

**ORDINANCE NO. 19-1**

**AN ORDINANCE REGARDING PURCHASE OR POSSESSION OF  
TOBACCO AND VAPING PRODUCTS BY MINORS**

The Village Board of the Village of Elk Mound, Dunn County, Wisconsin, do ordain as follows:

**SECTION I. REPEAL AND ADOPTION OF PROVISIONS.**

Section 11-5-9 of the Village of Elk Mound Code of Ordinances is repealed and recreated to read as follows:

**Sec. 11-5-9 Purchase or Possession of Tobacco, Nicotine  
Products or Vaping Paraphernalia by Minors.**

**(a) Finding of Facts; Statement of Purpose.**

- (1) The purpose of this Section is to protect the public health, safety, and welfare of persons in the Village of Elk Mound by prohibiting persons under eighteen (18) years of age from possessing and/or using tobacco products or vapor products or devices, and prohibiting the sale of tobacco products and vapor products and devices to persons under eighteen (18) years of age.
- (2) Vaping devices and products provide an alternative smoking experience to tobacco products. The decline in cigarette smoking and the use of other tobacco products has resulted in an increase in the popularity of vaping devices and alternative nicotine delivery systems, particularly among minors.
- (3) Vaping devices and products often mimic conventional tobacco products in shape, color and size, with the user exhaling a smoke-like vapor similar in appearance to smoke exhaled when using tobacco products.
- (4) Persons under age eighteen (18) years of age are prohibited by law from purchasing or possessing cigarettes, cigars, and other tobacco products, and retailers are prohibited from selling them to minors. Tobacco-less vaping devices and products allow a user to simulate smoking; such products currently may be purchased by minors and are marketed, unlike tobacco products, without health warnings, disclosure of nicotine concentrations, content levels of toxic substances, or age

restrictions, and often come in flavors that appeal to minors. Consumers have no way of knowing whether vapor devices and products are safe, what potentially harmful chemicals the products contain, and what level of nicotine the products deliver.

- (5) The production of e-cigarettes, vapor products and vaping devices is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration (FDA) has not completed full testing of these products. Preliminary studies, however, have determined that e-cigarettes, vapor products and vapor devices can contain chemicals and substances known to be harmful, which may expose users and bystanders to potential health risks. The contents of cartridges used in vaping devices and products varies but often contain nicotine, traces of nicotine, formaldehyde, carcinogens, antifreeze, and other toxic substances which may pose a health risk to users and bystanders.
- (6) Vapor devices and products have been found to emit nicotine, ultrafine particles, lead, acetaldehyde, nickel, chromium, volatile organic compounds and other toxins, which when inhaled can be dangerous to the user and public, especially pregnant women and children. Volatile organic compounds, such as benzene and formaldehyde, found in vaping liquids, as well as in tobacco products when smoked, are known carcinogens. Inhalation of vaporized nicotine in propylene glycol is not FDA-approved. Exposure to ultrafine particles may exacerbate respiratory illnesses, such as asthma. There have been incidents of electronic vapor devices exploding, causing serious harm to the user.
- (7) The nicotine and/or chemicals contained in the e-liquid used in vapor devices and products are undetectable unless the liquid is tested in a laboratory facility, making it difficult and impractical for law enforcement officers to ascertain the composition of the liquid used in a vaping device or product. Some cartridges used with vapor devices can be refilled with a liquid nicotine solution, creating the potential for exposure to dangerous nicotine concentrations.
- (8) Increased nicotine addiction among minors is a likely outcome from use of vaping devices and products, and may lead to users transitioning to tobacco products. After years of declining levels of tobacco use by minors, recent data indicates that tobacco use by minors is again increasing.
- (9) The use of vapor devices and products in smoke-free locations threatens to undermine compliance with state and local smoking regulations and conflicts with the progress which has been made in public understanding that smoking is not permitted in public places, schools and places of employment.
- (10) It is the intent of this Section to protect the public health, safety and welfare by having consistent and uniform enforcement of smoke-free laws and ordinances by:
  - a. Reducing the potential for minors to associate the use of vaping products and devices with a normal or healthy lifestyle;

