

ORDINANCE NO. 2024-06

AN ORDINANCE AMENDING CHAPTER 195, ARTICLE I, CIGARETTES AND TOBACCO PRODUCTS,  
OF THE VILLAGE OF ALLOUEZ MUNICIPAL CODE

SECTION 1. THE VILLAGE BOARD OF THE VILLAGE OF ALLOUEZ, BROWN COUNTY, WISCONSIN,  
DOES ORDAIN THAT CHAPTER 195, CIGARETTES AND TOBACCO PRODUCTS, OF THE VILLAGE  
OF ALLOUEZ MUNICIPAL CODE BE AMENDED TO READ AS FOLLOWS:

Article I

Chapter 195 Cigarettes, **Electronic Vaping Devices**, and Tobacco Products

Licensing

§ 195-1 Definitions.

The following terms have the meanings indicated as now provided in the Wisconsin Statutes, and as the same may be hereafter amended:

CIGARETTE

Has the meaning given in § 139.30(1m), Wis. Stats.

DISTRIBUTOR

Any of the following:

- A. A person specified under § 139.30(3), Wis. Stats.
- B. A person specified under § 139.75(4), Wis. Stats.

**ELECTRONIC VAPING DEVICE**

Has the meaning given in §134.65(1a)(b), Wis. Stats.

IDENTIFICATION CARD

Any of the following:

- A. A license containing a photograph issued under Ch. 343, Wis. Stats.
- B. An identification card issued under § 343.50, Wis. Stats.
- C. An identification card issued under § 125.08, 1987 Wis. Stats.

JOBBER

Has the meaning given in § 139.30(6), Wis. Stats.

MANUFACTURER

Any of the following:

- A. A person specified under § 139.30(7), Wis. Stats.
- B. A person specified under § 139.75(5), Wis. Stats.

RETAILER

Any person licensed under § 134.65(1), Wis. Stats.

SCHOOL

Has the meaning given in § 118.257(1)(d), Wis. Stats.

STAMP

Has the meaning given in § 139.30(13), Wis. Stats.

SUBJOBBER

Has the meaning given in § 139.75(11), Wis. Stats.

TOBACCO PRODUCTS

Has the meaning given in § 139.75(12), Wis. Stats.

VENDING MACHINE

Has the meaning given in § 139.30(14), Wis. Stats.

VENDING MACHINE OPERATOR

Has the meaning given in § 139.30(15), Wis. Stats.

**§ 195-2 License for retail sales.**

- A. No person shall in any manner, or upon any pretense, or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes, **electronic vaping devices** or tobacco products to any person not holding a license as herein provided or a permit under §§ 139.30 to 139.41 or 139.79, Wis. Stats., without first obtaining a license from the Clerk-Treasurer of the Village of Allouez. **The provisions of Wis. Stat. §134.65 are hereby adopted and made a part of this article by reference.**
- B. Upon the filing of a proper written application, a license shall be issued and continue in force for one year from date of issuance unless sooner revoked. The fee for the license is as provided in Chapter 225, Fees and Charges, of the Allouez Code, which shall be paid to the Village Clerk-Treasurer before the license is issued.
- C. Each such license shall name the licensee and specifically describe the premises where such business is to be conducted. Such licenses shall not be transferable from one person to another nor from one premises to another.
- D. Every licensed retailer shall keep complete and accurate records of all purchases and receipts of cigarettes, **electronic vaping devices**, and tobacco products. Such records shall be preserved on the licensed premises for two years in such a manner as to ensure permanency and accessibility for inspection and shall be subject to inspection at all reasonable hours by authorized state and local law enforcement officials.

**§ 195-3 Restrictions on sales to minors.**

- A. No retailer, manufacturer or distributor may sell or give cigarettes, **electronic vaping devices** or tobacco products to any person under the age of 18, except as provided in § 254.92(2)(a), Wis. Stats. A vending machine operator is not liable under this subsection for the purchase of cigarettes, **electronic vaping devices** or tobacco products from his or her vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.
- B. A retailer shall post a sign in areas within his or her premises where cigarettes, **electronic vaping**

devices or tobacco products are sold to consumers stating that the sale of any cigarette, electronic vaping devices, or tobacco product to a person under the age of 18 is unlawful under this section and § 254.92, Wis. Stats.

~~C.—A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under § 254.92, Wis. Stats., and that the purchaser is subject to a forfeiture of not to exceed the amount provided in § 195-5 of this article. (relocate under “vending machines”)~~

**~~D.C. Vending machines.~~**

~~(1) Except as provided in Subsection E below, nNo retailer may keep a vending machine in any public place that is open to persons under the age of 18 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 the age of 18 years. unless all of the following apply:~~

~~(a) The vending machine is in a place where it is ordinarily in the immediate vicinity, plain view and control of an employee.~~

~~(b) The vending machine is in a place where it is inaccessible to the public when the premises is closed.~~

~~(2) The person who ultimately controls, governs or directs the activities within the premises where the vending machine is located shall ensure that an employee of the retailer remains in the immediate vicinity, plain view and control of the vending machine whenever the premises is open.~~

~~(3) Except as provided in Subsection D(4) below, a vending machine operator shall remove all of his or her vending machines that are located in any place prohibited by this subsection.~~

~~(4) Notwithstanding Subsection D(3) above, if a written agreement binding on a vending machine operator governs his or her vending machine that is located in any place prohibited by this subsection, the vending machine operator shall remove the vending machine on the date that the written agreement expires or would be extended or renewed, whichever occurs first.~~

