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**LAW DEPARTMENT**

Coleman A. Young Municipal Center  
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**MEMORANDUM**

**TO:** Hon. City Council

**FROM:** Vie Serifovski  
Senior Assistant Corporation Counsel

**DATE:** October 23, 2024

**RE:** Advertising Marijuana and Vaping Products

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Council Member Benson has asked the Law Department to draft an ordinance to amend Chapter 4 of the 2019 Detroit City Code, *Advertising and Signs*, by amending Article III, *Protection of Minors Against Advertisement and Promotion of Alcoholic Liquor and Tobacco Products*, Section 4-3-4, *Advertisement of alcoholic liquor and tobacco products prohibited within a 1,000-foot radius of certain locations*, to include advertisements for marijuana products and ENDS in the prohibition of advertisement within a 1,000-foot radius of any advertisement-sensitive property, which includes a: child care center, child-caring institution, juvenile detention or correctional facility, library, park, parkway, playfield, playground, playlot, recreation center, school, or youth activity center and Article I *Generally*, Section 4-1-1, *Definitions*, to include definitions of marijuana products and electronic nicotine delivery systems (ENDS).

The Law Department has prepared a resolution that documents the legal basis and need for the proposed ordinance. The proposed resolution is provided for your review below:



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**RESOLUTION**

**BY COUNCIL MEMBER \_\_\_\_\_ :**

**WHEREAS**, federal and state laws prohibit the sale of tobacco, vapor products and marijuana to minors.

**WHEREAS**, recent amendments to the Federal Food, Drug, and Cosmetic Act, effective as of 2019, have and raised the federal minimum age of the sale of tobacco products from 18-21 years, which makes it illegal for a retailer to sell any tobacco product, including e-cigarettes, to anyone under 21.

**WHEREAS**, the Michigan Youth Tobacco Act, being MCL 722.641 et seq., prohibits the selling, giving, or furnishing of a tobacco product; vapor product, which can include ENDS;<sup>1</sup> or alternative nicotine product to a minor.

**WHEREAS**, the Michigan Regulation and Taxation of Marihuana Act, being MCL 333.27954 et seq., prohibits the transfer of marihuana or marihuana accessories to a person under the age of 21 and prohibits any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana.

**WHEREAS**, although considerable progress has been made in reducing cigarette smoking among our nation’s youth, the tobacco product landscape continues to evolve to include a variety of related products, including vapes, vaporizers, vape pens, hookah pens, electronic cigarettes (e-cigarettes or e-cigs), e-pipes, cigars, hookah and pipes, collectively referred to as Electronic Nicotine Delivery Systems (ENDS), which are designed to deliver nicotine, flavorings, and other additives to the user via an inhaled aerosol and are attractive to youth.<sup>2</sup>

**WHEREAS**, the United States Surgeon General has noted the surge in e-cigarette use among youth and emphasized the importance of addressing the epidemic of youth e-cigarette use to protect children from a lifetime of nicotine addiction and associated health risks.<sup>3</sup>

**WHEREAS**, experts classify the use of e-cigarettes among those under the age of 18, both in Michigan and in the United States overall, as a health epidemic.<sup>4</sup>

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<sup>1</sup> See MCL 722.644.

<sup>2</sup> U.S. Department of Health and Human Service, Office of the Surgeon General, Surgeon General’s Advisory on E-cigarette Use Among Youth ( 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

<sup>3</sup> U.S. Department of Health and Human Service, *supra* note 1.

<sup>4</sup> Press Release, Michigan Department of Health and Human Services, *What are e-cigarettes?* (Sept. 4, 2019) [https://www.michigan.gov/mdhhs/0,5885,7-339-71550\\_2955\\_2973\\_94238---,00.html](https://www.michigan.gov/mdhhs/0,5885,7-339-71550_2955_2973_94238---,00.html).



