

Village of Menomonee Falls Ordinance No. 719-O-18

**AN ORDINANCE CREATING SECTION 62-10
OF THE MUNICIPAL CODE OF THE VILLAGE OF MENOMONEE FALLS
RELATING TO THE UNDERAGE POSSESSION OF
ELECTRONIC SMOKING DEVICES**

WHEREAS, electronic smoking devices are handheld devices that work by heating e-liquid to generate an aerosol commonly called “vapor,” that users inhale; and

WHEREAS, the use of electronic smoking devices has become increasingly popular among youth across the country; and

WHEREAS, the contents of cartridges contained within electronic smoking devices vary widely and may contain nicotine, traces of nicotine, carcinogens, formaldehyde, antifreeze, traces of toxic metals¹ and other toxic substances which may pose health risks for users; and

WHEREAS, youth in particular may be vulnerable to the marketing and appeal of electronic smoking devices and may migrate from these devices to conventional cigarettes and tobacco products; and

WHEREAS, due to the marketing of electronic smoking devices and the sale of fruity and candy flavored products², minors may be trying these products and liking them without even knowing they may contain nicotine; and

WHEREAS, electronic smoking devices containing nicotine can create or sustain a nicotine addiction; and

WHEREAS, electronic smoking devices are also being used for a number of alternative behaviors that may or may not involve nicotine use, such as smoke tricks, use of flavors, dripping³, and use of other substances such as marijuana; and

WHEREAS, the use of electronic smoking devices for alternative behaviors that may or may not involve nicotine have been found to pose potential health risks such as impairing the body’s ability to heal wounds⁴ and chronic bronchitis⁵; and

¹ C.A. Hess et al. E-cigarettes as a source of toxic and potentially carcinogenic metals. *Environmental Research*. Vol. 152, January 28, 2017, p. 221. doi: 10.1016/j.envres.2016.09.026.

² L.L. Huang et al. Impact of non-menthol flavours in tobacco products on perceptions and use among youth, young adults and adults: A systematic review. *Tobacco Control*. Published early online November 21, 2016. doi: 10.1136/tobaccocontrol-2016-053196.

³ S. Krishnan-Sarin. E-cigarettes and “dripping” among high-school youth. *Pediatrics*. Vol. 139, March 2017, p. e 20163224. doi: 10.1542/peds.2016-3224.

⁴ W. Lei et al. Myofibroblast differentiation and its functional properties are inhibited by nicotine and e-cigarette via mitochondrial OXPHOS complex III. *Scientific Reports*. Vol. 7, March 3, 2017. doi: 10.1038/srep43213.

⁵ R. McConnell et al. Electronic-cigarette use and respiratory symptoms in adolescents. *American Journal of Respiratory and Critical Care Medicine*. Early online November 2, 2016. doi: 10.1164/rccm.201604-0804OC.

WHEREAS, in 2017 the FDA expanded its youth tobacco prevention campaign (The Real Cost) to include a full-scale media campaign to prevent youth from using electronic smoking devices; and

WHEREAS, the FDA has conducted a large-scale, undercover nationwide blitz to crack down on the sale of electronic smoking devices to minors at both brick-and-mortar and online stores;

WHEREAS, municipalities in Wisconsin have taken action to prohibit youth from possessing electronic smoking devices; and

WHEREAS, the risk to the health, safety and welfare of Menomonee Falls youth from using electronic smoking devices is of deep concern; and

WHEREAS, although the long term health effects of using electronic smoking devices are not yet known, there is a need to address the growing threat that electronic smoking devices pose to the health and safety of youth in the community; and

WHEREAS, it is therefore deemed to be in the best interests of the Village of Menomonee Falls that the Municipal Code of the Village of Menomonee Falls be further modified and amended in the manner hereinafter more particularly set forth;

NOW, THEREFORE, the Board of Trustees of the Village of Menomonee Falls do hereby ordain as follows:

Section 1. Section 62-10 of the Municipal Code of the Village of Menomonee Falls [**Electronic Smoking Devices**] is created to read as follows:

Sec. 62-10. Electronic Smoking Devices

- (a) *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.
- (b) No person under eighteen (18) years of age may purchase, attempt to purchase, or possess any vapor products as defined in subsection (a) above except as follows:
 - (1) A person under eighteen (18) years of age possessing vapor products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer.
- (c) No person, by himself, his servant or agent, or as the servant or agent of any other person, shall sell, give away, or otherwise dispose of, by vending machine or

otherwise, any vapor products as defined in subsection (a) to any person under the age of eighteen (18) years old. The defenses provided in Wis. Stat. § 134.66(3)(a)-(c) shall be defenses to any prosecution under this subsection.

(d) *Penalty.* Persons violating this section shall be subject to a penalty as provided in section 1-7 of this Code. Each violation and each day a violation continues or occurs shall constitute a separate offense. This section shall not preclude the village from maintaining any appropriate action to prevent or remove a violation of this section.

Section 2. Except as specifically modified and amended by this ordinance, the Municipal Code of the Village of Menomonee Falls shall remain in force and effect exactly as originally adopted and previously amended. All ordinances or parts of ordinances inconsistent with or in contravention of the provisions of this ordinance are hereby repealed.

Section 3. This ordinance shall take effect and be in full force from and after its passage and publication.

Section 4. SEVERABILITY. If a court of competent jurisdiction adjudges any section, clause, provision or portion of this ordinance unconstitutional or invalid, the remainder of this ordinance shall not be affected thereby.

Adopted by the Board of Trustees of the Village of Menomonee Falls on the 21st day of May, 2018.

By: _____
David Glasgow, Village President

Date Published:

5/25/18 - 6/7/18

Attest: _____
Janice Moyer, Village Clerk