

**CITY OF KAUKAUNA
ORDINANCE 1869-2022**

**ORDINANCE REPEALING AND RECREATING 9.29 PURCHASE, POSSESSION,
SALE OR GIFT OF TOBACCO PRODUCTS AND ELECTRONIC DELIVERY
DEVICES PROHIBITED**

WHEREAS, use of tobacco and nicotine products is hazardous to an individual's health, and reliable scientific studies assessed by credible health officials have found such use is a significant health hazard for children; and

WHEREAS, use of electronic delivery devices designed to deliver tobacco by-products such as nicotine has been increasing with children and young adults; and

WHEREAS, the Common Council of the City of Kaukauna has determined that the public interest and safety would be served adoption of an ordinance to prohibit the sale of such electronic delivery devices to minors;

NOW THEREFORE, be it ordained by the Common Council of the City of Kaukauna, in the State of Wisconsin, as follows:

SECTION 1: AMENDMENT “9.29 Purchase Or Possession Of Tobacco Products And Electronic Delivery Devices Prohibited” of the City of Kaukauna Municipal Code is hereby *amended* as follows:

BEFORE AMENDMENT

9.29 Purchase Or Possession Of Tobacco Products And Electronic Delivery Devices Prohibited

1. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
Cigarette has the meaning given in Wis. Stats. § 139.30(1).
Law enforcement officer has the meaning given in Wis. Stats. § 30.50(4s).
Tobacco products has the meaning given in Wis. Stats. § 139.75(12).
Electronic delivery device shall mean: any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of aerosol or vapor form of the product. The term includes, but is not limited to, devices manufactured, distributed, marketed or sold as e-cigarettes, e-cigars, e-pipes, vape pens, or e-hookah. An electronic cigarette (e-cig or e-cigarette), personal vaporizer (PV), or electronic nicotine delivery system (ENDS) is a battery-powered vaporizer which has the feel of tobacco smoking. They produce a mist rather than

cigarette smoke. In general, a heating element vaporizes a liquid solution known as e-liquid. E-liquids usually contain a mixture of propylene glycol, glycerin, nicotine, and flavorings.

2. *Prohibited.* Except as provided in subsection (3) of this section, no child may do any of the following:
 - a. Buy or attempt to buy any cigarette or tobacco product or electronic delivery device.
 - b. Falsely represent his age for the purpose of receiving any cigarette or tobacco product or electronic delivery device.
 - c. Possess any cigarette or tobacco product or electronic delivery device.
3. *Exception.* A child may purchase or possess cigarettes or tobacco products or electronic delivery devices for the sole purpose of resale in the course of employment during his working hours if employed by a retailer licensed under Wis. Stats. § 134.65(1).
4. *Seizure by law enforcement officer.* A law enforcement officer shall seize any cigarette or tobacco product or electronic delivery device involved in any violation of subsection (2) of this section committed in his presence.
5. *Amendments.* Any future amendments, revisions, or modifications of the statutes incorporated herein are intended to be made part of this section.
6. *Penalty.* The penalty for violation of this section shall be as provided in section 25.04 of this Code.

(Ord. No. 1781, 11-7-2018)

Editor's note(s)—Ord. No. 1781, adopted Nov. 7, 2018, repealed the former section and enacted a new section as set out herein. The former section pertained to similar subject matter and derived from Code 2011, § 9.29.

AFTER AMENDMENT

9.29 Purchase Or Possession Of Tobacco Products And Electronic Delivery Devices Prohibited

1. *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
 - Cigarette* has the meaning given in Wis. Stats. § 139.30(1).
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 - Tobacco products* has the meaning given in Wis. Stats. § 139.75(12).
 - Electronic delivery device* shall mean: any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of aerosol or vapor form of the product. The term includes, but is not limited to, devices manufactured, distributed, marketed or sold as e-cigarettes, e-cigars, e-pipes, vape pens, or e-hookah. An electronic cigarette (e-cig or e-cigarette), personal

vaporizer (PV), or electronic nicotine delivery system (ENDS) is a battery-powered vaporizer which has the feel of tobacco smoking. They produce a mist rather than cigarette smoke. In general, a heating element vaporizes a liquid solution known as e-liquid. E-liquids usually contain a mixture of propylene glycol, glycerin, nicotine, and flavorings.

