

ORDINANCE NO. 710

AN ORDINANCE TO AMEND CHAPTER 38 OF THE RIVERVIEW CODE OF ORDINANCES, "OFFENSES AND MISCELLANEOUS PROVISIONS", BY THE REPEAL AND READOPTION OF SECTION 38-380 "POSSESSION OR USE OF TOBACCO, VAPOR PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS", OF ARTICLE IX, "MINORS", DIVISION 1 "GENERALLY", TO INCLUDE E- CIGARETTES AND VAPING TO THE CONDUCT PROHIBITED BY MINORS; AND BY THE ADDITION OF SECTION 38-381 "SALE OF TOBACCO PRODUCTS, VAPOR PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE" TO ARTICLE IX, "MINORS", DIVISION 1 "GENERALLY", TO PROHIBIT SAME.

THE CITY OF RIVERVIEW ORDAINS:

ARTICLE I. Adoption: That Section 38-380, Tobacco, is hereby repealed and readopted, and Section 38-381, Sale of tobacco products, vapor products or alternative nicotine products to persons under 18 years of age, is hereby added to hereafter read as follows:

CHAPTER 38 OFFENSES AND MISCELLANEOUS PROVISIONS
ARTICLE IX. MINORS
DIVISION 1 GENERALLY

Section 38-380. - Possession or use of tobacco, vapor products or alternative nicotine products.

(a) *Definitions.* As used in this section, the following definitions shall apply:

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

Vapor product or alternative nicotine products means a noncombustible product containing nicotine or not 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 or not in a solution or other form. Vapor product includes 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 than is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. Vapor product does not include a product regulated as a drug or device by the United States Food and Drug Administration ("FDA") under subchapter V of the Federal Food, Drug, and Cosmetic Act, 21 USC 351 to 360FFF-7.

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

City Building means any building or structure owned, managed, operated, and/or leased by the City of Riverview.

Educational Facilities mean a building, facility, or structure and other real estate owned, leased, or otherwise controlled by a public school district, a private school, any building used for instruction of enrolled students, including but not limited to any day-care center, nursery school, public or private school, college, university, medical school, law school, or career and technical education school.

Health Facilities mean places that provide health care. They include hospitals, clinics, outpatient care centers, specialized care centers.

(b) *Possession or use in public and other designates places prohibited.* 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, or possess or smoke vapor product or alternative nicotine products on a public highway, street, alley, park, or other lands used for public purposes, in a public place of business or amusement, in any city building, educational facilities, or health facilities.

(c) *Penalty.* A person who violates subsection (b) of this section is guilty of a misdemeanor, punishable by a fine of not more than \$50.00 for each offense. If the court determines it is appropriate, eligible juveniles may be referred to a diversion program. Pursuant to a probation order, the court may require a person who violates subsection (b) of this section 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 cost of participating in the program. In addition, a person who violates this section is subject to the following:

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

- a. Perform not more than 16 hours of community service.
- 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 risk reduction program, the court may order the person to perform not more than 32 hours of community service.

(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 perform not more than 48 hours of community service.

(d) *Exemptions.* Subsection (b) does 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 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 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.
- (3) Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, 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) To the handling or transportation of a tobacco product by a minor under the terms of that minor's employment.

Section 38-381. - Sale of tobacco products, vapor products or alternative nicotine products to persons under 18 years of age.

(a) A person shall not sell, give or furnish any cigarette, cigar, chewing tobacco, tobacco snuff or tobacco in any form or vapor products or alternative nicotine products 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 \$50.00 for each offense.

(b) A person who sells tobacco products or vapor products or alternative nicotine products at retail shall post a sign as required by section 1 of Public Act No. 31 of 1915 (MCL 722.641), furnished by the state department of public health, that includes the following statement:

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

(c) It is an affirmative defense to a charge pursuant to subsection (b) of this section 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, vapor products or alternative nicotine products to persons under 18 years of age, and that the defendant enforced and continues to enforce the policy. A defendant which 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.

(d) A city attorney who proposes to offer testimony to rebut the affirmative defense described in subsection (c) of 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.

ARTICLE II. Penalty: A person violating this ordinance shall be punished in accordance with Section 1-8 of the Code of Ordinances of the City of Riverview, unless a different penalty is expressly provided in this ordinance.

ARTICLE III. Severability: Should any word, sentence, phrase or any portion of this Ordinance be held in a manner invalid by any Court of competent jurisdiction or by any agency having authority to do so for any reason whatsoever, such holding shall be construed and limited to such word, sentence, phrase or any portion of the Ordinance held to be invalid and shall not be construed as affecting the validity of any remaining words, sentence, phrases or portions of the Ordinance.

ARTICLE IV. Conflicting Ordinances: All prior existing ordinances adopted by the City of Riverview inconsistent or in conflict with the provisions of this Ordinance are, to the extent of such conflict or inconsistency, hereby expressly repealed.

ARTICLE V. Codification; Scrivener's Errors:

- (a). Article I of this Ordinance shall be codified, and all other sections shall not be codified.
- (b). The sections, divisions and provisions of this Ordinance may be renumbered or re-lettered as deemed appropriate by the Code codifier.
- (c). Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected with the endorsement of the City Manager, or designee, without the need for a public hearing.

ARTICLE VI. Reading and Publication: This Ordinance shall be given a first reading on March 18, 2019 shall be given a second reading on March 18, 2019, shall be adopted on April 1, 2019 and shall be published and become effective upon publication. The Clerk shall publish a summary of this ordinance and include in the publication notice that a true copy of the Ordinance can be inspected or obtained at the Clerk's office.

ADOPTED, APPROVED AND PASSED by the City Council of the City of Riverview this 1st day of April, 2019.

The undersigned hereby certifies that the foregoing is a true and accurate copy of the ordinance adopted by the City Council of the City of Riverview at a regular meeting held on April 1, 2019.

Cynthia M. Hutchison, City Clerk