

ORDINANCE No. 957AN ORDINANCE TO REVISE THE REQUIREMENTS RELATING TO THE
USE AND SALE OF ELECTRONIC NICOTINE DELIVERY SYSTEMS (ENDS)
AND E-LIQUID IN THE VILLAGE OF GREENDALE

WHEREAS, the purpose of this chapter is to protect the public health, safety and welfare of the property and persons in the Village by prohibiting persons under 18 years of age from possessing cigarettes, tobacco and vapor products and prohibiting the sale of cigarettes, tobacco and vapor products to persons under 18 years of age; and

WHEREAS, persons under age 18 are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. Now, there are many tobacco-less products available, commonly referred to as "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 and introduce vapor products into one's body. These products are being purchased by minors and are being marketed without age restrictions or health warnings and come in a variety of flavors that appeal to young people; and

WHEREAS, all ENDS products became subject to the premarket authorization requirements in the Tobacco Control Act on August 8, 2016 and the U.S. Food and Drug Administration ("FDA") regulates the manufacture, import, packaging, labeling, advertising, promotion, sale, and distribution of ENDS. Further, initial studies by the FDA have determined that use of vapor products and ENDS 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; and

WHEREAS, the use of ENDS has increased significantly in recent years, as evidenced by the fact that:

- a. In 2020, the FDA's National Youth Tobacco Survey (NYTS) found that disposable e-cigarette use among high school students increased from 2.4% in 2019 to 26.5% in 2020 – a 1,000% increase; and
- b. Similarly, disposable e-cigarette use among middle school students increased from 3.0% to 15.2% percent – a 400% increase; and
- c. According to a 2020 study by the Centers for Disease Control and Prevention ("CDC"), 85% of high school students and 74% of middle school students who used tobacco products in the past 30 days reported using a flavored tobacco product during that time; and
- d. In 2021, 74% of students who used social media had seen e-cigarette–related posts or content; and

- e. According to the CDC, in 2016, approximately 1/3 of U.S. middle school and high school students who had ever used an e-cigarette also reported using marijuana in the device. According to a 2021 Youth Risk Behavior Study conducted in the Village of Greendale, 29% of Greendale High School students had tried vaping (with 37% of seniors reporting they had tried vaping), 14% of Greendale High School students reported currently vaping (with 20% of the juniors reporting they currently vape), and 64% of Greendale High School students who vape had tried to quit within the past 12 months; and

WHEREAS, according to the American Lung Association (ALA), electronic smoking devices use a special liquid that fills the cartridges which usually contains nicotine (which is extracted from tobacco), propylene glycol, flavorings, and other chemicals. ALA reports the following toxic chemicals and metals have all been found in electronic smoking devices:

- a. Nicotine – a highly addictive substance that negatively affects adolescent brain development; and
- b. Propylene glycol – a common additive in food; also used to make things like antifreeze, paint solvent, and artificial smoke in fog machines; and
- c. Carcinogens - chemicals known to cause cancer, including acetaldehyde and formaldehyde; and
- d. Acrolein – a herbicide primarily used to kill weeds which can cause irreversible lung damage; and
- e. Diacetyl – a chemical linked to a lung disease called bronchiolitis obliterans aka "popcorn lung"; and
- f. Diethylene glycol – a toxic chemical used in antifreeze that is linked to lung disease; and
- g. Heavy metals such as nickel, tin, lead; and
- h. Cadmium – a toxic metal found in traditional cigarettes that causes breathing problems and disease; and
- i. Benzene – a volatile organic compound (VOC) found in car exhaust; and
- j. Ultrafine particles that can be inhaled deep into the lungs; and

WHEREAS, a Harvard University health study found high levels of diacetyl in 39 of 51 unique flavors of chemicals used in ENDS. Diacetyl is associated with bronchiolitis obliterans and other severe respiratory diseases among workers who have inhaled heated vapors containing diacetyl; and

WHEREAS, as of August 2019, the University of Wisconsin Center for Tobacco Research and Intervention has found several cases of severe breathing complications and lung disease linked to vaping; and

WHEREAS, since April 2019, the FDA has received at least 118 new reports of e-cigarette users experiencing seizures and similar incidents. The agency has received at least 127 reports of neurological events following e-cigarette use between 2010 and 2019; and

