

CITY OF MADISON, WISCONSIN

A SUBSTITUTE ORDINANCE _____

PRESENTED
REFERRED

November 18, 2014
BOHMDC

Amending Section 23.05(1) and creating Sections 23.05(2)(a)7. and 23.05(7)(c) of the Madison General Ordinances to define and prohibit use of an electronic delivery device, define retail electronic delivery store and to create an exception to the smoking restrictions for the retail electronic delivery device store.

Drafted by: Marci Paulsen

Date: December 22, 2014

SPONSOR: Aids. Cnare, Bidar-Sielaff,
Clausius, Clear, King, Palm,
Phair, Weier & Zellers

DRAFTER'S ANALYSIS: This ordinance establishes a definition of electronic delivery devices, retail electronic delivery device store, and includes electronic delivery devices in the definition of smoking. Thereby, prohibiting the use of electronic delivery devices in places of employment and other areas defined within the ordinance. This ordinance creates an exception to the smoking restrictions for retail electronic delivery device store.

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

1. Subsection (1) entitled "Definitions" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is amended by creating and amending therein the following:

"Electronic delivery device" means any product containing or delivering nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. This includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor.

"Retail electronic delivery device store" means a retail establishment that does not have a "Class B" or "Class A" intoxicating liquor license or a Class "B" or Class "A" fermented malt beverages license and that generates seventy-five percent (75%) or more of its gross annual income from the retail sale of electronic delivery devices and accessories.

"Smoking" means to smoke or carry a lighted pipe, cigar, cigarette or tobacco-related products in any form. Smoking also includes the use of an electronic delivery device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device."

2. Paragraph 7. of Subdivision (a) of Subsection (2) entitled "Intent and Purpose" of Section 23.05 entitled "Smoking Prohibited in Certain Areas" of the Madison General Ordinances is created to read as follows:

Approved as to form:

“7. Electronic delivery devices are currently unregulated and have been proven to emit nicotine, ultra-fine particles, volatile organic compounds and other toxins. Inhalation of nicotine is proven to be dangerous to everyone, especially children and pregnant women. 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, as well as conventional cigarette smoke, are proven carcinogens.”

3. Subdivision (c) of Subsection (7) entitled “Exceptions” of Section 23.05 entitled “Smoking Prohibited in Certain Areas” of the Madison General Ordinances is created to read as follows:

“(c) Retail electronic delivery device stores subject to the following:

1. The retail electronic delivery device store was in existence on February 1, 2015;
2. The store may provide electronic delivery devices and accessories for the purposes of sampling;
3. The store must have an entrance opening directly to the outside;
4. Smoking of tobacco products is prohibited; and
5. Service of food is not permitted.”