

# MEMO

## Legal Department

### Item No. 39

**To:** Mayor Haila, Ames City Council

**From:** Mark O. Lambert, City Attorney

**Date:** July 8, 2020

**Subject:** City of Ames Tobacco Ordinance

On December 20, 2019, the President signed legislation amending the Federal Food, Drug and Cosmetic Act, raising the federal minimum age for the purchase of tobacco products from 18 to 21 years. The legislation became effective immediately upon the President's signature.

The Iowa General Assembly recently passed SF 2268, changing state law on the purchase of tobacco (and vaping and nicotine) products also from 18 to 21; the Governor signed the bill into law on June 29, 2020. The changes to the law became effective immediately upon the Governor's signature.

The City of Ames has the following ordinance regarding the purchase/sale of tobacco products, which is now inconsistent with state law:

**Sec. 17.33. PROVISION OF TOBACCO PRODUCTS TO MINORS.**

(1) A person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age. Violation of this subsection shall be a municipal infraction punishable by a penalty of \$300 for a person's first violation and \$750.00 for each repeat violation; and, alternatively a violation of this subsection can be charged by a peace officer of the City as a simple misdemeanor.

(2) If the holder of a permit issued by the Iowa Department of Revenue and Finance under Chapter 453A Code of Iowa, or any employee of such permittee, during the course of the permittee's business, knowingly sells or otherwise supplies any cigarette or other tobacco product to any person under

eighteen years of age, or fails to take reasonable measures to ascertain whether that person is eighteen or more years of age, the said permittee shall have committed a municipal infraction punishable by a penalty of \$300 for that permittee's first such violation and \$750.00 for each repeat violation.

**OPTIONS:**

1. Direct the City Attorney to draft an ordinance prohibiting the sale of tobacco, vaping and nicotine products to persons under age 21.
2. Do not move forward with amending the current ordinance.

**RECOMMENDATION:**

The City Attorney's Office and the Ames Police Department believe the Ames Municipal Code should be updated to be consistent with the recent changes in state law, by specifying it is unlawful to sell or supply tobacco products to persons under 21 years of age (instead of the current age 18) and also by adding vaping products and other nicotine products to the ordinance. Therefore, Option #1 is being recommended.

**ORDINANCE NO.**

**AN ORDINANCE TO AMEND THE MUNICIPAL CODE OF THE CITY OF AMES, IOWA, BY REPEALING CHAPTER 17 SECTION 17.33 (1)(2) AND ENACTING A NEW CHAPTER 17 SECTION 17.33 (1)(2) THEREOF, FOR THE PURPOSE OF UPDATING THE PROVISION OF TOBACCO PRODUCTS TO MINORS REPEALING ANY AND ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT TO THE EXTENT OF SUCH CONFLICT; PROVIDING A PENALTY; AND ESTABLISHING AN EFFECTIVE DATE.**

**BE IT ENACTED**, by the City Council for the City of Ames, Iowa, that:

Section One. The Municipal Code of the City of Ames, Iowa shall be and the same is hereby amended by enacting a new Section as follows:

**“Sec. 17.33. PROVISION OF TOBACCO PRODUCTS TO MINORS.**

(1) A person shall not sell, give, or otherwise supply any tobacco, tobacco products, cigarettes, alternative nicotine products, or vapor products to any person under twenty-one years of age. Violation of this subsection shall be a municipal infraction punishable by a penalty of \$300 for a person’s first violation and \$750.00 for each repeat violation; and, alternatively a violation of this subsection can be charged by a peace officer of the City as a simple misdemeanor.

(2) If the holder of a permit issued by the Iowa Department of Revenue and Finance under Chapter 453A Code of Iowa, or any employee of such permittee, during the course of the permittee’s business, knowingly sells or otherwise supplies any cigarette, tobacco product, alternative nicotine product, or vapor product to any person under twenty-one years of age, or fails to take reasonable measures to ascertain whether that person is twenty-one or more years of age, the said permittee shall have committed a municipal infraction punishable by a penalty of \$300 for that permittee’s first such violation and \$750.00 for each repeat violation.”

*[State Law Ref. Iowa Code Sec. 453A.1]*

Section Two. Violation of the provisions of this ordinance shall constitute a municipal infraction punishable as set out by law.

Section Three. All ordinances, or parts of ordinances, in conflict herewith are hereby repealed to the extent of such conflict, if any.

Section Four. This ordinance shall be in full force and effect from and after its passage and publication as required by law.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Diane R. Voss, City Clerk

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John A. Haila, Mayor