

ORDINANCE NO. \_\_\_\_\_

Ordinance to Create Section 9.36 of the West Allis Revised Municipal Code Relating to Electronic Smoking Device Sales.

By Alderperson Reinke

The Common Council of the City of West Allis do ordain as follows:

PART I. Section 9.36 of the Revised Municipal Code of the City of West Allis is hereby created to read as follows:

9.36 ELECTRONIC SMOKING DEVICE SALES.

(1) Findings. The Common Council of the City of West Allis finds that:

(a) Electronic smoking devices are battery operated devices designed to deliver nicotine, flavor, and/or other substances through a vapor inhaled by the user; and

(b) The use of electronic smoking devices has increased significantly in recent years, as evidenced by the fact that:

1. Between 2011 and 2015, e-cigarette use rose from 1.5 percent to 16.0 percent among high school students and from 0.6 percent to 5.3 percent among middle school students;

2. In 2013-14, 81 percent of current youth e-cigarette users cited the availability of appealing flavors as the primary reason for use;

3. In 2015, more than three (3) million middle and high school students were current users of e-cigarettes, and e-cigarettes were the most commonly used tobacco products among youth;

4. 9.3 percent of youth who have used electronic smoking devices have never smoked conventional cigarettes;

5. Between 2010 and 2011, rates of both awareness and use of unregulated electronic smoking devices by adults also increased significantly; and

(c) Some cartridges used by electronic smoking devices can be re-filled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine. As a result:

1. Poisonings from electronic smoking devices have increased dramatically in the past five (5) years from once a month in September 2010 to 215 a month in February 2014.

2. Analysis of reports of poisonings from electronic smoking devices finds that calls reporting exposure to electronic smoking devices are much more likely to involve adverse health effects when compared to calls reporting exposure to conventional cigarettes; and

(d) A study published in the Journal of Environmental and Public Health suggests that electronic smoking devices “may have the capacity to ‘re-normalize’ tobacco use in a demographic that has had significant denormalization of tobacco use previously.”; and

(e) 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; and

(f) The purported health benefits from electronic smoking devices have not been scientifically proven, and use of these devices has not been proven safe, either for their users or for bystanders. More than one study has concluded that exposure to vapor from electronic smoking devices may cause passive or secondhand vapor inhalation. Clinical studies about the safety and efficacy of electronic smoking devices have not been submitted to the Food and Drug Administration (FDA) for the more than 400 brands of electronic smoking devices that are on the market, and consumers have no knowledge of whether electronic smoking devices are safe; what types of concentration of potentially harmful chemicals the products contain; and what dose of nicotine the products deliver. The World Health Organization has strongly advised consumers against the use of electronic smoking devices until they are “deemed safe and effective and of acceptable quality by a competent national regulatory body.” The World Medical Association has determined that electronic smoking devices “are not comparable to scientifically-proven methods of smoking cessation” and that “neither their value as therapeutic aids for smoking cessation nor their safety as cigarette replacements is established.”; and

(g) Research indicates electronic smoking devices may lead youth to try other tobacco products. In addition, research indicates that

youth who use electronic smoking devices are more likely to use tobacco products, including cigarettes, than those youth who do not use electronic smoking devices; and

(h) Electronic smoking devices are currently unregulated and have been proven to emit nicotine, ultra-fine particles, volatile organic compounds, and other toxins. Inhalation of nicotine is proven to be dangerous to everyone, especially children and pregnant women. Exposure to ultrafine particles may exacerbate respiratory illnesses, such as asthma and may constrict arteries which could trigger a heart attack. The volatile organic compounds, such as formaldehyde and benzene, found in electronic smoking device aerosols, as well as conventional cigarette smoke, are proven carcinogens; and

(i) That a Harvard University health study found that high levels of diacetyl in 39 of 51 unique flavors of chemicals used in electronic smoking devices. Diacetyl is associated with bronchiolitis obliterans and other severe respiratory diseases among workers who have inhaled heated vapors containing diacetyl; and

