

## ORDINANCE

An Ordinance to amend Section 14.290 of the Manitowoc Municipal Code regulating Restrictions on Sale or Gift of Cigarettes or Tobacco Products to Children.

The Mayor and Common Council of the City of Manitowoc do ordain as follows:

**Section 1.** Section 14.290 is amended to read as follows:

**“14.290 Restrictions on Sale or Gift of Cigarettes, ~~or~~ Tobacco Products, Electronic Smoking Devices and Nicotine Products to Children.**

**(1) Definitions.** The terms defined in Wis. Stat. § [134.66](#)(1) which are used in this section shall have the same definitions as contained in that Statute.

Electronic Smoking Device means any product containing or delivering nicotine, or any other substance, whether natural or synthetic, intended for human consumption through the inhalation of aerosol or vapor from the product. The term ‘electronic smoking device’ includes, but is not limited to, devices manufactured, marketed, or sold as e-cigarettes, e-cigars, vape pens, mods, tank systems, or under any other product name or descriptor. And includes any component part of a product, whether or not marketed or sold separately.

**(2) Restrictions.**

(a) No retailer, manufacturer, distributor, jobber or subjobber, and no agent, employee or independent contractor, may sell or provide for nominal or no consideration cigarettes, ~~or~~ tobacco products, electronic smoking devices or nicotine products to any person under the age of 18, except as provided in Wis. Stat. § [254.92](#)(2)(a). A vending machine operator is not liable under this subsection for the purchase of cigarettes, ~~or~~ tobacco products, electronic smoking devices or nicotine 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)1. A retailer shall post a sign in areas within his or her premises where cigarettes, ~~or~~ tobacco products or nicotine products are sold to consumers stating that the sale of any cigarettes, ~~or~~ tobacco product or nicotine products to a person under the age of 18 is unlawful under Wis. Stat. §§ [134.66](#) and [254.92](#). A retailer shall also post a sign in areas within his or her premises where electronic smoking devices are sold to consumers stating that the sale of any electronic smoking device to a person under the age of 18 is unlawful under this section.

2. 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 or nicotine 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 not to exceed \$50.00. 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 electronic smoking device by a person under the age of 18 is unlawful under this section and that the purchaser is subject to a forfeiture not to exceed \$50.00.

(c) A retailer or vending machine operator may not sell cigarettes, ~~or~~ tobacco products, electronic smoking devices or nicotine 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.

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

(e) 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, **electronic smoking devices, or nicotine 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.

(f) No person shall give, barter, sell or exchange cigarettes, ~~or~~ tobacco products, **electronic smoking devices, or nicotine products** to anyone under the age of 18 years old, unless excepted under the law.

(g) No retailer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under Wis. Stat. § [139.32](#)(1).

**(3) Defense of Retailer, Manufacturer and Distributor.** Proof of all the following facts by a retailer, manufacturer, distributor, jobber, subjobber, agent, employee or independent contractor who sells cigarettes, ~~or~~ tobacco products, **electronic smoking devices or nicotine 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 or she 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.

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**Section 2.** This ordinance shall take effect the day after publication.

INTRODUCED \_\_\_\_\_ ADOPTED \_\_\_\_\_ APPROVED \_\_\_\_\_

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Justin M. Nickels, Mayor

**Fiscal Impact:** \$0  
**Funding Source:** n/a  
**Finance Director Approval:** /sc  
**Approved as to form:** kmm

This resolution was drafted by Elizabeth Majerus, Assistant City Attorney