

Ordinance 0020-19

An ordinance to amend Chapter 22, Article IX and Chapter 66, Articles XXIV and XXV of the City of Racine of Ordinances.

WHEREAS, parts of the current ordinance governing the licensing of cigarette and tobacco products and possession and sale of cigarettes and tobacco products to minors are currently inconsistent with Wis. Stats. §§ 134.65, 134.66 and 254.92;

WHEREAS, the uniform licensing and regulation of cigarette and tobacco products has been declared a matter of statewide concern and requires strict conformity of local municipalities; and

WHEREAS, the City has an interest in clarifying its ordinance with respect to the regulation of cigarette and tobacco products and complying with state law;

NOW THEREFORE, the Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: To delete all of subsection (b) of Sec. 22-291 and restate subsection (a) without numbering it as subsection “(a)”; and to add the following state law reference.

**State Law reference** – Cigarette and tobacco products retailer license, Wis. Stat. § 134.65.

Part 2: To delete and recreate Sec. 22-293 to state as follows:

Application for a license or renewal of a license under this article shall be made to the city clerk. Licenses issued under this article shall include the name of the licensee, shall specifically describe the premises where such business is to be conducted, and shall specify whether the applicant will sell, exchange, barter, dispose of, or give away the products over the counter or in a vending machine, or both. Licenses shall expire on June 30 of each year, unless sooner revoked.

(Code 1973, § 22.29.030)

**State Law reference** – Cigarette and tobacco products retailer license, Wis. Stat. § 134.65.

Part 3: To amend Sec. 22-294 by deleting the first instance of the words “retail fermented malt beverages and”, and to delete the second instance of the words “”Class B”” and replacing it with the words “Class “B””.

Part 4: To delete and recreate Sec. 22-297, so as to read as follows:

“(a) Upon conviction, any person found to be in violation of this article shall forfeit not less than \$25.00 nor more than \$100.00 for the first offense, and not less than \$25.00 nor more than \$200.00 for the second or subsequent violation. If upon such second or subsequent violation the person so violating this article was personally guilty of a failure to exercise due care to prevent violation thereof, such person shall forfeit not less than \$25.00 nor more than \$300.00. Conviction shall immediately terminate the license of such person convicted of

being personally guilty of such failure to exercise due care and the person shall not be entitled to another license under this article for a period of five years thereafter, nor shall such person during that period act as a servant or agent of a person licensed under this article for the performance of the acts authorized by such license.

- (b) Any person who knowingly provides materially false information in an application for a cigarette and tobacco products retailer license may be required to forfeit not more than \$1,000.”

(Code 1973, § 22.29.070; Ord. No. 17-06, pt. 2, 5-24-06)

**State Law reference** – Cigarette and tobacco products retailer license, Wis. Stat. §134.65.

Part 5: To create Sec. 22-298. – Revocations, suspensions and denial of renewals and rename it as follows:

“Sec. 22-298.—Revocations and denial of renewal applications.

A conviction pursuant to section 66-697(a) of this Code shall constitute grounds for suspension, revocation or denial of renewal. Prior to the suspension, revocation or denial of renewal of such license, a due process hearing shall be held as required in section 22-41 of this Code.”

Cross reference – Same—Hearing, § 22-41.

Part 6: To amend the definition of “Cigarette” in Sec. 66-646 by deleting the words “or other substance” after the word tobacco, and adding the words “or any other substance” right after the word “paper”.

Part 7: To amend Sec. 66-646 by adding the following definition for “Nicotine product” after the “Cigarette” and before “Tobacco Products”, so as to read as follows:

“*Nicotine product* means a product that contains nicotine and is not any of the following:

1. A tobacco product.
2. A cigarette.
3. 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 approved purpose.”

Part 8: To amend the definition of “Tobacco products” by inserting the words “, including moist snuff” right after the first instance of “snuff”, and to add in the following state law reference:

**State Law Reference** – Cigarette tax, definitions, Wis. Stat. § 139.30(1m); Definitions, Wis. Stat. § 139.75(12); Restrictions on sale or gift of cigarettes or nicotine or tobacco products, Wis. Stat. § 134.66(f).

Part 9: To delete and recreate Sec. 66-647 to read as follows:

“The provisions of Wis. Stat. § 254.92 relating to the purchase or possession of cigarettes or tobacco products by a person under age 18 are adopted as a portion of this article as far as may be applicable to the city. Except as provided in section 66-648, no person under 18 years of age may do any of the following:

- (1) Buy, attempt to buy, or possess any cigarette, nicotine product, or tobacco product; or
- (2) Falsely represent his or her age for the purpose of receiving any cigarette, nicotine product, or tobacco product.”

**State Law reference** – Purchase or possession of cigarettes or tobacco products by person under 18 prohibited, Wis. Stat. § 254.92.

