

**Town Of Gibraltar
ORDINANCE 2022-19**

POSSESSION OF TOBACCO AND VAPOR PRODUCTS BY MINORS

Ordinance 2022-19 Identified in the code of ordinances as 10.27 shall repeal and replace any previous ordinance(s) in whole or part, or any other ordinances contradicting to this new ordinance.

The Town Board of Gibraltar, in the County of Door, State of Wisconsin, does hereby ordain as follows:

Purpose

- (a) The purpose of this section is to protect the public health, safety and welfare of the property and persons in the Town by prohibiting persons under 18 years of age from possessing tobacco products and vapor products and prohibiting the sale of tobacco products and vapor products to persons under 18 years of age.
- (b) Persons under age 18 years of age 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 smoking devices," "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 currently purchased by minors, are marketed without age restrictions or health warnings, and come in flavors that appeal to young people.
- (c) Electronic smoking 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) are 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. Many manufacturers also make nicotine-free solutions.
- (d) The production and distribution of electronic smoking devices is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration (FDA) has not completed testing of these products. Initial studies by the FDA have determined that electronic smoking devices 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.
- (e) The use of electronic smoking devices has increased significantly in recent years.
- (f) Existing studies on electronic smoking devices' vapor emissions and cartridge contents have found several dangerous substances including:
 - (1) Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium;

- (2) PM, 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 a liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine.
- (h) Clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over 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.
- (i) 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.
- (j) The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing smoke-free environments in public places and places of employment.
- (k) It is the intent of the Town Board, in enacting the ordinance codified in this section, to provide for the public health, safety and welfare of its citizens 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 Gibraltar Town Board determines that prohibiting the sale, giving, or furnishing of electronic smoking devices to minors and prohibiting the purchase, possession, or use of electronic smoking devices by minors is in the Town's best interest and will promote public health, safety, and welfare.

State Statutes Adopted – Authority

The Board of Supervisors of the Town of Gibraltar is granted authority for adopting this ordinance under its general 60.10(2)(c) and 60.22(3), Wisconsin Statutes. The Town Board Adopts this Ordinance under its general village powers authority and 66.1014 of the Wisconsin Statutes, 2917 Act 59.

Definitions

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

- (a) Minor means an individual who is less than 18 years of age.
- (b) 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.

- (c) 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.
- (d) 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.
- (e) Public place means a public street, sidewalk, or park or any area open to the general public in a publicly owned or operated building or premises, or in a public place of business or school.
- (f) 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.
- (g) Use of a tobacco product or vapor product means to smoke, chew, suck, inhale, or otherwise consume a tobacco product or vapor product.
- (h) 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 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.

General Provisions

Consistent with § 254.92, Wis. Stats., a minor shall not do any of the following:

- (1) Purchase or attempt to purchase a tobacco product or vapor product.
- (2) Possess or attempt to possess a tobacco product or vapor product.
- (3) Use a tobacco product or vapor product in a public place.
- (4) 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.
 - (a) 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.
 - (b) An individual who violates subsection (a) shall be subject to the penalties listed in the juvenile bond schedule.
 - (c) An individual who violates subsection (b) shall be subject to the following penalties: For the first violation, the person is responsible for a civil infraction punishable by a civil fine of not less than \$25.00 nor more than \$125.00

(d) Subsection (a) 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 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.
- (2) 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.
- (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 the state police or a local police agency.

(e) Subsection (a) 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.

(f) 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 (a).

(5) Furnishing to minors. The following is consistent with § 134.66, Wis. Stats.

(a) 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 of this section is subject to a fine of not more than \$500.00 for each violation.

(b) Subsection (a) 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.

(c) Before selling, offering for sale, giving, or furnishing a vapor product to an individual, a person shall verify that the individual is at least 18 years of age by doing one of the following:

- (1) Examining a government-issued photographic identification that establishes that the individual is at least 18 years of age.
- (2) 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 18 years of age or older.

Penalty

Any person under 18 years of age who shall violate any of the provisions of this section shall, upon conviction thereof, forfeit not less than \$25.00, and not more than \$125.00 for the first and each subsequent offense, together with assessments, costs and surcharges as set forth the juvenile bond schedule of this Code.

Enforcement

- (a) Enforcement shall be by citation
- (b) Schedule of Deposits. Deposits shall be made in cash, money orders, or certified check to the Clerk of Door County Circuit Court, who shall provide a receipt to the other office and the amount of the forfeiture schedule shall be stated above or such amount that the Circuit Court of Door County hereafter affixes.
- (c) Any person, firm, or corporation, violating any of the sub-sections of this ordinance may stipulate to the guilt or no contest and may pay to the Clerk of Court a bond according to a schedule prescribed by the Circuit Court of Door County. Such stipulation will make it unnecessary for the subject charged to appear in court and will act as a basis for the court to enter judgment and order forfeiture of the bond. Forfeitures, penalty assessments, costs and fees shall be disbursed as provided in Wisconsin Statutes, Section 66.12.

Reference to Statutes

Reference to specific statutory sections whenever used in this ordinance, shall mean Wisconsin Statutes as amended, modified, repealed or otherwise altered by the State Legislature.

Severability

If any of this Ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, such a decision shall not affect the validity of any other provisions of this ordinance.