

## **ORDINANCE 2020-10**

### **CREATING SECTION 11.14 (Vape Product Use and Possession Restricted) OF THE MUNICIPAL CODE OF THE CITY OF PRAIRIE DU CHIEN, CRAWFORD COUNTY, WISCONSIN**

The Common Council of the City of Prairie du Chien, Crawford County, Wisconsin, do ordain as follows:

**Section 1:** That Section 11.14 of the Municipal Code of the City of Prairie du Chien, Wisconsin be created to read as follows:

#### **11.14 Vape Product use and Possession Restricted**

**(1) Statement of Purpose:**

(a) The purpose of this ordinance is to protect the public health, safety and welfare of the property and persons in the city by prohibiting persons under eighteen (18) years of age from possessing vapor products, and prohibiting

the sale of vapor products to persons under eighteen (18) years of age.

(b) Persons under age eighteen (18) are prohibited by law from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. New tobacco-less products, however, commonly referred to as “electronic cigarettes,” “e-cigarettes,” “e-cigars,” “e-cigarillos,” “epipes,” “e-hookahs,” or “electronic nicotine delivery systems,” allow the user to simulate cigarette smoking. 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.

(c) E-cigarettes, and similar devices, are a relatively new nicotine delivery system. While devices vary in their appearance and specific method of operation, they have several basic elements in common. A solution of water, dissolved nicotine, and other ingredients (usually flavoring) is heated with a heating element (usually battery-powered). This vaporizes the nicotine solution, which passes into a mouthpiece and is inhaled in a manner similar to cigarette smoking. Often, glycerol or propylene glycol is added to the solution to give the appearance of smoke when the solution is vaporized. The concentration of nicotine contained in the solution can be customized by the retailer to the buyer’s specifications, and many manufacturers make nicotine-free solutions.

(d) The production and distribution of e-cigarettes is not currently regulated by federal or state authorities, and the U.S. Food and Drug Administration has not completed testing of these products. However, initial studies by the FDA have determined that ecigarettes 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.

(e) The use of e-cigarettes and similar devices has increased significantly in recent years.

(f) Existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances including: Chemicals known to cause cancer such as formaldehyde, acetaldehyde, lead, nickel and chromium; • 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.

(g) Some cartridges used by electronic smoking devices can be refilled with liquid nicotine solution, creating the potential for exposure to dangerous concentrations of nicotine.

(h) Clinical studies about the safety and efficacy of these products have not been submitted to the FDA for the over four hundred (400) brands of electronic smoking devices that are on the market and for this reason, consumers have no way of knowing whether electronic smoking devices are safe, what types of potentially harmful chemicals the products contain, and what dose of nicotine the products deliver.

Electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products

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

(j) It is the intent of the Common Council, in enacting the ordinance codified in this section, to provide for the public health, safety and welfare by facilitating uniform and consistent enforcement of smoke-free air laws; by reducing the potential for re-normalizing smoking in public places and places of employment; by reducing the potential for children to associate the use of electronic smoking devices with a normative or healthy lifestyle; and by prohibiting the sale or distribution of electronic smoking devices to minors.

(k) Therefore, the Prairie du Chien Common Council determines that prohibiting the sale, giving, or furnishing of vapor products to minors and prohibiting the purchase, possession, or use of vapor products by minors is in the City's best interest and will promote public health, safety, and welfare.

## **(2) Definitions**

(a) "Minor" means an individual who is less than eighteen (18) years of age

(b) "Person who sells vapor products at retail" means a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products.

(c) "Public place" means a public street, sidewalk, or park or any area open to the general public in a publicly owned or operated building or premises, or in a public place of business or school.

(d) "Use of a vapor product" means to suck, inhale, or otherwise consume a vapor product.

(e) Vapor product means any product containing or delivering nicotine, lobelia, or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance through inhalation of vapor from the product. Electronic delivery device shall include any component part of such a product whether or not sold separately. Electronic delivery device shall not include any product that has been approved or otherwise certified by the United States Food and Drug Administration for legal sales for use in tobacco cessation treatment or other medical purposes, and is being marketed and sold solely for that approved purpose.

### **(3) Prohibited Conduct**

(a) Consistent with Wis. Stat. 254.92, a minor shall not do any of the following:

I. Purchase or attempt to purchase a vapor product.

II. Possess or attempt to possess a vapor product

III. Use a vapor product in a public place

IV. Present or offer to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a vapor product.

(b) No individual, regardless of age, who is enrolled in secondary school may possess or attempt to possess a tobacco product or vapor product while on school property.

(c) An individual who violates subsection (3)(a) shall be subject to the penalties listed in the juvenile bond schedule.

(d) An individual who violates subsection (3)(b) shall be subject to the following penalties:

I. For the first violation, the person is responsible for a civil infraction punishable by a forfeiture of seventy-five dollars (\$75.00).

II. For a second and subsequent violation, the person is responsible for a civil infraction punishable by a forfeiture of one-hundred and fifty dollars (\$150.00).

### **(4) Exception**

(a) Subsection (3) does not apply to a minor participating in any of the following: (a) An undercover operation in which the minor purchases or receives a vapor product under the direction of the minor's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the minor purchases or receives a vapor product under the direction of the state police or a local police agency as part of an enforcement action, unless the initial or contemporaneous purchase or receipt of the vapor product by the minor was not under the direction of the state police or the local police agency

and was not part of the undercover operation (b) Subsection (3) does not apply to the handling or transportation of a vapor product by a minor under the terms of that minor's employment.

**Section 2:** Any Ordinance or parts thereof inconsistent herewith are hereby repealed.

**Section 3:** This Ordinance shall be effective from and after its passage and publication as required by law.

Passed and approved this 6<sup>th</sup> day of October, 2020.

\_\_\_\_\_  
David Hemmer, Mayor

ATTEST:

\_\_\_\_\_  
Chad Abram, City Administrator

\* \* \*

Certification

I, Tina Fuller, am the duly qualified and acting City Clerk of the City of Prairie du Chien, Crawford County, Wisconsin. I hereby certify that the aforementioned is a true and exact reproduction of the original ordinance or resolution adopted by the Common Council.

IN WITNESS WHEREOF, I have executed this Certificate in my official capacity on the \_\_\_\_ of October, 2020.

(SEAL)

\_\_\_\_\_  
Tina Fuller  
City Clerk