WHEREAS, as of February 18, 2020, 2,807 people have been reported to the CDC as hospitalized due to vaping and there have been 68 deaths confirmed related to vaping; and

WHEREAS, ENDS emit ultrafine particles, volatile organic compounds, and other toxins. 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 are proven carcinogens; and

WHEREAS, Defective e-cigarette batteries have caused fires and explosions which have resulted in serious injuries; and

WHEREAS, the National Poison Data System reported 7,043 potential poisonings by e-cigarettes from April 2022 through March 2023, with nearly 9 in 10 cases concerning children under five years old; and

WHEREAS, Some cartridges used by ENDS can be refilled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine. The CDC has found that:

- a. Most e-cigarettes contain nicotine and that 99% of the e-cigarettes sold in assessed venues in the U.S. contained nicotine; and
- b. Some e-cigarette labels do not disclose that they contain nicotine, and some e-cigarettes marketed as containing 0% nicotine have been found to contain nicotine; and
- c. Nicotine can harm the developing adolescent brain (which continues to develop until about age 25); and
- d. According to the Truth Initiative, nicotine in any form is harmful to developing brains. Adolescent use can disrupt the formation of brain circuits that control attention, learning, and may make them more susceptible to addiction at a later age. Research has shown that early age of smoking and pleasurable initial experiences are correlated with daily use and a lifetime of nicotine dependence; and
- e. Nicotine can worsen anxiety symptoms and amplify feelings of depression and stress; and
- f. Using nicotine in adolescence may also increase risk for future addiction to other drugs; and
- g. A single JUUL pod (a device brand) contains as much nicotine as a pack of 20 regular cigarettes; and

- h. When a person is dependent on (or addicted to) nicotine and stops using it, their body and brain must get used to not having nicotine. This can result in temporary symptoms of nicotine withdrawal; and
- i. Youth may turn to vaping to try to deal with stress or anxiety, creating a cycle of nicotine dependence, but nicotine addiction can be a source of stress; and
- j. The most common reason youth give for continuing to use e-cigarettes is "I am feeling anxious, stressed, or depressed;" and
- k. Youth e-cigarette and cigarette use have been associated with mental health symptoms such as depression; and
- l. What may start as social experimentation can become an addiction. The most common reason U.S. middle and high school students give for trying an e-cigarette is "a friend used them;" and

WHEREAS, a study published in the Journal of Environmental and Public Health suggests that ENDS "may have the capacity to 're-normalize' tobacco use in a demographic that has had significant denormalization of tobacco use previously"; and

WHEREAS, research indicates ENDS may lead youth to try tobacco products. In addition, research indicates that youth who use ENDS are more likely to use tobacco products, including cigarettes, than those youth who do not use ENDS. According to the CDC, cigarette smoking is the leading cause of preventable death in the United States. Cigarette smoking causes more than 480,000 deaths each year in the United States. This is nearly one in five deaths. Smoking causes more deaths each year than the following causes combined: Human immunodeficiency virus (HIV), Illegal drug use, Alcohol use, Motor vehicle injuries, and Firearm- related incidents; and

WHEREAS, the use of ENDS in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

WHEREAS, ENDS may be used to vaporize and ingest controlled substances, such as marijuana wax, synthetic marijuana, liquid marijuana, and hash oil. According to the CDC, in 2019 37% of US high school students reported lifetime use of marijuana and 22% reported use in the past 30 days. Past-year vaping of marijuana also remained steady in 2020 following large increases in 2018 and 2019. However, large percentages of middle and high school students reported past-year marijuana vaping—8% of eighth graders, 19% of 10th graders, and 22% of 12th graders; and

WHEREAS, 33 states currently require a license to sell e-cigarettes; and

WHEREAS, the Village Board finds that by restricting the number of establishments with the ability to sell vapor products will benefit the health, safety and welfare of the Village by reducing the use of said products by local youth; and

WHEREAS, the Wisconsin Statutes Section 134.65 was recently revised by the Wisconsin Legislature to include ENDS and other electronic vaping devices to the regulations of cigarette and tobacco products; and

WHEREAS, upon review of the Village Code, the Village Manager recommended certain revisions be made to the Village's ordinances relating to the sale and use of ENDS; and

WHEREAS, the Village Board finds that the revisions to the ordinances relating to the sale and use of ENDS will be a benefit to the health, general welfare, and safety of the Village of Greendale.