- b. Reducing the potential for re-normalizing smoking of any type in public places and places of employment; and
  - c. Prohibiting the sale or distribution of vapor devices and products to minors.
- (11) The Village Board of the Village of Elk Mound determines that prohibiting the sale, furnishing, or giving away of vapor devices and products to minors and prohibiting the possession, purchasing and use of such devices and products is in the public interest and will promote the public health, safety, and welfare.
- (b) **Definitions.** The following definitions are applicable in this Section:
- (1) **Cigarette.** Has the meaning given in Sec. 139.30(1), Wis. Stats.
  - (2) **Distributor.** A person specified under Secs. 139.30(3) or 139.75(4), Wis. Stats.
  - (3) **E-Liquid.** A liquid product, whether or not it contains nicotine, that is intended to be vaporized and inhaled using a vapor product or device.
  - (4) **Identification Card.** A license containing a photograph issued under Ch. 343, Wis. Stats., an identification card issued under Sec. 343.50, Wis. Stats., or an identification card issued under Sec. 125.08, Wis. Stats.
  - (5) **Jobber.** Has the meaning given in Sec. 139.30(6), Wis. Stats.
  - (6) **Law Enforcement Officer.** Has the meaning given in Sec. 30.50(4s), Wis. Stats.
  - (7) **Manufacturer.** Any person specified under Secs. 139.30(7) or 139.75(5), Wis. Stats.
  - (8) **Minor.** An individual who is less than eighteen (18) years of age.
  - (9) **Nicotine Product.** Has the meaning given in Sec. 134.66(1)(f), Wis. Stats.
  - (10) **Person Who Sells Tobacco Products at Retail.** A person whose ordinary course of business consists, in whole or part, of the retail sale of tobacco products subject to the state sales tax.
  - (11) **Person Who Sells Vapor Products or Devices at Retail.** A person whose ordinary course of business consists, in whole or part, of the retail sale of vapor products or devices.
  - (12) **Possession of a Tobacco or Vaping Product or Device.** Means either actual physical control of the tobacco or vaping product or device without necessarily owning that product/device, or the right to control the tobacco or vaping product/device even though the item is in a different place or room than where the person is physically located.
  - (13) **Retailer.** Any person licensed under Sec. 139.65(1), Wis. Stats., in regard to tobacco products, or, in the case of vaping, any person offering for sale vaping-related products or devices.
  - (14) **School.** Has the meaning given in Sec. 118.257(1)(c), Wis. Stats.
  - (15) **Subjobber.** Has the meaning given in Sec. 139.75(11), Wis. Stats.
  - (16) **Tobacco Products.** Has the meaning given in Sec. 139.75(12), Wis. Stats., and further means, but is not limited to, any substance

containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.

- (17) **Use a Tobacco or Vapor Product.** To smoke, chew, suck, inhale, or otherwise consume a tobacco product or vapor product.
  - (18) **Vapor or Vaping Product or Device.** Any product or device containing or delivering nicotine, lobella, or any other substance intended for human consumption that can be used by a person to simulate smoking through the delivery of nicotine or any other substance through inhalation of vapor from the product. Included are any devices, regardless of shape or size, which employs a mechanical heating element, battery, or electronic circuit and that can be used to heat or dispense a liquid solution as a vapor which is intended for human consumption through inhalation. The term includes, but is not limited to, any device marketed as an e-cigarette, e-cigar, e-pipe, e-hookah, vape pen, vapes, tank systems, electronic nicotine delivery systems, electronic smoking device, or under any similar product name or description. Such devices may be similar in appearance to tobacco cigarettes, cigars or pipes, while others may resemble pens, USB sticks or flash drives, and other everyday items. Also includes any component part of such product or associated paraphernalia whether or not sold separately, such as, but not limited to, any vapor cartridge, solution, or other container, that may or may not contain nicotine, that is intended to be used with a vaping device. Not included is any product that has been approved by the FDA for sale as a tobacco cessation product or is being marketed and sold solely for such approved purposes.
  - (19) **Vaping.** The use of an electronic or other device that creates an aerosol or vapor from a vapor product, in any manner or in any form or the use of any oral vapor or smoking device
  - (20) **Vending Machine.** Has the meaning given in Sec. 139.30(14), Wis. Stats.
  - (21) **Vending Machine Operator.** Has the meaning given in Sec. 139.30(15), Wis. Stats.
- (c) **Prohibition Against Sale of or Availability of Cigarettes, Tobacco Products, and Nicotine Products to Minors.** It shall be a violation of this Section for any retailer to sell or give away any cigarettes, tobacco products, or nicotine products to any person under the age of eighteen (18) except as provided in Sec. 254.92(2), Wis. Stats. A vending machine operator is not liable for the purchase of cigarettes, tobacco products, or nicotine products from his/her vending machine by a person under eighteen (18) years of age if the vending machine operator was unaware of the purchase.
- (d) **Prohibited Conduct.**
- (1) Consistent with Sec. 254.92, Wis. Stats., a minor shall not do any of the following:
    - a. Purchase or attempt to purchase a tobacco product, nicotine product, or vaping device or product.