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**WHEREAS**, the National Library of Medicine has noted that exposure to e-cigarette advertising reduces risk perception thereby leading to an increase in the susceptibility of e-cigarette use.<sup>5</sup>

**WHEREAS**, although much less comparable than annual marketing expenditures for conventional cigarettes, expenditures for e-cigarettes exceeded \$125 million in 2014,<sup>6</sup> a figure that does not include expenditures for retail marketing, social media, and sponsored events, all of which are essential components of the industry’s integrated marketing strategy.<sup>7</sup>

**WHEREAS**, the e-cigarette marketplace remains largely unregulated and the tobacco industry companies continue to heavily advertise such products to young people.<sup>8</sup> They offer cool, colorful and sleek product designs, and thousands of flavors, all of which serve to attract youth who are susceptible to widespread—but false—claims that these products are not addictive and are safe to use.<sup>9</sup>

**WHEREAS**, the more young people are exposed to cigarette advertising and promotional activities, the more likely they are to smoke.<sup>10</sup> While fewer studies have focused on e-cigarette advertising in particular, the available evidence suggests that e-cigarette advertising has similar effects.<sup>11</sup>

**WHEREAS**, the following findings are made with regard to vaping by children, adolescents, and young adults who are under the age of twenty-one:

- E-cigarettes entered the U.S. market place around 2007 and have been the most commonly used tobacco product among youth since 2014;<sup>12</sup>
- The National Youth Tobacco Survey (NYTS) , which is conducted annually by the FDA in conjunction with the Centers for Disease Control and Prevention (CDC), shows that approximately 5.9% (1.6 million) middle and high school students were currently using e-cigarettes. This includes 410,000 (3.5%) middle school students and 1.2 million high school students (7.8%).<sup>13</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> U.S. Department of Health and Human Services, Office of the Surgeon General, E-cigarette Use among Youth and Young Adults: A Report of the Surgeon General (2016), [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Full\\_Report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Full_Report_non-508.pdf).

<sup>7</sup> U.S. Department of Health and Human Services, *supra* note 7.

<sup>8</sup> Press Release, Michigan Department of Health and Human Services, *What are e-cigarettes?* (Sept. 4, 2019) [https://www.michigan.gov/mdhhs/0,5885,7-339-71550\\_2955\\_2973\\_94238---.00.html](https://www.michigan.gov/mdhhs/0,5885,7-339-71550_2955_2973_94238---.00.html).

<sup>9</sup> Michigan Department of Health and Human Services, *supra* note 9.

<sup>10</sup> U.S. Department of Health and Human Service, *supra* note 6.

<sup>11</sup> U.S. Department of Health and Human Services, *supra* note 7.

<sup>12</sup> U.S. Department of Health and Human Service, Office of the Surgeon General, Surgeon General’s Advisory on E-cigarette Use Among Youth ( 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

<sup>13</sup> U.S. Food and Drug Administration. (2024). *Results from the Annual National Youth Tobacco Survey*. Retrieved from <https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey>



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- In 2024, 5.9% of middle and high school students reported current e-cigarette use, including 7.8% of high school students and 3.5% of middle school students ([Table](#)). Among students who currently used e-cigarettes, 38.4% reported frequent use, and 26.3% reported daily use.<sup>14</sup>
- In 2023, 16.5% of 8<sup>th</sup> graders had vaped in their lifetime, 11.4 % in the last year, 7% in the past month; 25.1% of 10<sup>th</sup> graders had vaped in their lifetime, 17.6% in the last year, 11.9% in the past month; 33.5% of 12<sup>th</sup> graders had vaped in their lifetime, 23.2% in the last year, 16.9% had vaped in the past month;<sup>15</sup>
- With the growing popularity of vaping devices, teens have started vaping THC (the ingredient in marijuana that produces the high), with 2.2% of 12<sup>th</sup> graders saying they vape THC daily; and 13.7% saying they had vaped marijuana in the past 30 days.<sup>16</sup>
- The U.S. Surgeon General’s Advisory on E-cigarette Use Among Youth reports that nicotine exposure during adolescence can harm the developing brain – which continues to develop until about age 25. Nicotine exposure during adolescence can impact learning, memory, and attention. Using nicotine in adolescence can also increase risk for future addiction to other drugs. In addition to nicotine, the aerosol that users inhale and exhale from e-cigarettes can potentially expose both themselves and bystanders to other harmful substances, including heavy metals, volatile organic compounds, and ultrafine particles that can be inhaled deeply into the lungs;<sup>17</sup> and
- Using e-cigarettes as an aid to conventional cigarette smoking reduction/cessation does not appear to be a primary reason for use among youth and young adults.<sup>18</sup>