(j) That existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances including: carcinogens such as formaldehyde, acetaldehyde, lead, nickel, and chromium; 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 premature death from heart attacks and stroke; inconsistent labeling of nicotine levels in electronic smoking device products; and in one instance, diethylene glycol, an ingredient used in antifreeze and toxic to humans; and

(k) That many news stories have detailed police reports of individuals using electronic smoking devices to smoke illegal narcotics such as marijuana wax, synthetic marijuana, liquid marijuana, and hash oil; and

(l) That in 2016, the FDA adopted regulations prohibiting the sale of electronic smoking devices to any person under age 18; and

(m) That on at least two occasions, the West Allis Police Department has discovered hash oil, a prohibited Schedule I narcotic, in electronic smoking device liquids offered for sale at West Allis businesses.

(2) Definitions.

(a) “Electronic Smoking Device” means an electronic device that can be used to deliver an inhaled dose of nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. It includes any such device whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, vape pen, or any other product name or descriptor.

(b) “Electronic Smoking Device Paraphernalia” means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices. It does not include any cigarette, as defined in Wis. Stat. § 139.30(1m), nicotine product, as defined in Wis. Stat. § 134.66(1)(f), or tobacco products, as defined in Wis. Stat. § 139.75(12).

(c) “Person” means any individual, firm, corporation, or organization.

(d) “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, including hookahs and marijuana, whether natural or synthetic, in any manner or in any form. Smoking also includes the use of an electronic smoking device which creates an aerosol or vapor in any manner or in any form or the use of any oral smoking device.

(3) License Required. No person shall sell, give, or furnish an electronic smoking device or electronic smoking device paraphernalia in the City of West Allis without having first obtained a license from the City of West Allis therefore. Only a person who complies with the requirements of this section shall be entitled to receive and retain a license.

(4) Sale to Minors Prohibited. No person shall sell, give, furnish, or cause to be sold, given, or furnished an electronic smoking device or electronic smoking device paraphernalia to a person less than 18 years of age.

(5) License Application. A written application for the license required by this section shall be filed with the City Clerk upon forms provided by the City Clerk. The annual license fee shall be \$100 and shall be paid at the time the initial application is filed or, for license renewals, prior to the expiration of a license. Any renewal licensee fee paid on July 1 or later shall be subject to a late fee of \$10. A licensee or applicant shall notify the City Clerk in writing if any

information listed on the application form has changed within ten (10) days of such change.

(6) License Investigation. The City Clerk shall notify the Chief of Police or Chief's designee to investigate the applicant to determine whether the applicant is at least eighteen (18) years of age, if an individual; if a partnership, that each partner is at least eighteen (18) years of age; and, if a corporation or other entity, that the designated agent is at least eighteen (18) years of age. Additionally, the Chief of Police or designee shall investigate whether the applicant is a habitual law offender and/or has committed a felony, misdemeanor, statutory violation punishable by forfeiture, or county or municipal ordinance violation in which the circumstances of the felony, misdemeanor, or other offense substantially relate to the circumstances of the licensed activity. The results of the investigation shall be furnished to the City Clerk in writing.

(7) License Issuance. Based upon the police investigation, the City Clerk shall either grant or deny the license. If the license is granted, the City Clerk shall name the licensee and the place wherein such business is authorized to be conducted. If the license is denied, the City Clerk shall set forth, in writing, to the applicant's last-known address the reasons for denial. An applicant who has been denied a license by the City Clerk may appeal the decision to the West Allis Common Council within twenty (20) days from the date of notification. The decision of the Common Council shall be final.

(8) License Year. The license year for licenses issued under this section shall be from July 1 to June 30 annually, unless sooner suspended or revoked.

(9) Posting of License. Every licensee shall display its license at all times in plain view of the public on the licensed premises. Duplicate licenses shall be issued to replace licenses which are misplaced or damaged so as to be illegible. The fee for a duplicate license shall be ten dollars (\$10).