Part 10: To delete and recreate Sec. 66-648 to read as follows:

- “ (a) A person under 18 years of age may purchase or possess cigarettes, nicotine products, or tobacco products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer licensed under Wis. Stat. § 134.65(1).
- (b) A person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase or possess cigarettes, nicotine products, or tobacco products in the course of his or her participation in an investigation under Wis. Stat. § 254.916 that is conducted in accordance with Wis. Stat. § 254.916 (3).”

**State Law reference** – Purchase or possession of cigarettes or tobacco products by person under 18 prohibited, Wis. Stat. § 254.92.

Part 11: To amend Sec. 66-649 by replacing the first instance of the word “minor” with the words “person under age 18”, and replacing the word “order” with the word “forfeiture”.

Part 12: To delete and recreating Sec. 66-650, so as to read as follows, and to add the following state law reference:

“A police officer shall seize any cigarette, nicotine product, or tobacco product that has been sold and is in the possession of a person under the age of 18.”

**State Law reference** – Purchase or possession of cigarettes or tobacco products by person under 18 prohibited, Wis. Stat. § 254.92(3).

Part 13: To amend the definition of “Cigarette and tobacco products” in Sec. 66-666 to state “Cigarette, *nicotine product*, and *tobacco products* have the definitions set forth in section 66-646.”

Part 14: To amend Sec. 66-666 by adding the following definition between “Cigarette and tobacco products” and “Distributor”:

*Direct Marketer* has the meaning given in Wis. Stat. § 139.30 (2n).

Part 15: To amend Sec. 66-666 by replacing all 13 instances of the words “Wis. Stats.” to “Wis. Stat.”, except for the one instance of the words “Wis. Stats. Ch. 343.”

Part 16: To amend Sec. 66-666 by adding subsection (4) to the definition of “Identification card” to state as follows:

(4) A tribal identification card, as defined in Wis. Stat. § 134.695(1)(cm).

Part 17: To amend Sec. 66-666 by deleting the definition of “Tobacco products” and adding in the following state law reference:

**State Law reference** – Beverage and tobacco taxes, Wis. Stats. Ch. 139; Operators’ licenses, Wis. Stats. Ch. 343; Proof of age, Wis. Stat. § 125.08 (1987); Liability for referral to police, Wis. Stat. § 118.257(1)(d).

Part 18: To amend the definition of “School” in Sec. 66-666 by substitute “111.257(1)(c)” to “111.257(1)(d)”.

Part 19: To amend subsections (a) and (b) of Sec. 66-667 by adding in the words “direct marketer” after all four instances of the words “retailer,” and adding the words “nicotine products” after all three instances of the word “cigarettes,”.

Part 20: To amend Sec. 66-667 by replacing all three instances the words “Wis. Stats. § 938.983(3)” with the words “Wis. Stat. § 254.92(2)(a).”

Part 21: To amend Sec. 66-667 by replacing the word “\$25.00” in subsection (c)(2) with “\$50.00”, deleting the words “excepting to the extent authorized by 1997 Wisconsin Act 214, section 10(1)” in subsection (d), deleting subsection (f) altogether and renumbering section (g) to (f), inserting the words “or direct marketer” after the word “retailer” in the current subsection (g), and adding the following state law reference:

**State Law reference** – Restrictions on sale or gift of cigarettes or nicotine or tobacco products, Wis. Stat. § 134.66.

Part 22: To amend the first paragraph of Sec. 66-668 to read as follows and to add the state law reference below: “Proof of all the following facts by a retailer, manufacturer, jobber, subjobber or distributor, 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 the age of 18 is a defense to any prosecution for a violation of section 66-667(a).”

**State Law reference** – Restrictions on sale or gift of cigarettes or nicotine or tobacco products, Wis. Stat. § 134.66.

Part 23: To amend Sec. 66-669 by replacing subsection “(c)” with “(b)” under subsection (a)(1), and replacing “66-667(b)” with “66-667(c)” in subsection (b), and inserting the following state law reference:

**State Law reference** – Restrictions on sale or gift of cigarettes or nicotine or tobacco products, Wis. Stat. § 134.66.

Part 24: To delete and recreate Sec. 66-670, so that it reads as follow:

“Sec. 66-670. – Procurement for persons under 18 years of age prohibited.

No person may purchase cigarettes, nicotine products, or tobacco products on behalf of, or to provide to, any person under the age of 18. Any person who violates this section shall forfeit not more than \$500 if the person has not committed a previous violation within 30 months of the violation, nor more than \$1,000 if the person has committed a previous violation within 30 months of the violation.”

**State Law reference** – Purchase or possession of cigarettes or tobacco products by person under 18 prohibited, Wis. Stat. § 254.92(2m).

Part 25: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City Common Council and publication or posting as required by law.

Fiscal Note: N/A

