

AN ORDINANCE TO AMEND SECTIONS 9.041, 9.042, AND 9.043
OF THE GERMANTOWN MUNICIPAL CODE RELATING TO THE
USE, POSSESSION AND SALE OF NICOTINE AND VAPOR PRODUCTS

WHEREAS, the Village Board previously adopted Chapter 9 of the Municipal Code which includes certain regulations related to the use of cigarettes and tobacco products within the Village; and

WHEREAS, there has been a proliferation of alternative nicotine and vapor products that possess the same health concerns as cigarettes and other tobacco products, but which do not meet the definitions of those terms; and

WHEREAS, the Village Board wishes to regulate the use, possession and sale of nicotine and vapor products within the Village; and

WHEREAS, the regulation of use, possession and sale of nicotine and vapor products promotes the health safety and welfare of the Community;

NOW, THEREFORE, the Village Board of the Village of Germantown, Wisconsin, do ordain as follows:

SECTION I

Section 9.041 of the Germantown Municipal Code is hereby amended to read as follows (NOTE: additions are underlined, deleted text is ~~struck-through~~):

9.041 USE OF CIGARETTES, ~~AND TOBACCO,~~ NICOTINE AND VAPOR PRODUCTS.

(1) **DEFINITIONS.** The terms used herein shall be defined as follows:

- (a) Cigarette. The meaning given in §139.30(1), Wis. Stats.
- (b) Law Enforcement Officer. The meaning given in §30.50(4s), Wis. Stats.
- (c) Tobacco Products. The meaning given in §139.75(12), Wis. Stats.
- (d) Smoking. The meaning given in §101.123(1)(h), Wis. Stats.
- (e) Nicotine Products. The meaning given in §134.66(1)(f), Wis. Stats.
- (f) Vapor Products. Shall mean noncombustible products, that may or may not contain nicotine, 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 an electronic cigarette, 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.

- (2) **PROHIBITED.** Except as provided in subsection (3) below, no person under 18 years of age may do any of the following:
 - (a) Buy or attempt to buy any cigarette, Tobacco, Nicotine or Vapor Products ~~or tobacco product~~.
 - (b) Falsely represent his or her age for the purpose of receiving any cigarette, Tobacco, Nicotine or Vapor Products ~~or tobacco products~~.
 - (c) Possess any cigarette, Tobacco, Nicotine or Vapor Products ~~or tobacco product~~.
- (3) **EXCEPTIONS.** A person under 18 years of age may purchase cigarettes, Tobacco, Nicotine or Vapor 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 §134.65(1), Wis. Stats.
- (4) **ENFORCEMENT.** A law enforcement officer shall seize any cigarette, Tobacco, Nicotine or Vapor Products ~~or tobacco product~~ involved in any violation of subsection (2) above committed in his presence.
- (5) **AUTHORITY.** This section is adopted pursuant to § 254.92(4) ~~938.983~~, Wis. Stats.

SECTION II

Section 9.042 of the Germantown Municipal Code is hereby amended to read as follows (NOTE: additions are underlined, deleted text is ~~struck-through~~):

9.042 RESTRICTIONS ON SALE OR GIFT OF CIGARETTES, OR TOBACCO, NICOTINE OR VAPOR PRODUCTS

- (1) **DEFINITIONS.** The definitions set forth in §134.66(1), Wis. Stats., and Sec. 9.041(1) are hereby adopted by reference and made a part hereof.
- (2) **RESTRICTIONS.**
 - (a) [~~Age Restriction; Liability~~.] No retailer may sell or give cigarettes, Tobacco, Nicotine or Vapor Products ~~or tobacco products~~ to any person under the age of 18, except as provided in §~~938.983(3)~~254.92(2)(a),

Wis. Stats. A vending machine operator is not liable under this paragraph for the purchase of cigarettes, Tobacco, Nicotine or Vapor Products ~~or tobacco products~~ from his vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.

(b) ~~{Posting of Signs and Notices .}~~

1. A retailer shall post a sign in areas within his premises where cigarettes, Tobacco, Nicotine or Vapor Products ~~or tobacco products~~ are sold to consumers stating that the sale of any cigarette, Tobacco, Nicotine or Vapor Products ~~or tobacco product~~ to a person under the age of 18 is unlawful under this section and ~~§938.983~~§938.254.92, Wis. Stats.
2. A vending machine operator shall attach a notice in a conspicuous place on the front of his vending machines stating that the purchase of any cigarette, Tobacco, Nicotine or Vapor Products ~~or tobacco product~~ by a person under the age of 18 is unlawful under this section and §938.254.92, Wis. Stats., ~~and that the purchaser is subject to a forfeiture not to exceed \$25.00.~~

(c) ~~{Location and Control of Vending Machines .}~~

1. Except as provided in paragraph (d) below, no retailer may keep a vending machine in any public place that is open to persons under the age of 18 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 are 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 are open.