(10) Truth of Statements. All matters submitted in writing to the City by any applicant or licensee pertaining to any license issued under this section shall be true.

(11) Conditions of License.

(a) Every applicant procuring a license thereby consents to the entry of the police or other duly authorized representatives of the City at all reasonable hours for the purpose of inspection and search and consents to the removal from said premises of all things and articles there had in violation of City ordinances or state laws.

(b) The licensee and/or employees and agents of the licensee shall cooperate with police investigations or investigations of any other duly authorized representative of the City. "Cooperate," as used in this subsection, shall mean calling the police when a disturbance of the peace or other violation occurs on the licensed premises and providing complete and truthful responses to any inquiries from the police or other duly authorized representative of the City. A licensee shall also appear before the License and Health Committee when requested to do so and shall otherwise follow the lawful directives of the License and Health Committee.

(c) Each licensed premises shall be conducted in an orderly manner, and no disorderly, riotous, or indecent conduct shall be allowed at any time on any licensed premises.

(d) The licensee shall comply with all other provisions of this section and all other ordinances of the City of West Allis and the laws of the State of Wisconsin.

(12) Transfer of License. No license shall be transferred to another person or premises.

(13) Location.

(a) No licensee shall be located within fifteen hundred (1500) feet of the boundary of any parcel occupied by:

(1) A public or private kindergarten, elementary, middle, junior high, or high school.

(2) A licensed child-care facility or preschool.

(3) A public park.

(4) A public playground.

(5) A public library.

(b) No licensee shall be located within five hundred (500) feet of a site occupied by another licensee under this section.

The distance shall be measured from the closest boundary line of the real property on which the licensee is located to the closest real property boundary line of the real property on which the school is located.

(14) Vending Machines and Self-Service Displays Prohibited. No licensee shall sell, give, furnish, or cause to be sold, given, or furnished an electronic smoking device or electronic smoking device paraphernalia by use of a vending machine or self-service display unless the licensee ensures that no minor is present or permitted to enter the premises at any time.

(15) Nuisance Enforcement. In addition to the penalties listed within this section, the City Attorney or his/her designee or the Police Chief or his/her designee may pursue a nuisance enforcement action against a person selling, giving, or furnishing electronic smoking devices under Chapter 18 of this Code.

(16) License Revocation.

(a) Causes. Any license issued under this section may be suspended, revoked, or nonrenewed for cause by the Common Council after notice to the licensee and a hearing. Licenses may be suspended, revoked, or not renewed for the following causes:

1. The making of any material false statement in any application for a license.

2. The violation of any of the applicable provisions of this section.

3. The failure to conduct its licensed business at the authorized location for a period of thirty (30) consecutive days, unless such thirty-day period shall, for good cause shown, be extended by the Common Council.

4. The licensed premises is operated in such a manner that it constitutes a public or private nuisance or that conduct on or emanating from the licensed premises, including but not limited to loud and raucous noise, has had a substantial adverse effect upon the health, safety, convenience, or prosperity of the immediate neighborhood.

5. The failure to pay any tax or forfeiture as provided in Section 1.08(9)(a) and (b).

(b) Commencement of Proceedings. Suspension, revocation, or nonrenewal proceedings may be instituted by the License and Health Committee of the Common Council upon its own motion or upon sworn written charges made and filed with the City Clerk by the Chief of Police or Health Commissioner.

(c) Procedure. The procedure for suspension, revocation, and nonrenewal of licenses shall be as set forth in Subsection 9.02(20)(d) through (h) of the Revised Municipal Code.

PART II. All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

PART III. This ordinance shall take effect and be in force from and after its passage and publication.

PASSED: \_\_\_\_\_, 2016

\_\_\_\_\_  
City Clerk

APPROVED: \_\_\_\_\_, 2016

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Mayor