

## Ordinance 0010-19 – Ch. 66 Vapor Products

The Common Council of the City of Racine do ordain as follows:

Part 1: To insert an article after the current Chapter 66, Article XXV of the Code of Ordinance, by creating the article entitled Chapter 66, Article XXVI. – PURCHASE OR POSSESSION OF VAPOR PRODUCTS BY A MINOR PROHIBITED, of the City of Racine Code of Ordinance to state as follows:

“Sec. 66-675. – Statement of purpose.

a) The purpose of this ordinance is to protect the public health, safety and welfare of the property and persons in the City of Racine by prohibiting persons under 18 years of age from possessing nicotine and vapor products, and prohibiting the sale of these products to persons under 18 years of age.

b) Over the last few years, the popularity of electronic cigarettes has increased substantially, particularly among the youth population. Electronic cigarettes are tobacco-less handheld devices that allow its user to simulate cigarette smoking, and are also commonly referred to as “electronic cigarettes,” “e-cigarettes,” “e-cigars,” “e-cigarillos,” “e-pipes,” “e-hookahs,” or “electronic nicotine delivery systems.” For purposes of this section, all of these electronic smoking devices are referred to as an electronic nicotine delivery system (ENDS).

c) ENDS vary in their appearance and specific method of operation, although they do have a few basic elements in common. The devices work by heating up an “e-liquid” that generates an aerosol or vapor to be inhaled by its user. These e-liquid solutions typically contain nicotine, propylene glycol, glycerine and other flavorings. 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.

d) ENDS 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. These devices may be manufactured to look like conventional cigarettes, cigars or pipes. Some resemble pens or USB flash drives. Larger devices, such as tank systems or mods, bear little or no resemblance to cigarettes. Currently, these products come in many different flavors that appeal to young people.

e) The U.S. Food and Drug Administrative (FDA) currently regulates the manufacture, import, packaging, labeling, advertising, promotion, sale and distribution of all electronic nicotine delivery systems and prohibits the sale of such products to persons under 18 years of age. Under Wisconsin law, persons under 18 years of age are prohibited from purchasing or possessing cigarettes, tobacco products, or nicotine products, and retailers are prohibited from selling them to minors. Wisconsin law, however, does not

currently regulate nicotine-free vapor products or prohibit the sale of such products to persons under 18 years of age.

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

a. Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium;

b. PM 2.5, 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.

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

h) Clinical studies regarding the safety and efficacy of such products have not been submitted to the FDA for the over four hundred 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.

i) Despite current FDA rules banning the sale of such products to persons under 18 years of age, the use of e-cigarettes and similar devices by middle and high school students have continued to increase significantly in recent years.

j) 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.

k) It is the intent of the common 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.

l) Therefore, the City of Racine Common Council determines that prohibiting the sale, giving, or furnishing of electronic nicotine delivery systems and vapor products to minors and prohibiting the purchase, possession, or use of such products by minors is in the City's best interest and will promote public health, safety, and welfare.

Sec. 66-676. – Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Electronic nicotine delivery system* means a portable device capable of producing a vapor or aerosol, containing ingredients such as nicotine, propylene glycol, vegetable glycerin, and other chemicals, to be inhaled by the user. Electronic nicotine delivery systems include but are not limited to vapes, vaporizers, vape pens, vaping devices, mod systems, pod systems, hookah pens, electronic cigarettes or e-cigarettes, e-pipes and other similar devices, but do not include any products that have been approved or otherwise certified by the United States Food and Drug Administration to be sold as part of a tobacco cessation treatment or other medical purposes, and is being marketed and sold for that approved purpose. Electronic nicotine delivery systems shall include any component part of such a product, whether or not sold separately.

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

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

*Vapor product* means any part of an electronic nicotine delivery system, including the e-liquid solution that is intended to be used with or in an electronic smoking device, whether or not such component contains nicotine, or is sold separately. Vapor product does not include any products that have been approved or otherwise certified by the United States Food and Drug Administration to be sold as part of a tobacco cessation treatment or other medical purposes, and is being marketed and sold for that approved purpose.

Sec. 66-677. – Prohibited conduct.

(1) No person under 18 years of age may falsely represent his or her age for the purpose of receiving any vapor product.

(2) No person under 18 years of age may purchase, attempt to purchase, or possess any vapor product except as follows:

a. A person under 18 years of age may purchase or possess vapor products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer.

b. A person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase or possess vapor products in the course of his or her participation in an investigation under Wis. Stat. sec. 254.91 that is conducted in accordance with s. 254.916(3).

c. Any person who violates subsection (1) or (2) may be required to forfeit not less than \$50 nor more than \$100.

(3) No person may purchase vapor products on behalf of, provide to, or sell to any person who is under 18 years of age. Any person who violates this subsection may be required to:

a. Forfeit not less than \$100 if the person has not committed a previous violation within 30 months of the violation.

b. Forfeit not less than \$300 if the person has committed a previous violation within 30 months of the violation.

c. Forfeit not less than \$500 if the person has committed 2 previous violations within 30 months of the violation.

d. Forfeit not less than \$1,000 if the person has committed 3 or more previous violations within 30 months of the violation.

(4) A law enforcement officer shall seize any vapor product that has been sold to or is in the possession of a person under 18 years of age.

Sec. 66-678. – 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.

Sec. 66-679 – 66-699. – Reserved.”

Part 2: To renumber the current Chapter 66, Articles XXVI, XXVII, XXVIII and XXIX sequentially as follows:

Article XXVII. – BICYCLES.

Article XXVIII. – TRUANCY.

Article XXIX. – MERCURY THERMOMETERS.

Article XXX. - NUISANCE PROPERTIES.

Part 3: This ordinance shall take effect upon publication.

Fiscal note: N/A