

ORDINANCE NO.: 5368

AN ORDINANCE amending and creating various sections of Article V, Chapter 10 of the Code of Ordinances of the City of La Crosse relating to retail cigarette, tobacco products, and electronic vaping devices licensing; and to repeal and recreate Section 32-187 regarding the minimum age to purchase or possess cigarettes or tobacco products.

THE COMMON COUNCIL of the City of La Crosse do ordain as follows:

SECTION I: Section 10-171 is hereby amended to read as follows:

- (a) *Required.* Pursuant to the Wis. Stat. § 134.65, no persons shall in any manner, or upon any pretense or by any device, directly or indirectly sell, expose for sale, possess with intent to sell, exchange, barter, dispose of or give away any cigarettes, tobacco products, and electronic vaping devices to any person without first obtaining a retail license from the City Clerk, as hereinafter provided.
- (b) State law adopted. Wis. Stat. §134.65 is hereby adopted and incorporated by reference. All applicants and licensees shall comply with the requirements of Wis. Stat. § 134.65, as well as all other applicable federal, state, or local regulations.
- (c) License eligibility generally. In addition to the requirements imposed by the provisions of Wis. Stat. § 134.65(1m), the following restrictions shall apply to the issuance of licenses pursuant to this section:
 - (1) No license shall be issued for any premises which do not conform to applicable federal and state sanitary, safety and health requirements including all ordinances and regulations adopted by the City or County of La Crosse which pertain to sanitation, safety and health requirements.
 - (2) Delinquent taxes, assessments, etc.
 - a. Premises. No initial or renewal license shall be granted for any premises for which taxes, assessments, forfeitures or other fees of the City are delinquent and unpaid.
 - b. Persons, partnerships and corporations. No initial or renewal license shall be granted to any person, partnership or corporation:
 - 1. Delinquent in payment of any taxes, assessments or other fees owed to the City.
 - 2. Delinquent in payment of a forfeiture resulting from a violation of any ordinance of the City.
- (d) License year. The license year shall be from July 1 to the following June 30.
- ~~(de)~~ Applications. ~~A written application shall be~~ Applications, on a form pursuant to Wis. Stat. § 134.65, and available from the City Clerk, shall be made in writing and filed with the City Clerk ~~on forms as required by the Department of Revenue.~~ Each application shall include the name of the proposed licensee, a specific description of the premises where such business is to be conducted, and whether the licensee will sell the cigarette, tobacco products, or electronic vaping devices over the counter or from a vending machine.
- (f) *Renewal applications.* All applications for renewal of licenses are subject to the qualifications, eligibility, inspection and granting provided in this chapter and the Wisconsin Statutes.
 - (1) *Renewal application deadline.* Renewal applications will be sent to all licensed entities on or before March 15 and are due to the City Clerk's Office on or before April 15 of each year. If April 15 falls on a non-business day, the deadline will be extended to the next business day. The Common Council shall grant or deny each timely-filed application no later than June 15 for the ensuing license year. If a renewal application

- is received after April 15, notice of Council's intent to grant or deny the renewal application, as well as notice of any accompanying hearing, may not be available before the license expires on June 30.
- (2) Late application fee. Renewal applications received after the April 15 deadline shall be subject to a late filing fee in the amount established by resolution. Said late fee is imposed to recover the cost of processing the late application. Applications filed after May 15 will not be granted until after July 1.
- ~~(cg) Year and Fee. Each license shall be for the period of July 1 of each year or when applied for and continue in force until the following June 30 unless sooner revoked. The fee for the license shall be in the amount established by resolution, which shall be paid to the Director of Finance/Treasurer before the license is issued. Twenty-five dollars of said fee shall be provided to the County of La Crosse Health Department for education and other health needs relating to tobacco products.~~
- ~~(dh) Issuance of license. The City Clerk may issue the license or exercise discretion to not issue the license in accordance with Wis. Stat. § 134.65. Pursuant to Wis. Stat. § 134.65(3), each such license shall name the licensee and specifically describe the premises where such business is to be conducted. Such licenses shall not be transferable from one person to another nor from one premises to another.~~
- ~~(i) Posting of license. Pursuant to Wis. Stat. § 134.65, Licenses or permits issued under this article shall enclose the license in a frame that has a transparent front that allows the license to be read clearly. The licensee shall conspicuously display the license for public inspection at all times in the room or place where the activity subject to licensure is carried out. Any licensee who shall fail to post such license as herein required shall be presumed to be operating without a license.~~
- ~~(gj) Change in circumstances. Within thirty (30) days of any change in any fact set forth in an application for a license under Sec. 10-171(a), the applicant or licensee shall file a written description of the change with the City Clerk.~~
- ~~(k) Violations by agent or employee of licensee. A violation of this article by a duly authorized agent or employee of the licensee shall constitute a violation of the licensee. Violations of the provisions of this article or the provisions of Wis. Stat. § 134.65 may be grounds for immediate revocation by the Common Council.~~
- ~~(hl) Nonrenewal, Suspension, Revocation. Except as hereinafter provided, by the authority granted in Wis. Stat. § 134.65(8), the provisions of Wis. Stat. § 134.65(7) shall be applicable to proceedings for the revocation or suspension of all licenses granted under this section.~~
- ~~(1) License suspension or revocation hearings shall be before the Judiciary and Administration Committee of the Council.~~
- ~~(2) Whenever any license under this section shall be revoked or suspended by the Council or action of any court, it shall be the duty of the Clerk to notify the licensee of such suspension or revocation and to notify the Chief of Police, who shall take physical possession of the license wherever it may be found and file it in the Clerk's office.~~
- ~~(3) If any license granted under this section is seized by any local, State or Federal agency pursuant to applicable statutes providing for the seizure of personal property, such seizure will act as an automatic revocation of that license upon notification to the City Clerk by the seizing agency that a seizure has been effected.~~