NOW, THEREFORE, the Village Board for the Village of Greendale, Milwaukee County, Wisconsin, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 9 of the Municipal code of the Village of Greendale entitled "Public Peace and Good Order," Section 9.21 entitled "Smoking" is retitled as "Smoking, Vapor Products, Electronic Nicotine Delivery Systems (ENDS), and E-Liquid" Subsections (5), (6) and are hereby repealed and re-created as follows.

9.21 Smoking, Vapor Products, Electronic Nicotine Delivery Systems (ENDS), and E-Liquid

(5)

- a. As used in this section, electronic vaping device vapor products shall be defined consistent with Wis. Stats. Section 134.65(1a)(b): as: Noncombustible products that may or may not contain nicotine (from the tobacco plant or synthetic), that employ a mechanical heating element, battery, electronic circuit or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form including, but not limited to, ENDS, e-liquid, an electronic cigarette, disposable vapes, electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor products" shall include any vapor cartridge, solution or other container that may or may not contain nicotine that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor products" do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act. a device that may be used to deliver any aerosolized or vaporized liquid or other substance for inhalation, regardless of whether the liquid or other substance contains nicotine, including an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. "Electronic vaping device" includes a component, part, or accessory of the device, and includes a liquid or other substance that may be aerosolized or vaporized by such device, regardless of whether the liquid or other substance contains nicotine. "Electronic vaping device" does not include a battery or battery charger when sold separately. "Electronic vaping device" does not include drugs, devices, or combination products authorized for sale by the U.S. food and drug administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

- b. The provisions of this Chapter shall be applicable to electronic vaping device vapor-products as defined above.
- (6) No person may use any electronic vaping device vapor-product in any Village buildings, facilities, or vehicles. Buildings shall include all that area enclosed within the outermost entry doors.
- (7) Use of Electronic Vaping Devices Vapor-Products on School Grounds
- a. No person under the age established by the laws of the State of Wisconsin allowed to possess any cigarette, tobacco, or electronic vaping device vapor-product may possess any cigarette, tobacco, or electronic vaping device vapor-product at any time inside any building owned, leased or used by a public school in the Village.
 - b. No person may smoke, light, ingest, chew, inhale or otherwise use any cigarette, tobacco or electronic vaping device vapor-product or smoke from a cigarette or tobacco product, or use any electronic vaping device vapor-product, at any time, inside any building owned, leased or used by a public school in the Village.
 - c. No person, regardless of age, may smoke, light, ingest, chew, inhale or otherwise use any cigarette, tobacco product or electronic vaping device vapor-product, smoke from a cigarette or tobacco product or use any electronic vaping device vapor-product on land owned, leased, or used by a public school in the Village on any day.
 - d. No person may smoke, light, ingest, chew, inhale or otherwise use any cigarette, tobacco product or electronic vaping device vapor-product, while attending a function or event at a school, or while attending a function or event on public school grounds in the Village.

SECTION 2: Chapter 12 of the Municipal Code of the Village of Greendale entitled "Licenses and Permits," Section 12.01 entitled "License required; fee," Section (32) is hereby repealed and re-created as follows.

(32) Vapor products: Fee to be set by the Village Board by resolution and listed in the Village Fee Schedule

SECTION 3: Chapter 12 of the Municipal Code of the Village of Greendale entitled "Licenses and Permits," Section 12.28 entitled "Vapor Products" is hereby repealed, re-created, and renamed as follows:

12.28 Electronic Vaping Devices Vapor-Products

- (1) License required. No person shall sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any Electronic Vaping Devices Vapor-Products to any person without first obtaining a license from the Clerk. No new license shall be issued to any business engaged in the sale of Electronic Vaping Devices vapor-products if it is located within 1,000 feet of a school.

(2) Application. Upon filing of a proper written application, such license shall be issued on July 1 of each year or when applied for and continued in force until the following June 30, unless sooner revoked. The fee for such license shall be as provided in § 12.01 of this chapter, which shall be paid to the Clerk before the license is issued.

