

ORDINANCE NO. 19-03

RESTRICTIONS ON SALE OR GIFT OF TOBACCO PRODUCTS TO MINORS

The County Board of Supervisors of the County of Polk does ordain as follows:

SECTION 1.01 AUTHORITY AND PURPOSE

Polk County Health Department recognizes many smokers begin smoking before the age of 18 years; and those persons who reach the age of 18 years without having started smoking are significantly less likely to begin smoking; that because smoking has been shown to be the cause of several serious health problems, including cancer, heart disease, and respiratory problems, which subsequently place a financial burden on all levels of government, this ordinance is intended to regulate the sale or gift of tobacco products to minors.

Under Wis. Stat. §134.66(5), Polk County may adopt an ordinance regulating the conduct of tobacco sales to minors. This ordinance is adopted pursuant to that authority provided by § 254.916 (1), Wisconsin Statutes. § 254.916 (1) authorizes the Polk County Health Department to become the designated agents of the Wisconsin Department of Health & Family Services for the purpose to cause unannounced investigations to be conducted at least annually at retail outlets, including sites of tobacco vending machines, to survey overall levels of compliance with §134.66 (2) (a) and (am).

References to the Wisconsin Statutes are to the 2001-02 edition, unless specified otherwise herein.

SECTION 1.02 APPLICABILITY

The provisions of this ordinance shall apply to any retailer, manufacturer, distributor, jobber and or subjobber, agent, employee or independent contractor of any retailer, manufacturer, distributor, or jobber who has obtained a cigarette and tobacco products retailer license from the clerk of the city, village or town wherein such license is sought to be exercised.

This ordinance shall apply to all geographic locations in Polk County. However, this ordinance shall not apply within any town, village, or city that has adopted or adopts an ordinance under § 134.66(5).

SECTION 1.03 DEFINITIONS

- (1) "Cigarette" means any roll of tobacco wrapped in paper or any substance other than tobacco.
- (2) "Compliance Checks" shall mean the system the County or its designated agent uses to investigate and ensure that those authorized to sell tobacco, tobacco products, or tobacco-related devices are following and complying with the requirements of this ordinance. Compliance checks shall involve the use of minors as authorized by this ordinance. Compliance checks shall also mean the use of minors who attempt to purchase tobacco, tobacco products, or tobacco-related devices for educational, research and training purposes as authorized by State and Federal laws. Compliance checks may also be conducted by other units of government for the purpose of enforcing appropriate Federal, State or local laws and regulations relating to tobacco, tobacco products, or tobacco-related devices.
- (3) "Distributor" means any person who acquires unstamped cigarettes from the manufacturer thereof, affixes stamps to the packages or other containers, stores them and sells them to retailers for resale or who acquires stamped cigarettes.
- (4) "Gift" means providing another person cigarettes or tobacco products in exchange for nothing or nominal consideration.
- (5) "Governmental regulatory authority" means the department, a local health department, a state agency or a state or local law enforcement agency; or a person with whom the local health department, state agency, or state or local law enforcement agency contracts to conduct investigations authorized under §254.916 (1)(a). Governmental regulatory authority shall include county officials authorized under Section 1.06 of this ordinance to issue citations.
- (6) "Identification card" means any of the following:
 1. A license containing a photograph issued under ch. 343, Wis. Stats.
 2. An identification card issued under § 343.50.
 3. An identification card issued under § 125.08, 1987 stats.
- (7) "Jobber" means any person who acquires stamped cigarettes from manufacturers or distributors, stores them and sells them to retailers for resale.
- (8) "Law enforcement officer" has the meaning given in § 165.85 (2) (c).

