

ORDINANCE O-22-14

**AN ORDINANCE AMENDING TITLE 11, CHAPTER 2
OF THE CODE OF ORDINANCES
(Sale or Gift of Nicotine Products to Minors)**

Introduced by Alderman Keehan.

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 11, Chapter 2, by Creating SEC. 11-2-15 of the Code of Ordinances of the City of Menasha, Wisconsin as follows:

Title 11 – Offense and Nuisances

CHAPTER 2

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**SEC. 11-2-15 RESTRICTIONS ON SALE OR GIFT OF CIGARETTES OR NICOTINE
OR TOBACCO PRODUCTS TO MINORS.**

(a) **DEFINITIONS.** In this section:

- (1) Cigarette has the meaning given in Sec. 139.30(1m), Wis. Stats.
- (2) Direct marketer has the meaning given in Sec. 139.30(2n), Wis. Stats.
- (3) Distributor means a person specified under Sec. 139.30(3) or 139.75(4), Wis. Stats.
- (4) Identification card means a license containing the photograph issued under Chapter 343, Wis. Stats., an identification card issued under Sec. 343.50, Wis. Stats., an identification issued under Sec. 125.085, Wis. Stats.
- (5) Jobber has the meaning given in Sec. 139.30(6), Wis. Stats.
- (6) Manufacturer means any person specified under Secs. 139.30(7) or 139.75(5), Wis. Stats.
- (7) Nicotine product means a product that contains nicotine and is not any of the following:
 - a. A tobacco product.
 - b. A cigarette.
 - c. 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 an approved purpose.
- (8) Retailer means any person licensed under Sec. 134.65(1), Wis. Stats.
- (9) Subjobber has the meaning given in Sec. 139.75(11), Wis. Stats.
- (10) Tobacco products has the meaning given in Sec. 139.75(12), Wis. Stats.
- (11) Vending machine has the meaning given in Sec. 139.30(14), Wis. Stats.
- (12) Vending machine operator has the meaning given in Sec. 139.30(15), Wis. Stats.

(b) **RESTRICTIONS.**

- (1) 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.
- (2) Except as provided in Sec. 11-6-6(c), 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 give cigarettes, nicotine

products or tobacco products to any person under 18 years of age. 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 18 years of age if the vending machine operator was unaware of the purchase.

- (3) 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 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 18 years of age.
 - (4) 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 18 years of age.
 - (5) 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 Sec. 139.32(1), Wis. Stats.
- (c) **DEFENSE.** Proof of all 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 18 years of age is a defense to any prosecution for a violation of Subsection (b)(2) above:
- (1) That the purchaser falsely represented that he or she had attained 18 years of age 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 18 years of age.
 - (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 18 years of age.
- (d) **PENALTY.**
- (1) A person who commits a violation is subject to a forfeiture of:
 - a. Not more than \$500 if the person has not committed a previous violation within 12 months of the violation; or
 - b. Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.

SECTION2: This ordinance shall become effective upon its passage and publication as provided by law.

Passed and approved this _____ day of August, 2014.

Donald Merkes, Mayor

ATTEST:

Deborah A. Galeazzi, City Clerk