AN ORDINANCE
of the Council of the City of Berkley, Michigan
Amending Division 4 of Article VIII of Chapter 82, Offenses and Miscellaneous Provisions, of the City of Berkley Code of Ordinances to Prohibit the Possession and Use of Cigarettes, Tobacco, and Nicotine Products to Persons Under the Age of 21, and the Sale, Giving, or Furnishing of Cigarettes, Tobacco, and Nicotine Products, Including Electronic Cigarettes, to Persons Under the Age of 21, and to Prescribe Penalties for Violations.

THE CITY OF BERKLEY ORDAINS:

SECTION 1: Division 4 of Article VIII of Chapter 82 of the Berkley Code of Ordinances shall be amended, as follows:

Sec. 82-385. – Definition.

For the purposes of this division, the following terms shall be defined as follows:

Nicotine product means the highly toxic alkaloid found in tobacco, presented in tobacco, or in some other form for ingestion, including, but not limited to water soluble nicotine containing substances and devices which deliver nicotine through vapor or other means for inhalation or ingestion, including electronic cigarettes, hookah pens, or other similar devices.

Sec. 82-386. – Furnishing to minors.

It shall be unlawful within the city for any person to sell, give to or in any way furnish any cigarettes, tobacco, or nicotine products in any form to any person under the age of 21 years. In an action for a violation of this section, proof that the defendant demanded and was shown, before selling, giving, or furnishing any cigarettes, tobacco, or nicotine product to a person under the age of 21, a driver’s license or other bonafide photographic identification showing the person’s age and identity, shall be a defense.

Sec. 82-387. – Possession by minors.

It shall be unlawful within the city for any person under the age of 21 years to possess or have on their person any cigarettes, tobacco, or nicotine products in any form.

Sec. 82-388. – Use by minors in public places.

No person under the age of 21 years shall smoke, inhale, ingest, or use cigarettes, tobacco, or nicotine products in any form on any public highway, street, alley, park or other lands used for public purposes, or in any public place of business or amusement.
Sec. 82-389. – Harboring minors for purposes of indulgence; rights of parents.

No person shall knowingly harbor any person under the age of 21 years or grant to persons under the age of 21 years the privilege of gathering upon or frequenting any property or lands held by him for the purpose of indulging in the use of cigarettes, tobacco, or nicotine products in any form; provided, however, that no part of this division shall be construed as to interfere with the right of parents or lawful guardians in the rearing and management of their minor children or wards within the bounds of their own private premises.

Sec. 82-390. – Penalties.

(a) A person who violates sections 82-387 or 82-388 is responsible for a municipal civil infraction, with a fine up to $100 or community service.

(b) A person who violates sections 82-386 or 82-389 of this division is guilty of a misdemeanor, with a maximum penalty of up to 90 days in jail and/or a fine of up to $500.

SECTION 2: Severability Clause
Should any word, phrase, sentence, paragraph, or section of this Ordinance be held invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3: Effective Date
This Ordinance shall become effective 30 days following the date of adoption.

SECTION 4: Publication
The City Council directs the City Clerk to publish a summary of this ordinance in compliance with Public Act 182 of 1991, as amended, and Section 6.5 of the Berkley City Charter.

Introduced on the First Reading at the Regular City Council Meeting on Monday, June 21, 2021.
Passed on the Second Reading at the Regular City Council Meeting on Monday, July 19, 2021.

Attest:

Daniel J. Terbrack
Mayor

Victoria Mitchell
City Clerk