

LEGISTAR #37622 - Body

DRAFTER'S ANALYSIS: This ordinance mirrors state statute to include nicotine products. It prohibits retailers, employees and manufacturers from providing or selling nicotine products to any person under the age of 18.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 23.385 entitled "Restrictions on Sale or Gift of Cigarettes or Tobacco Products" of the Madison General Ordinances is amended to read as follows:

"23.385 RESTRICTIONS ON SALE OR GIFT OF CIGARETTES, NICOTINE PRODUCTS OR TOBACCO PRODUCTS.

- (1) Definitions. For the purpose of this section, the definitions found in Sec. 134.66(1), Wis. Stats., shall apply.
- (2) Restrictions.
 - (a) No retailer, manufacturer distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration may sell or give cigarettes, nicotine products, or tobacco products to any person under the age of eighteen (18) years, except as provided in Sec. 23.38(2) of these ordinances. A vending machine operator is not liable under this subsection for the purchase of cigarettes, nicotine products, or tobacco products from her or his vending machine by a person under the age of 18 if the vending machine operator was unaware of the purchase.
 - (am) No retailer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, manufacturer, distributor, jobber or subjobber, and no agent or employee of an independent contractor may provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person except in a place where no person younger than 18 years of age is present or permitted to enter 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.
 - 1. A retailer shall post a sign in areas within her or his premises where cigarettes 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 under this section and Section 23.38, Madison General Ordinances.
 - 2. A vending machine operator shall attach a notice in a conspicuous place on the front of her or his vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under Sec. 23.38 of these ordinances and that the purchaser is subject to a forfeiture of not to exceed fifty dollars (\$50).
 - (cm) 1m. A retailer or vending machine operator may not sell cigarettes or tobacco products from a vending machine unless the vending machine is located in a place where the retailer or vending machine operator ensures that no person younger than 18 years of age is present or permitted to enter unless he or she is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

2. Notwithstanding Subdivision 1m. above, no retailer may place a vending machine within five hundred (500) feet of a school.
- (d) No retailer or direct marketer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under Wis. Stat. § 139.32(1).
- (2m) Training.
- (a) Except as provided in Subdiv. (b), at the time that a retailer hires or contracts with an agent, employee, or independent contractor whose duties will include the sale of cigarettes or tobacco products, the retailer shall provide the agent, employee, or independent contractor with training on compliance with Subsec. (2)(a) and (am), including training on the penalties under Subsec. (4)(a)2. for a violation of Subsec. (2)(a) or (am). The Department of ~~Safety and Professional Health~~ Health Services shall make available to any retailer on request a training program developed or approved by that department that provides the training required under this subsection. A retailer may comply with this subsection by providing the training program developed or approved by the Department of ~~Safety and Professional Health~~ Health Services or by providing a comparable training program approved by that department. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the Department of ~~Safety and Professional Health~~ Health Services verifying that the agent, employee, or independent contractor has received the training, which the retailer shall retain in the personnel file of the agent, employee or independent contractor.
- (b) Subdiv. (a) does not apply to an agent, employee, or independent contractor who has receive the training described in Subdiv. (a) as part of a responsible beverage server training course or a comparable training course, as described in Wis. Stat. § 125.04(5)(a)5., that was successfully completed by the agent, employee, or independent contractor.
- (c) If an agent, employee, or independent contractor who has not received the training described in Subdiv. (a) commits a violation of Subsec. (2)(a) or (am), the City may issue a citation based on that violation only to the retailer that hired or contracted with the agent, employee or independent contractor and not to the agent, employee or independent contractor who has not received that training. If an agent, employee or independent contractor who has received the training described in Subdiv. (a) commits a violation of Subsec. (2)(a) or (am) for which the City issues a citation to the retailer that hired or contracted with the agent, employee or independent contractor, the City shall also issue a citation based on that violation to the agent, employee or independent contractor who has received that training.
- (3) Defense of Sale to Minor. Proof of all of the following facts by a retailer, manufacturer distributor, jobber, or subjobber, an agent, employee, or independent contractor of a retailer, manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent contractor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation of Subsection (2)(a) above:
- (a) That the purchaser falsely represented that she or he 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 paragraph, "violation" means a violation of sub. (2)(a), (am), (cm), or (d).
 2. A person who violates Subsection (2)(a), (am), (cm), or (d) is subject to a forfeiture of:
 - a. Not more than five hundred dollars (\$500) if the person has not committed a previous violation within twelve (12) months of the violation; or
 - b. Not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) if the person has committed a previous violation within twelve (12) months of the violation.
 3. A court shall suspend any license or permit issued under Sec. 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;
 - 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 Paragraph 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 twenty-five dollars (\$25)."

2. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by creating and amending therein the following:

<u>"Offense</u>	<u>Ord. No./Adopted Statute No.</u>	<u>Deposit</u>
Sale of <u>cigarettes, nicotine products,</u> <u>or tobacco products to children</u> <u>individual under 18 forbidden.</u>	23.385(2)(a), (am), (c), (cm), or (d) 28.385(2)(b)	\$10, 1st \$500, 2nd \$25"