

07/30/2014

ORDINANCE NO. _____

AN ORDINANCE TO ADD NEW DIVISION 4, E-CIGARETTES, TO ARTICLE VI OF CHAPTER 70, OFFENSES, OF THE CODE OF ORDINANCES OF THE CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, TO PROHIBIT THE SELLING, GIVING OR FURNISHING OF E-CIGARETTES TO MINORS AND PROHIBIT THE PURCHASE, POSSESSION OR USE OF E-CIGARETTES BY MINORS; REPEAL CONFLICTING OR INCONSISTENT ORDINANCES; AND PRESCRIBE A PENALTY FOR VIOLATIONS.

THE CITY OF ROCHESTER HILLS ORDAINS:

Section 1. New Division 4, E-Cigarettes, shall be added to Article VI, Chapter 70 of the Code of Ordinances as follows:

Division 4. E-Cigarettes

Sec. 70-400. Findings and Purpose.

Persons under age eighteen (18) are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. However, new tobacco-less products, commonly referred to as e-cigarettes, are available which allow the user to simulate cigarette smoking and ingest nicotine. These products may be purchased by minors and are being marketed without age restrictions or health warnings and come in different flavors that appeal to young people.

The production and distribution of e-cigarettes is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration has not completed testing of these products. But, initial studies by the FDA have determined that e-cigarettes can increase nicotine addiction among young people and contain chemical ingredients known to be harmful, which may expose users and the public to potential health risks.

Therefore, the Rochester Hills City Council determines that prohibiting the sale, giving or furnishing of e-cigarettes to minors and prohibiting the purchase, possession or use of e-cigarettes by minors is in the City's best interests and will promote the public health, safety and welfare.

Sec. 70-401. Definitions.

- (a) *E-Cigarette* shall mean an electronic oral device that provides a vapor of nicotine, simulates smoking through its use or through inhalation of the vapor generated by the device, is not approved by the U.S. Food and Drug Administration as an aid in quitting the use of tobacco or a nicotine product, and is composed of a heating element, battery or electronic circuit.

- (b) *E-Cigarette Cartridge* shall mean a container which has openings on each end, serves as a liquid reservoir and mouthpiece, allows the passage of a liquid to an atomizer and vapor from the atomizer to the user's mouth, and contains liquid for producing vapor in an e-cigarette.
- (c) *Minor* shall mean an individual younger than eighteen (18) years of age.
- (d) *Person* shall mean an individual, corporation, partnership, limited liability company, wholesaler, retailer or any business.

Sec. 70-402. Prohibitions.

- (a) *Sell, give or furnish to minor.* It shall be unlawful for any person to sell, give, furnish, or offer for sale an e-cigarette or e-cigarette cartridge in the City of Rochester Hills to a minor.
- (b) *Purchase, use or possession by minor.* It shall be unlawful for any minor to purchase, possess or use an e-cigarette in the City of Rochester Hills.

Sec. 70-403. Affirmative Defenses.

- (a) It is an affirmative defense to subsection (a) of Sec. 70-402, above, that the defendant had in force at the time of the incident and continues to have in force a written policy to prevent the sale of e-cigarettes and e-cigarette cartridges to minors and the defendant enforced and continues to enforce the policy.
- (b) Subsection (b) of Sec. 70-402, above, does not apply to the handling or transportation of e-cigarettes or e-cigarette cartridges by a minor under the terms, and in the course, of the minor's employment.

Sec. 70-404. Age Verification.

Any person selling, offering for sale, giving or furnishing an e-cigarette or e-cigarette cartridge to an individual, shall first verify that the individual is not a minor by examining a government-issued photographic identification establishing that the individual is at least eighteen (18) years of age. Or, for sales over the internet or other remote sales method, the person shall perform an age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification to the personal information entered by the individual during the ordering process that establishes the individual is eighteen (18) years of age or older.

Section 2. Severability. This ordinance and each article, section, subsection, paragraph, subparagraph, part, provision, sentence, word and portion thereof are hereby declared to be severable, and if they or any of them are declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Section 3. Penalty. A violation of this ordinance shall be a misdemeanor and upon conviction thereof shall be punishable by a sentence of not more than ninety (90) days of confinement to jail or by a fine of not more than \$500, or both, in the court's discretion.

Section 4. Repeal, Effective Date, Adoption.

(1) Repeal. All regulatory provisions contained in other City ordinances, which are inconsistent with the provisions of this ordinance, are hereby repealed.

(2) Effective Date. This ordinance shall become effective on _____, 2014, the day following its publication in the *Oakland Press* on _____, 2014.

(3) Adoption. This ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof held on _____, 2014.

Bryan K. Barnett, Mayor
City of Rochester Hills

CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING ORDINANCE WAS ADOPTED BY THE CITY COUNCIL OF THE CITY OF ROCHESTER HILLS AT A MEETING THEREOF ON _____, 2014.

Tina Barton, Clerk
City of Rochester Hills