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3. ~~*Exception.* A child may purchase or possess cigarettes or tobacco products or electronic delivery devices for the sole purpose of resale in the course of employment during his working hours if employed by a retailer licensed under Wis. Stats. § 134.65(1). *Seizure by law enforcement officer.* A law enforcement officer shall seize any cigarette or tobacco product or electronic delivery device involved in any violation of subsection (2) of this section committed in his presence. *Amendments.* Any future amendments, revisions, or modifications of the statutes incorporated herein are intended to be made part of this section. *Penalty.* The penalty for violation of this section shall be as provided in section 25.04 of this Code. *Restrictions.*~~
 - a. No retailer, manufacturer, distributor, jobber, or subjobber, no agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration cigarettes or tobacco products to any person under the age of 18, except as provided in Wis. Stats. § 254.92(3). A vending machine operator is not liable under this subsection for the purchase of cigarettes or tobacco products from his vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.
 - b. No retailer, manufacturer, distributor, jobber, subjobber, no agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber and no agent or employee of an independent contractor may provide for nominal or no consideration cigarettes 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 parent or guardian or by his spouse who has attained the age of 18 years.
 - c. *Signs and notices.*
 - (1) A retailer shall post a sign in areas within his 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 this section and Wis. Stats. § 938.983.
 - (2) A vending machine operator shall attach a notice in a conspicuous place on the front of his vending machines stating that the purchase of

any cigarette or tobacco product by a person under the age of 18 is unlawful under Wis. Stats. § 254.92 and that the purchaser is subject to a forfeiture of not to exceed \$25.00.

d. Vending machines.

(1) 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 is accompanied by his parent or guardian or by his spouse who has attained the age of 18 years.

(2) Notwithstanding subsection (2)(c)1 of this section, no retailer may place a vending machine within 500 feet of a school.

e. No manufacturer, distributor, jobber, subjobber, or retailer, or their employees or agents, may provide cigarettes or tobacco products for nominal or no consideration to any person under the age of 18.

f. No retailer 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. Defense of retailer, manufacturer, and distributor. Proof of all of the following facts by a retailer, manufacturer, or distributor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of subsection (2)(a) of this section:

a. That the purchaser falsely represented that he had attained the age of 18 and presented an identification card.

b. 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.

c. 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.

5. Exception. A child may purchase or possess cigarettes or tobacco products or electronic delivery devices for the sole purpose of resale in the course of employment during his working hours if employed by a retailer licensed under Wis. Stats. § 134.65(1).

6. Seizure by law enforcement officer. A law enforcement officer shall seize any cigarette or tobacco product or electronic delivery device involved in any violation of subsection (2) of this section committed in his presence.

7. Amendments. Any future amendments, revisions, or modifications of the statutes incorporated herein are intended to be made part of this section.

8. Penalties.

a. Violations.

(1) In this subsection, the term "violation" means a violation of subsection (2)(a), (b), (e) or (f) of this section.

(2) A person who commits a violation is subject to a forfeiture of:

(A) Not more than \$500.00 if the person has not committed a previous violation within 12 months of the violation; or

(B) Not less than \$200.00 nor more than \$500.00 if the person

has committed a previous violation within 12 months of the violation.

(3) A court shall suspend any license or permit issued under Wis. Stats. §§ 134.65, 139.34, or 139.79 to a person for:

(A) Not more than three days, if the court finds that the person committed a violation within 12 months after committing one previous violation.

(B) Not less than three days nor more than ten days, if the court finds that the person committed a violation within 12 months after committing two other violations; or

(C) 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 three or more other violations.

(4) The court shall promptly mail notice of a suspension under subsection (4)(a)3 of this section to the department of revenue and to the clerk of each city which has issued a license or permit to the person.

b. Whoever violates subsection (2)(b) of this section shall forfeit not more than \$25.00.

(Ord. No. 1781, 11-7-2018)

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PASSED AND ADOPTED BY THE CITY OF KAUKAUNA COMMON COUNCIL

Presiding Officer

Attest

Anthony J. Penterman, Mayor, City of
Kaukauna

Sally Kenney, Clerk, City of
Kaukauna