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**ORDINANCE NO. 2023-12****ORDINANCE TO AMEND SECTION 54.130 OF MUNICIPAL CODE OF THE VILLAGE OF PEWAUKEE REGARDING THE SALE, GIFT, OR POSSESSION OF VAPOR PRODUCTS**

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The Village Board of the Village of Pewaukee, Waukesha County, Wisconsin, do ordain as follows:

**SECTION I**

Section 54.130 of the Municipal Code of the Village of Pewaukee is hereby repealed and recreated to read as follows:

**Sec. 54.130. Sale, gift, or possession of cigarette, tobacco products, or vapor products.**

(a) *Purpose and Findings.* The Village Board of the Village of Pewaukee finds that:

(1) The purpose of this chapter is to protect the public health, safety and welfare of the property and persons in the Village by prohibiting persons under 18 years of age from possessing cigarettes, tobacco and vapor products and prohibiting the sale of cigarettes, tobacco and vapor products to persons under 18 years of age; and

(2) Persons under age 18 are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. Now, there are many tobacco-less products available, commonly referred to as "electronic cigarettes," "e-cigarettes," "e-cigars," "e-cigarillos," "e-pipes," "e-hookahs," or "electronic nicotine delivery systems," which allow the user to simulate cigarette smoking and introduce vapor products into one's body. These products may be purchased by minors and are being marketed without age restrictions or health warnings and come in different flavors that appeal to young people; and

(3) Initial studies by the FDA have determined that use of vapor products and electronic smoking devices can increase nicotine addiction among young people and contain chemical ingredients known to be harmful, which may expose users and the public to potential health risks; and

(4) Existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances including:

(a) Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium; and

(b) PM 2.5, acrolein, tin, toluene, and aluminum, which are associated with a range of negative health effects such as skin, eye, and respiratory irritation, neurological effects, damage to reproductive systems, and even premature death from heart attacks and stroke; and

(5) A Harvard University health study found high levels of diacetyl in 39 of 51 unique flavors of chemicals used in electronic smoking devices. Diacetyl is associated with bronchiolitis obliterans and other severe respiratory diseases among workers who have inhaled heated vapors containing diacetyl; and

(6) Electronic smoking devices emit ultrafine particles, volatile organic compounds, and other toxins. 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 are proven carcinogens; and

(7) Children and adults have been poisoned by swallowing, breathing, or absorbing e-cigarette liquid through their skin and eyes. Approximately 50% of calls to poison control centers for e-cigarettes are for children five years of age or younger; and

(8) Some cartridges used by electronic smoking devices can be refilled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine. The CDC has found that:

(a) Most e-cigarettes contain nicotine and that 99% of the e-cigarettes sold in assessed venues in the U.S. contained nicotine; and

(b) Some e-cigarette labels do not disclose that they contain nicotine, and some e-cigarettes marketed as containing 0% nicotine have been found to contain nicotine; and

(c) Nicotine can harm the developing adolescent brain (which continues to develop until about age 25); and

(d) Using nicotine in adolescence can harm the parts of the brain that control attention, learning, mood, and impulse control; and

(e) Using nicotine in adolescence may also increase risk for future addiction to other drugs.

(9) A study published in the Journal of Environmental and Public Health suggests that electronic smoking devices "may have the capacity to 're-normalize' tobacco use in a demographic that has had significant denormalization of tobacco use previously"; and

**(10)** Research indicates electronic smoking devices may lead youth to try tobacco products. In addition, research indicates that youth who use electronic smoking devices are more likely to use tobacco products, including cigarettes, than those youth who do not use electronic smoking devices; and

**(11)** The use of electronic smoking devices in smoke-free locations threatens to undermine compliance with smoking regulations and reverse the progress that has been made in establishing a social norm that smoking is not permitted in public places and places of employment; and

**(12)** Electronic smoking devices are commonly used to vaporize and ingest controlled substances, such as marijuana wax, synthetic marijuana, liquid marijuana, and hash oil; and

**(13)** According to the 2022 National Youth Tobacco Survey conducted by the FDA and CDC, nearly 3.08 million middle and high school students (11.3%) reported current use of tobacco products and, further, 2.14 million high school students (14.1%) and 380,000 middle school students (3.3%) reported current use of e-cigarettes; and

**(14)** The heightened use of tobacco and vapor products by middle and high school students necessitates enhanced protection in public locations commonly frequented by those under the age of eighteen (18), including public schools and public parks, in order to protect the public health, safety and welfare of the property and persons in the Village.

(b) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Cigarette* means a narrow tube of cut tobacco enclosed in paper and designed for smoking.