**WHEREAS**, a study conducted in 2017 by the National Center for Chronic Disease Prevention and Health Promotion found that exposing adolescents to marijuana advertisements was significantly associated with current marijuana use, similar to the effects other substances, such as, alcohol, cigarettes, and e-cigarettes have on adolescents’ use of those substances.<sup>19</sup>

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<sup>14</sup> Park-Lee E, Jamal A, Cowan H, et al. *Notes from the Field: E-Cigarette and Nicotine Pouch Use Among Middle and High School Students — United States, 2024*. MMWR Morb Mortal Wkly Rep 2024;73:774–778.

DOI: <http://dx.doi.org/10.15585/mmwr.mm7335a3>.

<sup>15</sup>University of Michigan, Institute for Social Research. (2024). *Monitoring the Future: Nicotine Vaping Prevalence by Grade*. Retrieved from <https://monitoringthefuture.org/data/bx-by/drug-prevalence/#drug=%22Vape+Nicotine+%28E-cigarettes%29%22>

<sup>16</sup>University of Michigan, Institute for Social Research. (2024). *Monitoring the Future: Marijuana Vaping Prevalence by Grade*. Retrieved from <https://monitoringthefuture.org/data/bx-by/drug-prevalence/#drug=%22Vape+Marijuana+%28Cannabis%29%22>

<sup>17</sup> U.S. Department of Health and Human Service, Office of the Surgeon General, *Surgeon General’s Advisory on E-cigarette Use Among Youth* ( 2018), <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

<sup>18</sup> U.S. Department of Health and Human Services, Office of the Surgeon General, *E-cigarette Use among Youth and Young Adults: A Report of the Surgeon General Executive Summary* (2016), [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_SGR\\_Exec\\_Summ\\_508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_SGR_Exec_Summ_508.pdf).

<sup>19</sup> Dai Hongying, *Exposure to Advertisements and Marijuana Use Among US Adolescents* 14 Preventing Chronic Disease (2017) [https://www.cdc.gov/ped/issues/2017/17\\_0253.htm](https://www.cdc.gov/ped/issues/2017/17_0253.htm).



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**WHEREAS**, fewer teens now believe using marijuana is harmful.<sup>20</sup> The Michigan Department of Health and Human Services has reported the national perceived risk of marijuana use among 12th grade students has decreased by 47% since 2007.<sup>21</sup>

**WHEREAS**, side effects associated with long term use of marijuana in adolescence include respiratory issues, brain development problems, addiction and an increased risk of psychiatric disorders.<sup>22</sup> Since the legalization of marijuana, studies reported by the National Library of Medicine found that suicide rates in individuals ages 15-24 have risen approximately by 18%.<sup>23</sup>

**WHEREAS**, studies also reveal that young adults with more exposure to marijuana promotions is directly linked to more problematic use which highlight the need for targeted regulatory measures to address disparities in retail exposure and reduce related health risks.<sup>24</sup>

**WHEREAS**, the following findings are made with regard to marijuana use by children, adolescents, and young adults who are under the age of twenty-one:

- According to the American Academy of Child & Adolescent Psychiatry, Teenage marijuana use is at its highest level in 30 years, and today's teens are more likely to use marijuana than tobacco;<sup>25</sup>
- A study conducted by the University of Michigan revealed the following:
  - (1) In 2023, 11.5% of 8<sup>th</sup> graders have used marijuana in their lifetime, 8.3% of 8<sup>th</sup> graders have used marijuana in the past year, 4.7% of 8<sup>th</sup> graders in the past month, and 0.9% of 8<sup>th</sup> graders use daily;
  - (2) In 2023, 22.5% of 10<sup>th</sup> graders have used marijuana in their lifetime, 17.8% of 10<sup>th</sup> graders have used marijuana in the past year, 10.3% of 10<sup>th</sup> graders have used marijuana in the past month, and 2.7% of 10<sup>th</sup> graders use daily;
  - (3) In 2023, 36.5% of 12<sup>th</sup> graders have used marijuana in their lifetime, 29% of 12<sup>th</sup> graders have used marijuana in the past year, 18.4% of 12<sup>th</sup> graders

