

ORDINANCE NO. 22-1

REPEALING AND REPLACING SECTIONS 8.32 AND 8.33 OF THE OZAUKEE COUNTY CODE OF ORDINANCES PERTAINING TO CIGARETTES, NICOTINE PRODUCTS AND TOBACCO PRODUCTS.

An Ordinance repealing and replacing Sections 8.32 and 8.33 of the Ozaukee County Code of Ordinances pertaining to Cigarettes, Nicotine Products and Tobacco Products.

The County Board of Supervisors of the County of Ozaukee does ordain that Sections 8.32 and 8.33 of the Ozaukee County Code of Ordinances be repealed and restated as follows:

8.32 PROVISION TO AND PURCHASE OR POSSESSION OF CIGARETTES, NICOTINE PRODUCTS, AND TOBACCO PRODUCTS BY MINORS.

(1) It shall be unlawful to provide cigarettes, nicotine products, or tobacco products to any person under 18 years of age and for any person under 18 years of age to purchase, attempt to purchase, or possess cigarettes, nicotine products, or tobacco products as provided in this ordinance.

(2) In this section, the terms "cigarette," "nicotine product," "retailer," and "tobacco products" have the meanings given in Section 134.66 (a), (f), (g) and (j), Wisconsin Statutes. "Law enforcement officer" has the meaning given in Section 165.85 (2) (c), Wisconsin Statutes.

(3) Except as provided in subsection (4), no person under 18 years of age may do any of the following:

(a) Purchase, attempt to purchase, or possess any cigarette, nicotine product, or tobacco product.

(b) Falsely represent his or her age for the purpose of receiving any cigarette, nicotine product, or tobacco product.

(4)

(a) A person under 18 years of age may purchase, attempt to purchase, and possess cigarettes, nicotine 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.

(b) A person under 18 years of age, but not under 15 years of age, may purchase, attempt to purchase, and possess cigarettes, nicotine products, or tobacco products in the course of his or her participation in an investigation under Section 254.916, Wisconsin Statutes, that is conducted in accordance with Subsection 254.916 (3).

(5) No person may purchase cigarettes, nicotine products, or tobacco products on behalf of, or to provide to, any person who is under 18 years of age.

(6) A court may impose the following forfeitures for violation of this ordinance:

(a) A forfeiture of not more than \$50 against any person under 18 years of age violating Subsections (3) or (5) of this ordinance.

(b) A forfeiture against any person 18 years of age or older violating Subsection (5) of this ordinance as follows:

1. Not more than \$100 if the person has not committed a previous violation within 30 months of the violation.
2. Not more than \$500 if the person has committed a previous violation within 30 months of the violation.
3. Not more than \$1,000 if the person has committed 2 previous violations within 30 months of the violation.
4. Not more than \$10,000 if the person has committed 3 or more previous violations within 30 months of the violation.

(7) A law enforcement officer shall seize any cigarette, nicotine product, or tobacco product that has been sold to and is in the possession of a person under 18 years of age.

(8) This ordinance is adopted under the authority granted by Section 254.92 (4), Wisconsin Statutes.

(9) This ordinance is not applicable in any town, village, or city that has enacted or enacts an ordinance regulating the conduct regulated by Section 254.92, Wisconsin Statutes, if such ordinance strictly conforms to Section 254.92.

### 8.33 RESTRICTIONS ON RETAIL SALE OR PROVISION OF CIGARETTES, NICOTINE PRODUCTS, OR TOBACCO PRODUCTS TO MINORS.

(1) It shall be unlawful to sell or provide cigarettes, nicotine products, or tobacco products to any person under 18 years of age as provided in this ordinance.

(2) In this section, the terms “cigarette,” “direct marketer,” “distributor,” “identification card,” “jobber,” “manufacturer,” “nicotine product,” “retailer,” “school,” “stamp,” “subjobber,” “tobacco products,” “vending machine,” and “vending machine operator” have the meaning given in Section 134.66 (1) (a) through (L), Wisconsin Statutes.

(3) Restrictions.

