



**211 Walnut Street  
Neenah, WI 54956**

**AN ORDINANCE:**

Re: Creating Neenah Code § 11-101 – Possession of Tobacco and Vapor Products By Minors Prohibited

ORDINANCE NO. 2018-12

Introduced: September 19, 2018

Committee/Commission Action:

**RECOMMENDED FOR PASSAGE**

## **AN ORDINANCE**

The Common Council of the City of Neenah, Wisconsin, do ordain as follows:

**Section 1.** Section 11-101 of the Code of Ordinances of the City of Neenah is created to read as follows:

### **Sec. 11-101: Possession of Tobacco and Vapor Products By Minors**

#### ***(A) Statement of Purpose.***

(1) The purpose of this ordinance is to protect the public health, safety and welfare of the property and persons in the city by prohibiting persons under eighteen (18) years of age from possessing tobacco products and vapor products, and prohibiting the sale of tobacco products and vapor products to persons under eighteen (18) years of age.

(2) Persons under age eighteen (18) are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. There are new tobacco-less products, however, commonly referred to as “electronic cigarettes,” “e-cigarettes,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-hookahs,” or “electronic nicotine delivery systems,” which allow the user to simulate cigarette smoking. These products may be purchased by minors and are being marketed without age restrictions or health warnings and come in different flavors that appeal to young people.

(3) E-cigarettes, and similar devices, are a relatively new nicotine delivery system. While devices vary in their appearance and specific method of operation, they have a few basic elements in common. A solution of water, dissolved nicotine, and other ingredients (usually flavoring) is heated with a heating element (usually battery-powered). This vaporizes the nicotine solution, which passes into a mouthpiece and is inhaled in a manner similar to cigarette smoking. Often, glycerol or propylene glycol is added to the solution to give the appearance of smoke when the solution is vaporized. The concentration of nicotine contained in the solution can be customized by the retailer to the buyer’s specifications, and many manufacturers make nicotine-free solutions.

(4) The production and distribution of e-cigarettes is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration has not completed

testing of these products. But, initial studies by the FDA have determined that e-cigarettes can increase nicotine addiction among young people and contain chemical ingredients known to be harmful, which may expose users and the public to potential health risks.

(5) The use of e-cigarettes and similar devices has increased significantly in recent years.

(6) Existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances including:

- Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium;
- PM<sub>2.5</sub>, acrolein, tin, toluene, and aluminum, which are associated with a range of negative health effects such as skin, eye, and respiratory irritation, neurological effects, damage to reproductive systems, and even premature death from heart attacks and stroke.

(7) Some cartridges used by electronic smoking devices can be refilled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine.

(8) Clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over four hundred (400) brands of electronic smoking devices that are on the market and for this reason, consumers have no way of knowing whether electronic smoking devices are safe, what types of potentially harmful chemicals the products contain, and what dose of nicotine the products deliver.

(9) Electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products.

(10) The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverses the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment.

(11) It is the intent of the city council, in enacting the ordinance codified in this section, to provide for the public health, safety and welfare by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; by reducing the potential for children to associate the use of electronic smoking devices with a normative or healthy lifestyle; and by prohibiting the sale or distribution of electronic smoking devices to minors.

(12) Therefore, the City of Neenah Common Council determines that prohibiting the sale, giving, or furnishing of e-cigarettes to minors and prohibiting the purchase, possession, or use of e-cigarettes by minors is in the City's best interest and will promote public health, safety, and welfare.

### **(B) Definitions**

For the purpose of construction and application of this section, the following definitions shall apply:

*Minor* means an individual who is less than eighteen (18) years of age.

*Person who sells tobacco products at retail* means a person whose ordinary course of business consists, in whole or in part, of the retail sale of tobacco products subject to the state sales tax.

*Person who sells vapor products at retail* means a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products.

*Possession of a tobacco product* shall mean either actual physical control of the tobacco product without necessarily owning that product, or the right to control the tobacco product even though it is in a different room or place than where the person is physically located.

*Public place* means a public street, sidewalk, or park or any area open to the general public in a publically owned or operated building or premises, or in a public place of business or school.

*Tobacco product* means a product that contains tobacco and is intended for human consumption, including but not limited to, cigarettes, non-cigarette smoking tobacco, or smokeless tobacco, as those terms are defined in Section 2 of the Tobacco Products Tax Act, and cigars. Tobacco product does not include a vapor product or a product regulated as a drug or device by the United States Food and Drug Administration.

*Use a tobacco product or vapor product* means to smoke, chew, suck, inhale, or otherwise consume a tobacco product or vapor product.

*Vapor product* means 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 vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

**(C) Prohibited conduct**

(1) Consistent with Wis. Stat. 254.92, a minor shall not do any of the following:

- (a) Purchase or attempt to purchase a tobacco product or vapor product.
- (b) Possess or attempt to possess a tobacco product or vapor product.
- (c) Use a tobacco product or vapor 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 or her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product or vapor product.

(2) No individual, regardless of age, who is enrolled in secondary school may possess or attempt to possess a tobacco product or vapor product while on school property.

(3) An individual who violates subsection (1) shall be subject to the penalties listed in the juvenile bond schedule.

(4) An individual who violates subsection (2) shall be subject to the following penalties:

(a) For the first violation, the person is responsible for a civil infraction punishable by a civil fine of fifty dollars (\$50.00).

(b) For a second and subsequent violation, the person is responsible for a civil infraction punishable by a civil fine of seventy-five dollars (\$75.00).

(5) Subsection (1) does not apply to a minor participating in any of the following:

(a) An undercover operation in which the minor purchases or receives a tobacco product or vapor product 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 internal enforcement action.

(b) An undercover operation in which the minor purchases or receives a tobacco product or vapor product under the direction of the state police or a local police agency as part of an

enforcement action, unless the initial or contemporaneous purchase or receipt of the tobacco product or vapor product by the minor was not under the direction of the state police or the local police agency and was not part of the undercover operation.

(c) 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 the state police or a local police agency.

(6) Subsection (1) does not apply to the handling or transportation of a tobacco product or vapor product by a minor under the terms of that minor's employment.

(7) This section does not prohibit an individual from being charged with, convicted of or found responsible for, or sentenced for any other violation of law that arises out of the violation of subsection (1).

**(D.) *Furnishing to minors.***

Consistent with Wis. Stat. 134.66;

(1) A person shall not sell, give or furnish any vapor product to a minor, including, but not limited to, through a vending machine. A person who violates this subsection or subsection (h) of this section is subject to a fine of not more than one hundred dollars (\$100.00) for each violation.

(2) Subsection (1) of this section does not apply to the handling or transportation of a tobacco product or vapor product by a minor under the terms of the minor's employment.

(3) Before selling, offering for sale, giving, or furnishing a vapor product to an individual, a person shall verify that the individual is at least eighteen (18) years of age by doing one (1) 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 by 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 to the personal information entered by the individual during the ordering process that establishes that the individual is eighteen (18) years of age or older.

**Section 2. Severability.** In the event any section, subsection, clause, phrase or portion of this ordinance is for any reason held illegal, invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of this ordinance. It is the legislative intent of the Common Council that this ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

**Section 3. Repeal and Effective Date.** All ordinances or parts of ordinances and resolutions in conflict herewith are hereby repealed. This ordinance shall take effect from and after its passage and publication.

Moved by: Ald. Bates / Lendrum  
Adopted: September 19, 2018  
Approved: 7-2 September 19, 2018  
Published: September 25, 2018

Approved:



Dean Kaufert, Mayor

Attest:



Patricia A. Sturn, City Clerk

THIS INSTRUMENT WAS DRAFTED BY:  
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