~~(2) A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette, electronic vaping device or tobacco product by a person under the age of 18 is unlawful under § 254.92, Wis. Stats., and that the purchaser is subject to a forfeiture of not to exceed the amount provided in § 195-5 of this article.~~

**~~E.—Proximity to schools.~~**

~~(1) Notwithstanding Subsection D above, nNo retailer may place a vending machine within 500 feet of a school.~~

~~(2) Except as provided in Subsection E(3) below, a vending machine operator shall remove all of his or her vending machines which are located within 500 feet of a school.~~

~~(3) Notwithstanding Subsection E(2) above, if a written agreement binding on a vending machine operator governs the location of his or her vending machine which is located within 500 feet of a school, the vending machine operator shall remove the vending machine on the date that the written agreement expires or would be extended or renewed, whichever occurs first.~~

~~(4) No manufacturer, distributor, jobber, subjobber or retailer, or its employees or agents, may~~

~~provide cigarettes or tobacco products for nominal or no consideration to any person under the age of 18.~~

~~(5) No retailer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under § 139.32(1), Wis. Stats.~~

**FD.** Defense of retailer, manufacturer and distributor. Proof of all of the following facts by a retailer, manufacturer or distributor who sells cigarettes, **electronic vaping devices** or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of Subsection A:

- (1) That the purchaser falsely represented that he or she had attained the age of 18 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 the age of 18; and
- (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 the age of 18.

#### **§ 195-4 Revocation or suspension of licenses.**

- A. The Village Board shall have the power to revoke or suspend any license or permit issued under this article for a violation of this article.
- B. The proceedings shall be commenced by a summons, signed by the Village Clerk-Treasurer, directed to any peace officer, commanding the licensee to appear before the Village Board on a day certain and at a place named in such summons, not less than 20 days from the date it is served on the licensee, to show cause why the license or licenses should not be revoked or suspended. The summons may be served on the licensee personally or upon the person in charge of the place to which the license related.
- C. A complaint signed by the Village Clerk-Treasurer, stating the grounds for the proposed revocation or suspension, shall be served at the same time as the summons.
- D. If the licensee does not appear at the hearing, the complaint shall be taken as true. If the licensee appears at the hearing and denies the complaint, each party may produce witnesses and be heard by counsel. If, upon such hearing, the Board shall find that any of the alleged grounds stated in the complaint are true, the license may be suspended for not less than 10 days nor more than 90 days, or be revoked. If the Board shall find the complaint to be untrue, the proceedings shall be dismissed without costs to the accused. When a license is suspended or revoked, it shall be so entered of record by the Village Clerk-Treasurer, and the Village Clerk-Treasurer shall forthwith notify the Wisconsin Department of Revenue of such suspension or revocation. No other license shall be granted to such person within 12 months of the date of a license revocation nor shall any part of the money paid for any license so suspended or revoked be refunded.

#### **§ 195-5 Violations and penalties.**

- A. Any person violating § 195-2 of this article shall be subject to a forfeiture of not more than \$100 nor less than \$25 for the first offense and not more than \$200 nor less than \$25 for the second or subsequent offense. If, upon such second or subsequent violation, the person so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, the person shall be subject to a forfeiture of not more than \$300 nor less than \$25. Conviction shall immediately terminate the license or permit of the person convicted of being personally guilty of such failure to exercise due care and the person shall not be entitled to another license or permit hereunder for a period of five years thereafter, nor shall the person in that period act as the

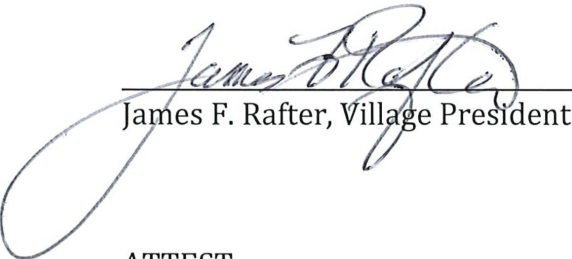
servant or agent of a person licensed hereunder for the performance of the acts authorized by such license or permit.

- B. A person who commits a violation of § 195-3 of this article is subject to a forfeiture of:
- (1) Not more than \$500 if the person has not committed a previous violation within 12 months of the violation; or
  - (2) Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.
- C. A court shall suspend any license or permit issued under § 134.65, 139.34 or 139.79, Wis. Stats., or § 195-2 of this article to a person for:
- (1) Not more than three days, if the court finds that the person committed a violation within 12 months after committing one previous violation;
  - (2) Not less than three days nor more than 10 days, if the court finds that the person committed a violation within 12 months after committing two other violations; or
  - (3) Not less than 15 days nor more than 30 days, if the court finds that the person committed the violation within 12 months after committing three or more other violations.
- D. The court shall promptly mail notice of a suspension under Subsection C above to the Department of Revenue and to the Clerk-Treasurer of the Village of Allouez.
- E. **Any person who violates the requirement that a retailer post a sign in areas within his or her premises where cigarettes, electronic vaping devices or tobacco products are sold to consumers stating that the sale of any cigarette or tobacco product to a person under the age of 18 is unlawful shall forfeit not more than \$25.00.**

**SECTION 2.** All ordinances or parts of ordinances, in conflict herewith are hereby repealed.

**SECTION 3.** This ordinance shall take effect upon its adoption and publication.

Approved and adopted this 21<sup>st</sup> day of May, 2024.

  
James F. Rafter, Village President

ATTEST:

  
Carrie C. Zittlow, Village Clerk