*Schools* means the public schools under the jurisdiction of the Pewaukee School Board.

*Tobacco products* means cigars, cigarettes, cheroots, stogies, periques, smoking tobacco, tobacco in any form, including but not limited to granulated, plug cut, crimp out ready rolled, fine cut chewing tobaccos, snuff tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and any other kinds or forms of tobacco prepared in a manner as to be suitable for chewing or smoking or both.

*Vapor products* means noncombustible products that may or may not contain nicotine, that employ a mechanical heating element, battery, electronic circuit or other mechanism, regardless of shape or size, that can be used to produce a vapor in a solution or other form including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor products" shall include any vapor cartridge, solution or other container that may or may not contain nicotine that is intended to be used with an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or similar product or device. "Vapor products" do not include any products regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

- (c) *Restrictions on sale or gift of cigarettes or nicotine or tobacco products.* Wis. Stats. § 134.66 as amended from time to time is hereby adopted in this section by reference as though fully set forth in this section.
  - (d) *Purchase or possession of cigarettes or tobacco products by person under 18 prohibited.* Wis. Stats. § 254.92 as amended from time to time is hereby adopted in this section by reference as though fully set forth herein.
  - (e) *Possession of cigarettes, tobacco products, or vapor products by students and persons under 18 years of age in school buildings or upon school property prohibited.* No person under the age of 18 and no person enrolled as a student in the Pewaukee School District may possess any cigarette, tobacco product, or vapor product at any time inside any building or on any property owned, leased or used by a public school in the village.
  - (f) *Use of cigarettes, tobacco products, or vapor products in school buildings or upon school property prohibited.* No person regardless of age may smoke, light, ingest, chew, inhale or otherwise use any cigarette, tobacco product or vapor product, smoke from a cigarette or tobacco product, or use a vapor product at any time inside any building or on any property owned, leased or used by a public school in the village.
  - (g) *Possession of cigarettes, tobacco products, or vapor products in public parks by persons under 18 years of age prohibited.* No person under the age of 18 may possess any cigarette, tobacco product, or vapor product at any time within the public parks located in the Village of Pewaukee.
  - (h) *Purchase, sale or possession of vapor products.*
    - (1) Sale of vapor products to minors prohibited. No person, by himself, his servant or agent, or as the servant or agent of any other, shall sell, give away, or otherwise dispose of, by vending machine or otherwise, any vapor product to any person under the age of 18 years.
    - (2) Purchase or possession of vapor products by persons under 18 years of age prohibited.
      - i. No person under 18 years of age may falsely represent his or her age for the purpose of receiving any vapor products.
      - ii. No person under 18 years of age may purchase, attempt to purchase or possess any vapor products except as follows: A person under 18 years of age may purchase or possess vapor products for the sole purpose of resale in the course of employment during his or her working hours if employed by a retailer.
- The defenses provided in § 134.66(3)(a) through (c), Wis. Stats., shall also be defenses to any prosecution hereunder.

- (i) *Penalties.* Violations of this section are subject to the penalty provisions in s. 1.102 of the Municipal Code of the Village of Pewaukee, as well as the following:

- (1) Violations of subsection (e) and (g) are subject to the following penalties:

First offense	\$204.00
Second offense	\$313.00
Third offense	\$439.00

- (2) Violations of subsection (e) and (g) where a vapor product is found to contain a controlled substance or controlled substance analog as those terms are defined in Wis. Stat. s §961.01, unless the person obtains the substance or the analog directly from or pursuant to a valid prescription or order of a practitioner who is acting in the course of his or her professional practice or unless the person is otherwise authorized by Wis. Stats. ch. 961 to possess the substance or the analog, are subject to the following penalties:

Each offense:           \$439.00

## SECTION II

All Ordinances or parts of Ordinances contravening the terms and conditions of this Ordinance are hereby to that extent repealed.

## SECTION III


The several sections of this Ordinance shall be considered severable. If any section shall be considered by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the other portions of the Ordinance.

## SECTION IV

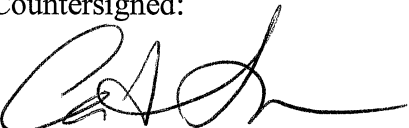
This Ordinance shall take effect upon passage and publication as approved by law, and the Village Clerk shall so amend the Code of Ordinances of the Village of Pewaukee, and shall indicate the date and number of this amending Ordinance therein.

Passed and adopted this 18 day of July 2023 by the Village Board of the Village of Pewaukee.

APPROVED:

  
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Jeff Knutson, Village President

Countersigned:

  
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Cassie Smith, Village Clerk