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- (9) "Manufacturer" means any person who manufactures cigarettes for the purpose of sale, including the authorized agent of a person who manufactures cigarettes for the purpose of sale.
- (10) "Minor" shall mean any natural person who has not yet reached the age of eighteen (18) years.
- (11) "Retailer" means any person who sells, exposes for sale or possesses with intent to sell to consumers any tobacco product.
- (12) "Retail outlet" means a place of business from which cigarettes or tobacco products are sold at retail to consumers.
- (13) A "sale" shall mean any transfer of goods for money, trade, barter, or other consideration.
- (14) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but "tobacco products" does not include cigarettes, as defined under §139.30(1).
- (15) "Tobacco vending machine" is any mechanical device that automatically dispenses cigarettes or tobacco products when money or tokens are deposited in the device in payment for the cigarettes or tobacco products.
- (16) "Tobacco vending machine operator" means a person who acquires tobacco products or stamped cigarettes from manufacturers, as defined in §134.66(1)(e), stores them and sells them through the medium of tobacco vending machines that he or she owns, operates or services and that are located on premises that are owned or under the control of other persons.
- (17) "School" means a public, parochial or private school which provides an educational program for one or more grades between grades 1 and 12 and which is commonly known as an elementary school, middle school, junior high school, senior high school or high school.
- (18) "Stamp" means the authorized indicia of cigarette tax payment including water transfer stamps and heat applied stamps.

- (19) "Subjobber" means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells or gives them to persons other than the ultimate consumers.

SECTION 1.04 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 cigarettes or tobacco products to any person under the age of 18, except as provided in §254.92(2)(a) which states a person under 18 years of age may purchase or possess cigarettes 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. A vending machine operator is not liable under this paragraph for the purchase of cigarettes or tobacco products from his or her 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 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.

(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 this ordinance and § 254.92. A failure to post such a sign is a violation of this ordinance.

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 this ordinance and §254.92 and that the purchaser is subject to a forfeiture of not to exceed \$50.00. A failure to post such a sign is a violation of this ordinance.

(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 subd. 1m., no retailer may place a vending machine within 500 feet of a school.

SECTION 1.05 ENFORCEMENT AND CITATION AUTHORITY

- (a) Written Order - When a violation of Section 1.04 of this ordinance occurs, the governmental regulatory authority shall make a good faith effort to make known to the retailer, manufacturer, distributor, jobber or subjobber, agent, employee or independent contractor of a retailer the occurrence of such violation within 72 hours after the occurrence of the violation. Such notice shall include the written results of any investigation, instructions to come into compliance with this ordinance and any citations issued by a governmental regulatory authority for a violation that occurs during the conduct of the investigation.
- (b) All of the following information shall be reported to the retailer or the retailer's employee or agent within 10 days after the conduct of an investigation under this section:
 - 1) The name and position of the governmental regulatory authority employee who directly supervised the investigation.
 - 2) The age of the minor.
 - 3) The date and time of the investigation.
 - 4) A reasonably detailed description of the circumstances giving rise to a violation, if any. If there is no violation, written notice to that effect.
- (c) If an agent, employee, or independent contractor, who has not received the training as described in Section 1.06 of this ordinance, commits a violation of Section 1.04 of this ordinance, a county official as listed under Section 1.05 (e) 4 may issue a citation based on that violation only to the retailer that hired or contracted with the agent, employee, or independent contractor. The county official may not issue a citation to the agent, employee, or independent contractor who has not received that training.
- (d) If an agent, employee, or independent contractor, who has received the training described in Section 1.06 of this ordinance, commits a violation of Section 1.04 of this ordinance for which a county official as listed under Section 1.05 (e) 4 issues a citation to the retailer that hired or contracted with the agent, employee, or independent contractor, the county official shall also issue a citation based on that violation to the agent, employee, or independent contractor who has received that training. Verification of Training Form described in section 1.06 of this ordinance shall be signed and retained in the personnel file of the agent, employee, or independent contractor.
- (e) Issuance of Citations
 - 1. Method. Pursuant to § 66.0113(1)(a), the County of Polk adopts and authorizes the use of a citation to be issued for violations of this ordinance.

