

CITY OF KAUKAUNA

ORDINANCE _____-2026

ORDINANCE REPEALING AND REPLACING SECTION 9.29 PURCHASE OR POSSESSION OF TOBACCO PRODUCTS AND ELECTRONIC DELIVERY DEVICES PROHIBITED

WHEREAS, the City of Kaukauna has previously adopted Section 9.29 of the City of Kaukauna Municipal Code regulating the purchase, possession, and provision of cigarettes, tobacco products, and nicotine products by persons under the age

WHEREAS, Wisconsin Statutes § 254.92 regulates the purchase, attempted purchase, possession, and provision of cigarettes, tobacco products, and nicotine products by persons under the age of 18, and authorizes municipalities to enact ordinances regulating such conduct only if those ordinances strictly conform to state law; and

WHEREAS, Wisconsin Statutes § 134.66 regulates the sale of cigarettes, tobacco products, and nicotine products, including retailer compliance and training requirements, which apply statewide without the need for local duplication; and

WHEREAS, the Common Council finds it necessary and appropriate to repeal and replace Section 9.29 of the City of Kaukauna Municipal Code in order to ensure strict conformity with Wisconsin Statutes §§ 254.92 and 134.66, to incorporate current state-law definitions and enforcement standards, and to maintain consistency with applicable state law;

NOW THEREFORE, be it ordained by the Common Council of the City of Kaukauna, in the State of Wisconsin, that Section 9.29 of the City of Kaukauna Municipal Code is hereby repealed and replaced as follows:

9.29 Sale, Purchase, Possession, and Provision of Cigarettes, Tobacco Products, and Nicotine Products Regulated

1. *Definitions.* The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this subsection and as defined in the Wisconsin Statutes, including but not limited to, Wis. Stats. § § 254.911 and 134.66, as those provisions may be amended, renumbered, or successor statutes enacted, to ensure strict conformity with state law:

- a. "Cigarette" means any roll of tobacco wrapped in paper or any substance other than tobacco.
- b. "Direct marketer" means a bonded direct marketer or a nonbonded direct marketer.
- c. "Distributor" means any of the following:

1. any person who acquires unstamped cigarettes from the manufacturer

thereof, affixes stamps to the packages or other containers, stores them and sells them to other permittees or to retailers for resale or who acquires stamped cigarettes from another permittee for such sales;

2. Any person engaged in the business of selling tobacco products or vapor products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products or vapor products for sale;
3. Any person who makes, manufactures or fabricates tobacco products or vapor products in this state for sale in this state; or
4. Any person engaged in the business of selling tobacco products or vapor products outside this state who ships or transports tobacco products or vapor products to retailers in this state to be sold by those retailers.

d. "Identification card" means any of the following:

1. A license containing a photograph issued under Wis. Stats. § 343.
2. An identification card issued under Wis. Stats. § 343.50.
3. An identification card issued under Wis. Stats. § 125.08, 1987 stats.
4. A tribal identification card, as defined in Wis. Stats. § 134.695 (1) (cm).

e. "Jobber" means any person who acquires stamped cigarettes from manufacturers or distributors, stores them and sells them to retailers for resale.

f. "Manufacturer" means any of the following:

1. any person who manufactures cigarettes for the purpose of sale, including the authorized agent of a person who manufactures cigarettes for the purpose of sale. "Manufacturer" includes a person who owns an automated roll-your-own machine that is used to make cigarettes, but does not include an individual who owns a roll-your-own machine and uses the machine in his or her home solely to make cigarettes for his or her personal use or for the use of other individuals who live in his or her home.
2. any person who manufactures and sells tobacco products or vapor products.

g. "Law enforcement officer" means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed and sworn to enforce. "Law enforcement officer" includes a university police officer, as defined in Wis. Stats. § 175.42 (1) (b).

- h. "Nicotine product" means a product that contains nicotine and is not any of the following:
 - 1. A tobacco product.
 - 2. A cigarette.
 - 3. A product that has been approved by the U.S. food and drug administration for sale as a smoking cessation product or for another medical purpose and is being marketed and sold solely for such approved purpose.
 - i. "Retailer" means any person licensed under Wis. Stats. § 134.65(1d).
 - j. "School" means a public, parochial, private, or tribal school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school, or high school.
 - k. "Stamp" means the authorized indicia of cigarette tax payment including water transfer stamps and heat applied stamps.
 - l. "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products or vapor products from a distributor and sells them to persons other than the ultimate consumers.
 - m. "Tobacco products" means cigars; pipe tobacco; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but "tobacco products" does not include cigarettes, as defined under Wis. Stats. § 139.30 (1m).
 - n. "Vending machine" is any mechanical device which automatically dispenses cigarettes upon the deposit therein of specified coins in payment for such cigarettes.
 - o. "Vending machine operator" means a person who acquires stamped cigarettes from manufacturers or permittees, stores them and sells them through the medium of vending machines which he or she owns, operates or services and which are located on premises which are owned or under the control of other persons.
2. Purchase or possession of cigarettes or tobacco products by person under 18 prohibited.
- a. No person under 18 years of age may falsely represent his or her age for the purpose of receiving any cigarette, nicotine product, or tobacco product.