(3) Information required. ~~Each such license shall name the licensee and specifically describe the premises where such business is to be conducted. Such license shall not be transferable from one person to another nor from one premises to another.~~ The following information shall be provided with an application:

1. The applicant's history relevant to the applicant's fitness to hold a license.
2. The kind of license for which the applicant is applying.
3. The premises where electronic vaping devices will be sold or stored.
4. If the applicant is a corporation, the identity of the corporate officers and agent.
5. If the applicant is a limited liability company, the identity of the company members or managers and agent.
6. The applicant's trade name, if any.
7. Whether the applicant will sell, exchange, barter, dispose of, or give away the electronic vaping devices over the counter or in a vending machine, or both.
8. Any other information required by the department of revenue.

A license shall not be issued unless the applicant meets the following requirements:

1. Subject to Wis. Stats. Sections 111.321, 111.322, and 111.335, the applicant has not habitually been a law offender or been convicted of a felony unless pardoned.
2. The applicant has submitted the proof required under Wis. Stats. Section 77.61 (11).

(4) Records. Each licensed retailer shall keep complete and accurate records of all purchases and receipts of ~~Electronic Vaping Devices~~Vapor Products. Such records shall be preserved on the licensed premises for two years in such 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.

(5) Restrictions on sale or gift of ~~Electronic Vaping Devices~~Vapor Products. Section 134.66, Wis. Stats., placing restrictions on sale or gift of cigarettes or tobacco products is adopted by reference and made a part of this section and shall apply to the sale of ~~Electronic Vaping Devices~~Vapor Products, as though set forth in full.

(6) Revocation. ~~An Electronic Vaping Devices~~ Vapor Products license issued pursuant to this section shall be revoked if the licensed business or employee is convicted of sales to persons under the age established by the laws of the State of Wisconsin allowed to purchase ~~Electronic Vaping Devices~~ Vapor Products.

three (3) times within a two (2) year period. The date of conviction shall be used as the date for calculating the convictions within the two (2) year period. Revocation can also occur for violations of 134.65(5), Wis. Stats., which is incorporated herein by reference.

(7) Quota. There shall be a limit of three (3) Electronic Vaping Devices Vapor-Products licenses granted by the Village Board within the Village of Greendale. Any establishment legally selling Electronic Vaping Devices Vapor-Products on the effective date of this ordinance shall be permitted to continue selling such Electronic Vaping Devices Vapor-products. If any establishment selling Electronic Vaping Devices Vapor-Products on the effective date of this ordinance shall cease business or have its Electronic Vaping Devices Vapor-Products license become invalid, either by nonrenewal or revocation, a new license shall not be approved until the number of valid licenses within the Village shall be reduced to two or less.

(7)(8) Display of License. An Electronic Vaping Devices license shall be enclosed in a frame that has a transparent front that allows the license to be read clearly. The licensee shall conspicuously display the license for public inspection at all times in the room or place where the activity subject to licensure is carried out.

SECTION 4: Chapter 19 of the Municipal Code of the Village of Greendale entitled "Recreation," Section 19.05 entitled "Smoking," is hereby repealed and re-created as follows.

19.05 No person shall be permitted to smoke or hold a cigarette, cigar, or pipe, or use any Electronic Vaping Devices vapor-products as defined in section 9.21(5)(a) of this Code, in any Village park building or section of a building or in any public park area.

SECTION 5: SEVERABILITY. The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision and shall not affect the validity of any other provisions, sections, or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 6: EFFECTIVE DATE. This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

(signatures on following page)

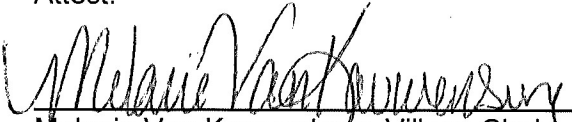
Adopted by the Village Board of the Village of Greendale, Milwaukee County, Wisconsin, this
19th day of March, 2024.

VILLAGE OF GREENDALE



Jason Cyborowski, Village President

Attest:



Melanie Van Kauwenberg, Village Clerk