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<sup>20</sup> Michigan Department of Health and Human Services, Marijuana Use and Perception of Risk Among High School Students (2018)

[https://www.michigan.gov/documents/mdhhs/Marijuana\\_perceived\\_risk\\_and\\_use\\_2018\\_651749\\_7.pdf](https://www.michigan.gov/documents/mdhhs/Marijuana_perceived_risk_and_use_2018_651749_7.pdf)

<sup>21</sup> <https://monitoringthefuture.org/wp-content/uploads/2023/12/mtf2023table3.pdf>

<sup>22</sup> Marijuana Side Effects: Physical, Mental, and Long-Term Effects (2024).

<https://americanaddictioncenters.org/marijuana-rehab/long-term-effects>

<sup>23</sup><sup>23</sup> Examining Factors in the Cannabis-Suicide Link: Considering Trauma and Impulsivity among University Students PUB.2022. <https://pmc.ncbi.nlm.nih.gov/articles/PMC9368410/>

<sup>24</sup> Young Adults' Experiences with Cannabis Retailer Marketing and Related Practices: Differences Among <https://hsrc.himmelfarb.gwu.edu/gwhpubs/5278/>

<sup>25</sup>American Academy of Child and Adolescent Psychiatry, Marijuana and Teens (2023)

[https://www.aacap.org/AACAP/Families\\_and\\_Youth/Facts\\_for\\_Families/FFF-Guide/Marijuana-and-Teens-106.aspx](https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Marijuana-and-Teens-106.aspx).





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have used marijuana in the past month, and 6.5% of 12 graders use marijuana use daily.<sup>26</sup>

- According to the Substance Abuse and Mental Health Services Administration, 1 in 10 people who use marijuana will become addicted. When they start before age 18, the rate of addiction rises to 1 in 6;<sup>27</sup> and
- CDC Research shows that marijuana use can have permanent effects on the developing brain when use begins in adolescence, especially with regular or heavy use.<sup>28</sup>

**WHEREAS**, in light of the foregoing evidence, constitutionally permissible restrictions on the advertisement of ENDS and marijuana products are warranted.

**WHEREAS**, in *Packer Corp. v. State of Utah*, 285 U.S. 105, 110 (1932), the U.S. Supreme Court recognized that outdoor advertising is a unique and distinguishable medium of advertising that involuntarily subjects the general public to unavoidable forms of solicitation, unlike other media such as newspapers, magazines, and radio.

**WHEREAS**, in multiple cases, the U.S. Supreme Court has consistently recognized the correlation between advertising and consumption of the advertised product including, for example: *Cent. Hudson Gas & Electric Corp. v. Public Serv. Commission of N.Y.*, 447 U.S. 557, 569 (1980) (finding an immediate connection between advertising of electricity and demand for electricity. It reasoned that Central Hudson Gas and Electric would not contest the advertising ban unless it believed that promotion would increase its sales); *Posadas de Puerto Rico Assocs. v. Tourism Co. of Puerto Rico*, 478 U.S. 328, 342 (1986), abrogated on other grounds by 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484, 509-513 (1996) (finding that Puerto Rico Legislature’s belief that advertising of casino gambling aimed at the residents of Puerto Rico would serve to increase the demand for the product advertised to be reasonable); *United States v. Edge Broad. Co.*, 509 U.S. 418, 434 (1993) (“Government may be said to advance its purpose [of decreasing demand for gambling] by substantially reducing lottery advertising, even where one is not wholly eradicated”); and *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 557 (2001) (affirming “the theory that product advertising stimulates demand for products, while suppressed advertising may have the opposite effect.”)

**WHEREAS**, advertising is a form of commercial speech which, although protected under the First Amendment of the United States Constitution, enjoys a lesser degree of protection than that which is afforded to other forms of speech.