- b. Possess or attempt to possess a tobacco product, nicotine product, or vaping device or product.
  - c. Use a tobacco product, nicotine product or vaping device or product in a public place.
  - d. Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his/her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product, nicotine product, or vaping device or product.
- (2) No individual, regardless of age, who is enrolled in a public school may use, possess or attempt to possess a tobacco product, nicotine product, or vaping device or product on school grounds and property.
- (e) **Exceptions.** Subsection (d) above does not apply to a minor participating in any of the following:
- (1) An undercover operation in which the minor purchases or receives a tobacco product, nicotine product or vapor product under the direction of a law enforcement agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product, nicotine product or vapor product or device by the minor was not under the direction of a law enforcement agency and was not part of the undercover operation.
  - (2) An undercover operation in which the minor purchases or receives a tobacco product, nicotine product, or vapor product or device under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored enforcement action.
  - (3) Compliance checks in which the minor attempts to purchase tobacco products for the purpose of satisfying federal substance abuse block grant youth tobacco access requirements, if the compliance checks are conducted with the prior approval of a law enforcement agency.
  - (4) A minor may possess or handle a tobacco product, nicotine product, or vapor device or product for the sole purpose of resale in the course of employment during his/her normal working hours if employed by a retailer licensed under Sec. 134.65(1), Wis. Stats.
- (f) **Defense of Retailers.**
- (1) Proof of all the following facts by a retailer who sells tobacco products, nicotine products, or vapor devices or products to a minor is a defense to any prosecution for a violation of Subsection (d) above:
    - a. That the purchaser falsely represented that he/she had attained the age of eighteen (18) and presented a fraudulent identification card.
    - b. 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 eighteen (18).
  - (2) A retailer or vending machine operator shall post a sign(s) in areas within his/her retail premises where tobacco products, nicotine products, or vapor products or devices are sold to consumers stating

that the sale of any tobacco product, nicotine product, or vapor product or device to a person under the age of eighteen (18) is unlawful under this Section or comparable state laws.

- (g) **Furnishing to Minors.** Consistent with the requirements of Sec. 134.66, Wis. Stats.:
- (1) No person shall sell, furnish or give any tobacco product, nicotine product, or vapor product or device to a minor, including, but not limited to, through a vending machine.
  - (2) Before selling, offering for sale, giving, or furnishing a tobacco product, nicotine product, or vapor product or device to an individual, such person shall verify that the individual is at least eighteen (18) years of age by doing one of the following:
    - a. Examining a government-issued photographic identification that establishes that the individual is at least eighteen (18) years of age.
    - b. For sales made through the internet or other remote sales method, performing an age verification through an independent, third-party age verification service that compares information available from a commercially available database, or aggregate of databases, that are regularly used by government agencies and businesses for the purpose of age and identity verification of the personal information entered by the individual during the ordering process that establishes that the individual is eighteen (18) years of age or older.
  - (3) No manufacturer, distributor, jobber, sub-jobber, or retailer, or their employees or agents, may provide cigarettes, tobacco products, nicotine products, or vapor devices or products for nominal or no consideration to any person under the age of eighteen (18).
- (h) **Seizure of Products.** A law enforcement officer may seize any tobacco product, nicotine product, or vapor device or product involved in any violation of this Section committed in his/her presence.
- (i) **Penalties.** Any person who violates provisions of this Section shall be subject to the penalties set forth in Section 1-1-6 of this Code of Ordinances, except that where a minor is adjudged to have violated this Section, the court is also authorized to impose any of the dispositions in Secs. 938.343 and 938.344, Wis. Stats.

## **SECTION II. SEVERABILITY.**

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications. It is the intent of the Village that this Section shall conform with Secs. 134.66 and 254.92, Wis. Stats. Should any provision herein set forth fail to meet with this qualification upon court review, the

offending provision shall be considered to be severed from the remainder of this Section, which shall remain in full force and effect as if the offending provision had not been adopted.

**SECTION III. EFFECTIVE DATE.**

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 3rd day of April, 2019.

VILLAGE OF ELK MOUND, WISCONSIN



Village President



Village Clerk-Treasurer

INTRODUCED: 4/3/19

PASSED: 4/3/19

PUBLISHED:  
(POSTED) 4/9/19

State of Wisconsin :  
County of Dunn:

I hereby certify that the foregoing Ordinance is a true, correct and complete copy of an Ordinance duly and regularly adopted by the Village Board of the Village of Elk Mound on the 3rd day of April, 2019, and that said Ordinance has not been repealed or amended and is now in full force and effect.

Dated this 3rd day of April, 2019



Pat Hahn, Village Clerk-Treasurer