or furnish any cigarette, cigar, chewing tobacco, nicotine product, tobacco snuff or tobacco in any other form to a person under 18 years of age. A person who violates this section is guilty of a misdemeanor, punishable by a fine of not more than $100.00 for each offense.

(b) Beginning 90 days after the effective date of this subsection, 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 that includes the following statement:

"The purchase of tobacco 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."

(c) If the sign required under subsection (b) is more than six feet from the point of sale, it shall be five and one-half inches by eight and one-half inches, and the statement required under subsection (b) shall be printed in 36-point boldface type. If the sign required under subsection (b) is six feet or less from the point of sale, it shall be two inches by four inches, and the statement required under subsection (b) shall be printed in 20-point boldface type. For purpose of this section, a "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.

Ordained this ___ day of, _____2014, but to become effective upon publication in a newspaper of general circulation within the City of Birmingham.

_____

Scott Moore, Mayor

_____

Laura M. Pierce, City Clerk

I, Laura M. Pierce, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2014 and that a summary was published _____, 2014.

_____
Laura M. Pierce, City Clerk

CITY OF BIRMINGHAM

ORDINANCE NO. _____

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Sec. 74-421. Definitions.

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(Ord. No. 1572, § 9.171, 10-11-93)

Sec. 74-423. Smoking on school property.

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(b) This section shall not apply to the part of a school property consisting of outdoor dining areas including, but not limited to, an open air stadium, during either of the following time periods:

(1) Saturdays, Sundays or 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. 1572, § 9.172, 10-11-93)

Sec. 74-424. Penalty.

(a) A person who violates this division is guilty of a misdemeanor, punishable by a fine of not more than $50.00 for each offense.

(b) In addition to the fine stated in subsection (a) of this section, a minor who violates section 74-422 may be required by the court to participate in a health promotion and risk reduction assessment program, if available. A minor 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 minor who violates section 74-422 is subject to the following:

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

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

b. Participate in a health promotion and risk reduction program, as described in this subsection.

(2) For a second violation, in addition to participation in a health promotion and risk reduction program, the court may order the minor to perform not more than 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 minor to perform not more than 48 hours of community service in a hospice, nursing home or long-term care facility.

(Ord. No. 1572, § 9.172, 10-11-93; Ord. No. 1663, 1-26-98)

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(b) Beginning 90 days after the effective date of this subsection, 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 that includes the following statement:

"The purchase of tobacco 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."

(c) If the sign required under subsection (b) is more than six feet from the point of sale, it shall be five and one-half inches by eight and one-half inches, and the statement required under subsection (b) shall be printed in 36-point boldface type. If the sign required under subsection (b) is six feet or less from the point of sale, it shall be two inches by four inches, and the statement required under subsection (b) shall be printed in 20-point boldface type. For purpose of this section, a "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.

(Ord. No. 1626,8-12-96)

Ordained this ___ day of, _____2014, but to become effective upon publication in a newspaper of general circulation within the City of Birmingham.

_____

Scott Moore, Mayor

_____

Laura M. Pierce, City Clerk

I, Laura M. Pierce, City Clerk of the City of Birmingham, do hereby certify that the foregoing ordinance was passed by the Commission of the City of Birmingham, Michigan at a regular meeting held _____, 2014 and that a summary was published _____, 2014.

_____

Laura M. Pierce, City Clerk