(a) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of the foregoing persons, or agent or employee of an independent contractor, may:

1. Sell, or provide for nominal or no consideration, cigarettes, nicotine products, or tobacco products to any person under 18 years of age, except as provided in Section 254.92 (2) (a), Wisconsin Statutes and Section 8.32 (4) (a), Ozaukee County Code of Ordinances. A vending machine operator is not liable under this paragraph for the purchase of cigarettes, nicotine products, or tobacco products from his or her vending machine by a person under 18 years of age if the vending machine operator was unaware of the purchase.

2. Provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person except in a place where no person under 18 years of age is present or permitted to enter unless the person who is under 18 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained 18 years of age.

(b)

1. A retailer shall post a sign in areas within his or her 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

Sections 134.66 and 254.92, Wisconsin Statutes, and Sections 8.32 and 8.33, Ozaukee County Code of Ordinances.

2. A vending machine operator shall attach a notice in a conspicuous place on the front of his or her vending machines stating that the purchase of any cigarette or tobacco product by a person under the age of 18 is unlawful under Section 254.92, Wisconsin Statutes and Section 8.32, Ozaukee County Code of Ordinances and that the purchaser is subject to a forfeiture of not to exceed \$50.

(c)

1. No retailer or vending machine operator may 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 under 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 18 years of age.

2. Notwithstanding 1., no retailer may place a vending machine within 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 Section 139.32 (1), Wisconsin Statutes.

(4) DEFENSES. Proof of all of the following facts by a retailer, manufacturer, distributor, jobber or subjobber, an agent, employee, or independent contractor of the foregoing, or agent or employee of an independent contractor who sells cigarettes or tobacco products to a person under 18 years of age is a defense to any prosecution for a violation of (3) (a) 1. of this ordinance.

(a) That the purchaser falsely represented that he or she had attained 18 years of age 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 18 years of age.

(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 18 years of age.

(5) PENALTIES.

(a) Violations of 8.33 (3) (a), (c) and (d) of this ordinance shall be subject to the following forfeitures:

1. Not more than \$500 if the person has not committed a previous violation within 12 months of the violation; or

2. Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.

(b) A court shall suspend any license or permit issued under Sections 134.65, 139.34 or 139.79, Wisconsin Statutes, to a person for:

1. Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation; or

2. 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

3. 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.

(c) The court shall promptly mail notice of a suspension under subsection (b) to the State Department of Revenue and to the clerk of each municipality which has issued a license or permit to the person.

(d) Whoever violates Subsection (3)(b) shall forfeit not more than \$25.

(6) This ordinance is adopted under the authority of Section 134.66 (5), Wisconsin Statutes.

(7) This ordinance is not applicable in any town, village, or city that has enacted or enacts an ordinance regulating the conduct regulated by Section 134.66, Wisconsin Statutes, if such ordinance strictly conforms to Section 134.66.

This Ordinance shall take effect upon enactment and publication.

Dated at Port Washington, Wisconsin, this 1st day of June 2022.

*SUMMARY: Updating Sections 8.32 and 8.33 of the Ozaukee County Code of Ordinances pertaining to Cigarettes, Nicotine Products and Tobacco Products.*

*VOTE REQUIRED: Majority*

**PUBLIC SAFETY COMMITTEE**

**RESULT:**       **APPROVED [UNANIMOUS]**

**MOVER:**        P. Foy, Supervisor District 26

**SECONDER:**   J. Krane, Supervisor District 24

**AYES:**         Nelson, Haas, Foy, Maguire, Krane

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Lee Schlenvogt

CHAIRPERSON - COUNTY BOARD

**ORD. 22-1**

Repealing and Replacing Sections 8.32 and 8.33 of the Ozaukee County Code of Ordinances pertaining to Cigarettes, Nicotine Products, and Tobacco Products

 **Passed By Majority Vote**

Winker		YES
Haas		YES
Jobs		YES
Schlenvogt		YES
Clark		YES
Nelson		YES
Matera	M	YES
Larson		YES
Grabow		YES
Melotik		YES
Wolf		YES
Richart		YES
Hagen		YES

Rishel		YES
Maguire		YES
Whitworth		YES
Irish		EXCUSED
Stelter		YES
Ross		YES
Godden		YES
Strom	S	YES
Holyoke		YES
Schoessow		YES
Krane		EXCUSED
Watts		YES
Foy		YES