2. Form. The citation shall contain the following:
 - i. The name and address of the alleged violator.
 - ii. Factual allegations describing the alleged violation.
 - iii. The time and place of the offense.
 - iv. The section of the ordinance violated.
 - v. A description of the offense in such a manner as can be readily understood by a person making a reasonable effort to do so.
 - vi. The time at which the alleged violator may appear in court.
 - vii. A statement, which, in essence, informs the alleged violator:
 1. That a cash deposit based on the schedule established by this section may be made which shall be delivered to the Clerk of Courts prior to the time of the scheduled court appearance.
 2. That if a deposit is made, no appearance in court is necessary unless he is subsequently summoned.
 3. That if a cash deposit is made and the alleged violator does not appear in court, he will be deemed to have entered a plea of no contest or, if the court does not accept the plea of no contest, a summons will be issued commanding him to appear in court to answer the complaint.
 4. That if no cash deposit is made and the alleged violator does not appear in court at the time specified, an action may be commenced to collect the forfeiture, penalty assessment, jail assessment, crime laboratories and drug law enforcement assessment, consumer information assessment and domestic abuse assessment pursuant to §66.0113(1)(b)7.d.
 5. That if the court finds that the violation involves an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both, and that the violation resulted in damage to property or of personal injury to a person other than the alleged violator, the court may summon the alleged violator into court to determine if restitution shall be ordered.

- viii. An instruction that if alleged violator elects to make a cash deposit, the alleged violator shall sign an appropriate statement which accompanies the citation to indicate that the statement required under Para. Vii above has been read. The alleged violator shall send the signed statement with the cash deposit.
 - ix. Such other information as the issuing county official deems necessary.
 - x. **Cash deposits:** Any retailer, manufacturer, distributor, jobber or subjobber, agent, vending machine operator, employee or independent contractor who commits a violation under Section 1.04 of this ordinance may post a cash deposit in the amount of the forfeiture and assessments provided in Section 1.07.
3. Schedule of Deposits. Any person who receives a citation shall be subject to the forfeiture and assessment provisions of Section 1.07 of this ordinance.
4. Who May Issue. The following county officials may issue citations, which are directly related to their official responsibilities:
- i. Public Health Officer or an appointee;
 - ii. Law Enforcement Officer; or
 - iii. District Attorney.
5. Procedure. Section 66.0113(3), Wis. Stats. relating to violator's options and procedure on default, is hereby adopted and incorporated herein by reference.
6. Nonexclusivity.
- i. Adoption of this chapter does not preclude the County Board from adopting any other ordinance or providing for the enforcement of any other law or ordinance relating to the same or other matters.
 - ii. The issuance of a citation hereunder shall not preclude the County or any authorized officer from proceeding under any other ordinance or law or by any other enforcement method to enforce any ordinance, regulation, or order.

SECTION 1.06 TRAINING

(a) Except as provided in par. (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. The Polk County Health Department shall make available to any retailer on request a training program developed or approved by Wisconsin Department of Health and Family Services (WDHFS) that provides the training required under this paragraph. A retailer may comply with this paragraph by providing the training program developed or approved by the WDFHS. At the completion of the training, the retailer and the agent, employee, or independent contractor shall sign a form provided by the WDFHS verifying that the agent, employee, or independent contractor has received the training. The retailer shall retain the completed verification of training form in the personnel file of each such agent, employee, or independent contractor. The retailer shall make said completed form available for inspection to the Polk County Health Department or its designee upon request.

(b) Paragraph (a) does not apply to an agent, employee, or independent contractor who has received the training described in par. (a) as part of a responsible beverage server training course or a comparable training course, as described in §. 125.04 (5) (a) 5., that was successfully completed by the agent, employee, or independent contractor

SECTION 1.07 FORFEITURES, ASSESSMENTS AND PENALTIES

1. In this paragraph, "violation" means an occurrence contrary to Section 1.04(a), (am), (b), or (cm) of this ordinance.
2. The forfeitures, assessments and penalties used by this ordinance are set forth with §§ 66.0113 and 134.66 (4) and are incorporated herein by reference.
3. Any retailer, manufacturer, distributor, jobber or subjobber, agent, vending machine operator, employee or independent contractor of a retailer who has obtained a cigarette and tobacco products retailer license who commits a violation under Section 1.04 (a) or (am) is subject to a forfeiture of:
 - a) Forfeiture for an initial violation shall be Fifty Dollars (\$50).
 - b) Forfeiture for a second violation that occurs within twelve (12) month period shall be Two hundred dollars (\$200).
 - c) Forfeiture for a third violation that occurs within twelve (12) month period shall be Three hundred dollars (\$300).
 - d) Forfeiture for a fourth violation that occurs within twelve (12) month period shall be Four hundred dollars (\$400).
 - e) Forfeiture for a Fifth violation that occurs within twelve (12) month period shall be Five hundred dollars (\$500).