(d) ~~{Location of Vending Machines to Proximity of Schools .}~~

1. No person may place a vending machine within 500 feet of a school.
2. Except as provided in subparagraph 3., below, a vending machine operator shall remove all of his vending machines which are located within 500 feet of a school by September 1, 1989.
3. Notwithstanding subparagraph 2., above, if a written agreement binding on a vending machine operator governs the location of his vending machine which is located within 500 feet of a school, the vending machine owner shall remove the vending machine on the

date that the written agreement expires or would be extended or renewed.

- (e) ~~{Providing to Persons Under 18. }~~ No manufacturer, distributor, jobber, sub-jobber or retailer, or their employees or agents, may provide cigarettes, Tobacco, Nicotine or Vapor Products ~~or tobacco products~~ for nominal or no consideration to any person under the age of 18.
- (f) ~~{Stamp Required. }~~ 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.

(3) **DEFENSE OF RETAILER.** Proof of all of the following facts by a retailer who sells cigarettes, Tobacco, Nicotine or Vapor Products ~~or tobacco products~~ to a person under the age of 18 is a defense to any prosecution for a violation of subsection (2) above:

- (a) That the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card.
- (b) 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.
- (c) 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.

(4) **PENALTIES.**

- (a) 1. In this subsection, "violation" means a violation of subsection (2)(a), (c), (d), (e), or (f) above.
- 2. A person who commits a violation is subject to a forfeiture of:
 - a. Not more than \$500.00 if the person has not committed a previous violation within 12 months of the violation; or
 - b. Not less than \$200.00 nor more than \$500.00 if the person has committed a previous violation within 12 months of the violation.
- 3. A court shall suspend any license or permit issued under §134.65, 139.34 or 139.79, Wis. Stats., to a person for:
 - a. Not more than 3 days if the court finds that the person committed a violation within 12 months after committing one previous violation; or
 - b. Not less than 3 days nor more than 10 days if the court finds that the person committed a violation within 12 months after committing 2 other violations; or

- c. 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 3 or more other violations.
- 4. The court shall promptly mail notice of a suspension under subparagraph 3., above, to the Department of Revenue and to the clerk of each municipality which has issued a license or permit to the person.
- (b) Whoever violates subsection (2)(b) above, shall forfeit not more than \$25.00.
- (5) **AUTHORITY.** This section is adopted pursuant to §134.66, Wis. Stats.

SECTION III

Section 9.043 of the Germantown Municipal Code is hereby amended to read as follows (NOTE: additions are underlined, deleted text is ~~struck-through~~):

9.043 USE OF TOBACCO, NICOTINE OR VAPOR PRODUCTS ON SCHOOL PREMISES.

- (1) **PROHIBITED.** Pursuant to §120.12(20), Wis. Stats., no person shall use any Tobacco, Nicotine or Vapor Products ~~tobacco product~~ on any property of the Germantown School District.
- (2) **DEFINITIONS.** For the purpose of this section, the following definitions shall be used:
 - (a) Use Any Tobacco Product Tobacco, Nicotine or Vapor Products. Smoke or possess a lighted cigar, cigarette or pipe, or place any Tobacco, Nicotine or Vapor Products ~~tobacco product~~ in one's mouth.
 - (b) Property of the Germantown School District . All buildings and grounds and school buses within the Village owned, leased or rented by the Germantown School District, including any vehicle located on School District grounds.
 - (c) The definitions set forth in Sec. 9.041(1) are hereby adopted by reference and made a part hereof.
- (3) **PENALTY.** Any person who shall violate subsection (1) above shall be subject to a penalty as provided in section 25.04 of this Code.

SECTION IV

The terms and provisions of this ordinance are severable. Should any term or provision of this ordinance be found to be invalid by a court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

SECTION V:

All ordinances or parts of ordinances contravening the terms of this ordinance are hereby to that extent repealed.

SECTION VI:

This ordinance shall take effect and be in full force on upon its passage and the day after publication except that Section II shall first become effective on January 1, 2019.

Introduced by Trustee: Myers

Adopted: May 7, 2018

Vote:

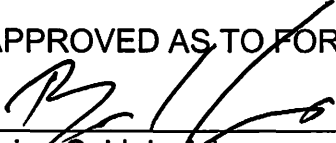
Ayes: 9

Nays: 0


Dean Wolter, Village President

ATTEST: Deanna L Boldrey
Deanna Boldrey, Village Clerk

APPROVED AS TO FORM:


Brian Sajdak, Attorney

Published: