

ORDINANCE NO. 2020-02**AN ORDINANCE AMENDING IN PART AND CREATING IN PART SECTION 70-7 OF THE CODE OF ORDINANCES FOR THE VILLAGE OF UNION GROVE REGARDING THE SMOKING BAN IN THE VILLAGE LAID OUT IN WIS. STAT. § 101.123 AND INCLUDING ELECTRONIC SMOKING DEVICES IN THAT BAN.**

The Village Board of the Village of Union Grove ordains as follows:

1. That Section 70-7 of the Municipal Code of the Village of Union Grove shall ban smoking in prohibited locations laid out in Wis. Stat. § 101.123, and the use of Electronic Smoking Devices shall be included in that ban, Section 70-7 is amended in part and created in part to read as follows:

“Sec. 70-7. Smoking Prohibited Under Certain Conditions.

(a) **Purpose and authority.** This ordinance is adopted, pursuant to Wis. Stat. § 101.123(1), for the purpose of protecting the public health, safety, comfort and general welfare of the people of the Village of Union Grove.

(b) Findings.

- (1) Tobacco smoking is a well-recognized health risk for young people and adults and tobacco use is recognized as the single most preventable cause of death in the United States. Inhalation of nicotine is proven to be dangerous to everyone, as exposure to ultrafine particles may exacerbate respiratory illness such as asthma and may constrict arteries which could trigger a heart attack.
- (2) Electronic smoking devices are known by many different names. They are sometimes called “e-cigarettes”, “e-cigs”, “e-hookahs,” “mods,” “vape pens,” “vapes,” “tank systems,” and “electronic nicotine delivery systems.” Some devices are made to look like regular cigarettes, cigars, or pipes while other resemble pens, USB sticks, and other everyday items.
- (3) Electronic smoking devices produce an aerosol by heating a liquid that usually contains nicotine, the addictive drug in regular cigarettes and other tobacco products, as well as flavorings and other chemicals that help to make the aerosol. Users inhale this aerosol into their lungs. Bystanders can also breathe in this aerosol when the user exhales into the air. Electronic smoking devices can be used to deliver marijuana and other drugs.

- (4) While the aerosol from electronic smoking devices contain fewer toxic chemicals than found in regular cigarettes, the aerosol is not harmless, and such devices are not currently approved by the United States Food and Drug Administration (“FDA”) as a “smoking cessation” device. The aerosol can contain harmful and potentially harmful substances, including nicotine, heavy metals like lead, volatile organic compounds, and cancer-causing agents such as formaldehyde and diacetyl.

(c) **Adoption of State Law.** The provisions of Wis. Stats. § 101.123, as amended from time-to-time, regulating smoking in various enclosed places are hereby adopted and made part of this Section by reference. As prescribed by state statutes, a warning notice shall be issued to the “person in charge” for the first violation. As defined in this section, “smoking” shall include Electronic Smoking Devices.

(d) **Definitions.** Except as set forth below, the definitions of Wis. Stat. § 101.123(1) are hereby adopted. In this section:

“Cigarette” means any roll of tobacco wrapped in paper or any substance other than tobacco.

“Electronic smoking device” means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. “Electronic smoking device” includes any component part of such product whether or not sold separately. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name. “Electronic smoking device” is not included in any product that has been approved by the FDA for sale as a tobacco cessation product or is being marketed and sold solely for approved purposes.

“Law enforcement office” means any person employed by the state or any political subdivision of the state for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed to enforce.

“Smoke” or “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated oral smoking device, including lighted pipes, cigars, cigarettes, tobacco, and hookah. Smoking shall include the use of an Electronic Smoking Device which creates an aerosol or vapor, in any manner or in any form or the use of any oral smoking device.

“Tobacco Products” means cigars; Cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut 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.

“Village buildings” and “village property” mean all village owned or operated buildings and those portions of buildings leased or operated by the village, and municipal property such as motor vehicles.

(e) Prohibition.

- (1) No person shall smoke in a place prohibited by Wis. Stat. § 101.123(2).
- (2) No person shall smoke or use Cigarettes, Electronic Smoking Devices, or Tobacco Products in Village buildings or Village-owned or leased motor vehicles.
- (3) No person shall smoke or use tobacco products, including chewing tobacco and other smokeless tobacco products, in Village Buildings or Village-owned motor vehicles.

(f) Sale or possession of cigarettes, Electronic Smoking Devices, and Tobacco Products to or of persons under the age of eighteen.

- (1) No person shall sell or offer for sale or provide for nominal or no consideration any electronic smoking device to any person under eighteen (18) years of age.
- (2) No person under eighteen (18) years of age shall possess or use any electronic smoking device.

(g) Penalties.

- (1) Any person violating the prohibition against smoking in enclosed places or upon those unenclosed spaces identified in Wis. Stats. § 101.123(d) and (e), shall be subject to a forfeiture of not less than \$100 nor more than \$250. Any person over the age of eighteen (18) violating Subsections (e)-(f) of this Section shall be subject to a forfeiture of not less than \$100 nor more than \$250. Any person over the age of eighteen (18), upon failure to pay the forfeiture, may be subject to not less than 2 nor more than 5 days of confinement in the county jail or house of corrections.
- (2) Any person in charge of property as defined in Wis. Stats. § 101.123(1)(d), who violates the provisions of Wis. Stats. §§ 101.123(2m)(b) to (d), or Sections 70-7(e)-(f), shall be subject to a forfeiture of \$100 and, upon failure to pay the forfeiture, may be confined in the county jail or house of correction for a period of 2 days.

No person may be held subject to more than \$100 total forfeiture for violations occurring on the same calendar day. For violations subject to the forfeiture provided in this paragraph, no citation shall be issued to a person in charge who has not received a prior written warning notice.

- (3) If any person under the age of eighteen (18) is issued a citation for violating any portion of this Section, the Municipal Court is authorized to impose any of the dispositions listed in Wis. Stat. §§ 938.343 and 938.344.

(h) **Designation of outside smoking areas.** Notwithstanding any other provision of this section, any person in charge of a restaurant, tavern, private club or retail establishment may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club or retail establishment where customers, employees, or persons associated with the restaurant, tavern, private club or retail establishment may smoke as provided in s. 101.123(4m), Wis. Stats. governing local authority to regulate smoking on public property. Any person in charge of a restaurant, tavern, private club or retail establishment that designates an area for smoking which is a reasonable distance from any entrance to a restaurant, tavern, private club or retail establishment shall assure that the designated area is kept free of litter including cigarette butts or other tobacco products.

(i) **Seizure.** A law enforcement officer shall seize any cigarette, electronic smoking device, or tobacco product from a person under the age of eighteen (18) found in violation of Subsection (f) of this Section.

(j) **Effect of Future Amendment to Wisconsin Statutes.** In the event that the provisions of Wis. Stats. § 101.123 are amended to delete the regulation of smoking in various enclosed places or the State removes the authority of municipalities to regulate smoking in enclosed places, this section shall have no effect and shall not be enforced within the Village, regardless of whether the ordinance remains included as a section of the Village's Code of Ordinances. In the event that the provisions of Wis. Stat. § 254.92 or other state statutes are amended to change the age of sale or possession of Cigarettes, Electronic Smoking Devices, or Tobacco Products from eighteen (18) to twenty-one (21), the amendment shall apply to this Section.

(k) **Severability.** Each section, paragraph, sentence, clause, word, and provision of this ordinance is severable, and if any such section or provision shall be held unconstitutional or invalid for any reason, such decision(s) shall not affect the remainder of the ordinance nor any part thereof other than that affected by such decision.”

2. That this ordinance shall become effective upon adoption and publication as provided by law.

Adopted by the Village Board of Union Grove, Racine County, Wisconsin, this ____ day of February, 2020.

VILLAGE OF UNION GROVE

By: _____

Michael Aimone
Village President

Attest: _____

Bradley Calder
Village Clerk