- b. Purchase, Attempted Purchase, or Possession. Except as provided in Section 3 of this section, no person under 18 years of age may purchase, attempt to purchase, or possess any cigarette, nicotine product, or tobacco product.
 - c. No person under 18 years of age may purchase, attempt to purchase, or possess any cigarette, nicotine product, or tobacco product except as follows:
 - 1. A person under 18 years of age may purchase or possess cigarettes, nicotine products, or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer.
 - 2. A person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase or possess cigarettes, nicotine products, or tobacco products in the course of his or her participation in an investigation under Wis. Stats. § 254.916 that is conducted in accordance with Wis. Stats. § 254.916 (3).
 - d. No person may purchase cigarettes, tobacco products, or nicotine products on behalf of, or to provide to, any person who is under 18 years of age. Any person who violates this subsection may be:
 - 1. Required to forfeit not more than \$500 if the person has not committed a previous violation within 30 months of the violation.
 - 2. Fined not more than \$500 or imprisoned for not more than 30 days or both if the person has committed a previous violation within 30 months of the violation.
 - 3. Fined not more than \$1,000 or imprisoned for not more than 90 days or both if the person has committed 2 previous violations within 30 months of the violation.
 - 4. Fined not more than \$10,000 or imprisoned for not more than 9 months or both if the person has committed 3 or more previous violations within 30 months of the violation.
 - e. A law enforcement officer shall seize any cigarette, nicotine product, or tobacco product that has been sold to and is in the possession of a person under 18 years of age.
3. Sales Restrictions. The sale of cigarettes, tobacco products, and nicotine products within the City of Kaukauna shall comply with Wis. Stats. § 134.66, including all training, compliance, and enforcement provisions contained therein.
- a. No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person under the age of 18, except as provided in Wis. Stats. § 254.92 (2) (a). A vending machine operator is not liable under this paragraph for the purchase of cigarettes, nicotine products, or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.
 - b. No retailer, direct marketer, manufacturer, distributor, jobber, subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor

may provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless the person who is younger than 18 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

- c. No retailer or direct marketer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under Wis. Stats. § 139.32 (1).

4. Signs and Notices.

- a. A retailer shall post a sign in areas within his or her premises where cigarettes or tobacco products are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of 18 is unlawful under Wis. Stat. § 134.66(2)(b)(1) and Wis. Stat. § 254.92.
- b. A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under Wis. Stat. § 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$50.

5. Vending Machines

- a. A retailer or vending machine operator may not sell cigarettes or tobacco products from a vending machine unless the vending machine is located in a place where the retailer or vending machine operator ensures that no person younger than 18 years of age is present or permitted to enter unless he or she is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.
- b. Notwithstanding subsection (5)(a) of this section, no retailer may place a vending machine within 500 feet of a school.

6. Defense; Sale to Minor. Proof of all of the following facts by a retailer, manufacturer, distributor, jobber, or subjobber, an agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent contractor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution, or a complaint made under this section, for a violation of subsection (3)(a) of this section:

1. That the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card.
2. That the appearance of the purchaser was such that an ordinary and prudent person would believe that the purchaser had attained the age of 18.
3. That the sale was made in good faith, in reasonable reliance on the identification card and appearance of the purchaser and in the belief that the purchaser had attained the age of 18.

7. Penalties. In this paragraph, "violation" means a violation of subsections 3 and 5 of this Section.

- a. A person who commits a violation is subject to a forfeiture of:

1. Not more than \$500 if the person has not committed a previous violation within 12 months of the violation; or
 2. Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.
- b. A court shall suspend any license or permit issued under Wis. Stats. § 134.65, 139.34 or 139.79 to a person for:
1. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;
 2. Not less than 3 days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing 2 other violations; or
 3. Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing 3 or more other violations.
- c. The court shall promptly mail notice of a suspension under subsection 7(b) of this Section to the Department of Revenue and to the clerk of each municipality which has issued a license or permit to the person.
1. Whoever violates subsection 4 of this section shall forfeit not more than \$25.
8. State Law Incorporated; Strict Conformity Intended. This Section is enacted pursuant to Wis. Stats. §§ 254.92, 254.911, and 134.66 and is intended to strictly conform to state law. Any future amendments, revisions, or modifications to Wis. Stats. §§ 254.92, 254.911, and 134.66 are incorporated herein by reference.

PASSED AND ADOPTED BY THE CITY OF KAUKAUNA COMMON COUNCIL

April 9, 2026.

Presiding Officer

Attest

Anthony J. Penterman, Mayor,
City of Kaukauna

Kayla Nessmann, Clerk,
City of Kaukauna