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<sup>26</sup> University of Michigan, Institute for Social Research. (2024). *Monitoring the Future: Marijuana Use Prevalence by Grade*. Retrieved from <https://monitoringthefuture.org/data/bx-by/drug-prevalence/#drug=%22Marijuana+%28Cannabis%29%22>

<sup>27</sup> Substance Abuse and Mental Health Services Administration, Know the Risks of Marijuana (2024) <https://www.samhsa.gov/marijuana>.

<sup>28</sup> Centers for Disease Control and Prevention. (2023). *Cannabis and Teens: Health Effects of Marijuana*. Retrieved from <https://www.cdc.gov/cannabis/health-effects/cannabis-and-teens.html>



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**WHEREAS**, because **the proposed ordinance will** regulate commercial speech its permissibility under the First Amendment is subject to the four-part test set forth by the Supreme Court in *Cent. Hudson Gas & Electric Corp.*, 447 U.S. at 566, which considers whether (1) the commercial speech at issue concerns a lawful activity and is not misleading; (2) the asserted government interest is substantial; (3) the regulation directly advances the governmental interest asserted; and (4) it is not more extensive than is necessary to serve that interest.

**WHEREAS**, the United States Supreme Court has held in *Denver Area Educ. Telecommunications Consortium, Inc. v. F.C.C.* the government has a “compelling interest” in protecting children. *See* 518 U.S. 727 (1996). Therefore, it can be established that Detroit’s interest in protecting minors from the public health and safety ramifications that result from the use of marijuana and ENDS is at least substantial.

**WHEREAS**, in light, of the foregoing evidence and the Supreme Court’s recognition of the correlation between advertising and consumption, restriction on billboard advertisements of ENDS and marijuana products will directly advance the City of Detroit’s asserted interest by reducing consumption of marijuana products and ENDS amongst youth.

**WHEREAS**, the **proposed ordinance will not be** more extensive than is necessary to serve the City of Detroit’s asserted interest in restricting billboard advertisements of ENDS and marijuana products in areas where children are likely to live, play, congregate and attend school.

**WHEREAS**, **the City of Detroit** is not preempted under the Federal Cigarette Labeling and Advertising Act, 15 USC §1334, from regulating the location of signs **provided it does not** impose a requirement or prohibition based on smoking and health with respect to the advertising or promotion of any cigarettes that are labeled in conformity with federal law.

**WHEREAS**, the Smoking Prevention and Tobacco Control Act (TCA), 21 USC §387p, preserves the City of Detroit’s right to enact, adopt, promulgate, and enforce any law, rule, regulation, or other measure with respect to tobacco products that is in addition to, or more stringent than, requirements established by the TCA, including a law, rule, regulation, or other measure relating to or prohibiting the sale, distribution, possession, exposure to, access to, advertising and promotion of, or use of tobacco products by individuals of any age, information reporting to the State, or measures relating to fire safety standards for tobacco products.

**WHEREAS**, the City of Detroit is not preempted under the Highway Advertising Act, being MCL 252.301 et seq., Section 42a. of the Michigan Penal Code Act, being MCL 750.42a, or the Michigan Regulation and Taxation or Marihuana Act, being MCL 33.27956, from providing reasonable restrictions to advertising signs which are within its City limits and are adjacent to interstate highway.



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**NOW THEREFORE BE IT RESOLVED** the City of Detroit shall move forward with preparing a proposed ordinance to amend Chapter 4 of the 2019 Detroit City Code in order, to proscribe the location of certain advertising signs which advertise ENDS and marijuana products.

**BE IT FURTHER RESOLVED** the purpose of the proposed ordinance will promote the following: (1) the welfare and temperance of minors and young adults exposed to certain publicly visible advertisement of ENDS and marijuana products; (2) compliance with existing state law which prohibits the selling, giving, or furnishing of a tobacco product, vapor product, or alternative nicotine product to a minor; and (3) compliance with existing state law which prohibits the transfer of marihuana or marihuana accessories to a person under the age of 21 and prohibits any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana.

**BE IT FINALLY RESOLVED** the proposed ordinance will not be directed toward or intended to affect the advertising of ENDS and marijuana products, to individuals who are legally authorized to purchase such products.