4. Any retailer, manufacturer, distributor, jobber or subjobber, agent, vending machine operator who has obtained a cigarette and tobacco products retailer license who commits a violation under Section 1.04 (b) or (cm) is subject to a forfeiture not to exceed \$50.00.
5. Any person who commits a violation under Section 1.04 of this ordinance shall be subject to the assessments provided in § 66.0113 (1) and (3).
6. A court shall suspend any license or permit issued under s. 134.65, 139.34 or 139.79 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.
7. The court shall promptly mail notice of a suspension under subd. 6, above, to the department of revenue and to the clerk of each municipality which has issued a license or permit to the person.

SECTION 1.08 DEFENSES

1. Proof of all of the following facts by a retailer, manufacturer or distributor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to any prosecution for a violation under Section 1.04:
 - (a) That the purchaser falsely represented that he or she 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; and
 - (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.
2. The governmental regulatory authority shall not issue a citation to an agent, employee, or independent contractor of a retailer who has obtained a cigarette and tobacco products

retailer license if such agent, employee, or independent contractor has not received training described in Section 1.06.

SECTION 1.09 INVESTIGATIONS

- 1.(a). In the administration of this subchapter, the WDFHS may contract with local health departments, as agents of the department, with a state agency or with law enforcement agencies of the state, or of a county, city, village or town, to cause unannounced investigations to be conducted at least annually at retail outlets, including sites of tobacco vending machines, to survey overall levels of compliance with §134.66(2)(a) and (am) and this ordinance. A person with whom the department contracts under this paragraph may contract with another person to conduct the investigations.
- (b). No retailer may be subject to unannounced investigations more than twice annually unless the retailer is found to have violated Section 1.04 during an investigation.
2. With the permission of his or her parent or guardian, a person under 18 years of age, but not under 15 years of age, may cause or attempt to cause a violation of this ordinance as set forth in Section 1.04, if all of the following are true:
 - (a) The person commits the act for the purpose of conducting an investigation under this section.
 - (b) The person is directly supervised during the conducting of the investigation by an adult employee of a governmental regulatory authority.
 - (c) The person has prior written authorization to commit the act from a governmental regulatory authority, the district attorney or from an authorized agent.
3. All of the following, unless otherwise specified, apply in conducting investigations under this section:
 - (a) If questioned about his or her age during the course of an investigation, the minor shall state his or her true age.
 - (b) A minor may not be used for the purposes of an investigation at a retail outlet at which the minor is a regular customer.
 - (c) The appearance of a minor may not be materially altered so as to indicate greater age.

(d) A photograph or videotape of the minor shall be made before or after the investigation or series of investigations on the day of the investigation or series of investigations. If prosecution results from an investigation, the photograph or videotape shall be retained until the final disposition of the case.

(e) A governmental regulatory authority shall make a good faith effort to make known to the retailer or the retailer's employee or agent, within 72 hours after the occurrence of the violation, the results of an investigation, including the issuance of any citation by a governmental regulatory authority for a violation that occurs during the conduct of the investigation. This paragraph does not apply to investigations conducted under a grant received under 42 United States Code § 300x-021.

(f) All of the following information shall be reported to the retailer within 10 days after the conduct of an investigation under this section:

1. The name and position of the governmental regulatory authority employee who directly supervised the investigation.
2. The age of the minor.
3. The date and time of the investigation.
4. A reasonably detailed description of the circumstances giving rise to a violation, if any, or, if there is no violation, written notice to that effect.

(g) No evidence obtained during or otherwise arising from the course of an investigation under this section that is used to prosecute a person for a violation of Section 1.04 may be used in the prosecution of an alleged violation of § 125.07 (3).

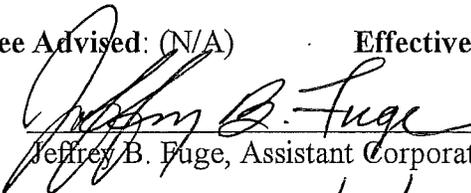
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Approved as to Form:


 Jeffrey B. Fuge, Assistant Corporation Counsel

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County Board Action: Adopted.

Submitted at the request of the Polk County Board of Health

Submitted By:

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