SECTION II: Section 10-173 is hereby created to read as follows:

Sec. 10-173. Restrictions.

- (a) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct marketer, manufacturer, distributor, jobber or subjobber and no agent or employee of an independent contractor may sell or provide for nominal or no consideration cigarettes, nicotine products, or tobacco products to any person under the age of 21, except as otherwise allowed by Wis. Stat. § 254.92(2)(a). 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 the age of 21 if the vending machine operator was unaware of the purchase.
- (b) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent, employee or independent contractor of a retailer, direct marketer, 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 21 years of age is present or permitted to enter unless the person who is younger than 21 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 21 years.
- (c) 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 21 is unlawful under this article and 21 CFR Part 1140.
- (d) 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 21 is unlawful under this article and 21 CFR Part 1140 and that the purchaser is subject to a forfeiture as outlined in Sec. 10-170 of this article.
- (e) 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 21 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 21 years.
- (f) A retailer or vending machine operator may not sell cigarettes, nicotine products, or tobacco products without verifying that the purchaser has attained 21 years of age by a valid photo identification.
- (g) Notwithstanding subdivision (e), no retailer may place a vending machine within 500 feet of a school.
- (h) 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).
- (i) No adult may knowingly permit or fail to take action to prevent the illegal consumption of cigarettes, nicotine products, or tobacco products by a person younger than 21 years of age on property, including any premises, owned and occupied by the adult or occupied by the adult and under the adult's control. This subdivision does not apply to cigarettes, nicotine products, or tobacco products used exclusively as part of a religious service.

SECTION III: Section 10-174 is hereby created to read as follows:

Sec. 10-174. Training required.

The provisions of Wis. Stat. § 134.66(2m) are adopted by reference. This section is subject to any exemptions or exclusions from such statute provided in Wis. Stat. § 134.66(2m).

SECTION IV: Section 10-175 is hereby created to read as follows:

Sec. 10-175. Electronic vaping device directory.

The provisions of Wis. Stats. §§ 995.15(1), (2), (3), (4), (5), (6), (7), and (8) are adopted by reference. This section is subject to any exemptions or exclusions from such statute provided in Wis. Stat. § 995.15.

SECTION V: Sections 32-186 and 32-187 are hereby repealed, and Section 32-186 is hereby repealed and recreated as follows:

Sec. 32-186. Purchase or possession of cigarettes or tobacco products by person under 21 prohibited.

- (a) No person under 21 years of age may falsely represent his or her age for the purpose of receiving any cigarette, nicotine product, or tobacco product.
- (b) No person under 21 years of age may purchase, attempt to purchase, or possess any cigarette, nicotine product, or tobacco product except as follows:
 - (1) A person under 21 years of age may purchase or 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.
 - (2) A person under 21 years of age may purchase, attempt to purchase or possess cigarettes, nicotine products, or tobacco products in the course of his or her participation in a law enforcement investigation.
- (c) No person may purchase cigarettes, tobacco products, or nicotine products on behalf of, or to provide to, any person who is under 21 years of age.

SECTION VI: Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this division shall not be affected.

SECTION VII: This ordinance shall take effect and be in force from and after its passage and publication.

_____/s/_____
Shaundel Washington-Spivey, Mayor

_____/s/_____
Nikki M. Elsen, City Clerk

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