

CHAPTER 34

CIGARETTE AND TOBACCO PRODUCTS

34.01 DEFINITIONS.

The following terms have the meanings indicated as now provided in the Wisconsin Statutes, and as the same may be hereafter amended:

- (1) **Cigarette** has the meaning given in Section 139.30(1), Wis. Stats.
- (2) **Distributor** means any of the following:
 - (a) A person specified under Section 139.30(3).
 - (b) A person specified under Section 139.75(4).
- (3) **Identification card** means any of the following:
 - (a) A license containing a photograph issued under Chapter 343.
 - (b) An identification card issued under Section 343.50.
 - (c) An identification card issued under Section 125.08, 1987 stats.
- (4) **Jobber** has the meaning given in Section 139.30(6).
- (5) **Manufacturer** means any of the following:
 - (a) A person specified under Section 139.30(7).
 - (b) A person specified under Section 139.75(5).
- (6) **Retailer** means any person licensed under Section 134.65(1).
- (7) **School** has the meaning given in Section 118.257(1)(c).
- (8) **Stamp** has the meaning given in Section 139.30(13).
- (9) **Subjobber** has the meaning given in Section 139.75(11).
- (10) **Tobacco products** has the meaning given in Section 139.75(12).
- (11) **Vending machine** has the meaning given in Section 139.30(14).
- (12) **Vending machine operator** has the meaning given in Section 139.30(15).

34.02 LICENSE FOR RETAIL SALES.

- A. No person 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 or tobacco products to any person not holding a license as herein provided or a permit under Sections 139.30 to 139.41 or 139.79, Wisconsin Statutes, without first obtaining a license from the Clerk-Treasurer of the Village of Allouez.

- B. Upon the filing of a proper written application, a license shall be issued and continue in force for one year from date of issuance unless sooner revoked. The fee for the license is as provided in Section 8.20 of the Allouez Code, which shall be paid to the Village Clerk-Treasurer before the license is issued.
- C. 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.
- D. Every licensed retailer shall keep complete and accurate records of all purchases and receipts of cigarettes and tobacco products. Such records shall be preserved on the licensed premises for two years in such a manner as to insure permanency and accessibility for inspection and shall be subject to inspection at all reasonable hours by authorized state and local law enforcement officials.

34.03 RESTRICTIONS ON SALES TO MINORS.

- A. No retailer, manufacturer or distributor may sell or give cigarettes or tobacco products to any person under the age of eighteen (18), except as provided in Section 938.983(3), Wisconsin Statutes. 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.
- B. 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 section and Section 938.983, Wisconsin Statutes.
- C. 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 Section 938.983, Wisconsin Statutes, and that the purchaser is subject to a forfeiture of not to exceed the amount provided in Section 34.100 of this ordinance.
- D. (1) Except as provided in paragraph E. below, no retailer may keep a vending machine in any public place that is open to persons under the age of 18 unless all of the following apply;
 - (a) The vending machine is in a place where it is ordinarily in the immediate vicinity, plain view and control of an employee.

- (b) The vending machine is in a place where it is inaccessible to the public when the premises are closed.
 - (2) The person who ultimately controls, governs or directs the activities within the premises where the vending machine is located shall ensure that an employee of the retailer remains in the immediate vicinity, plain view and control of the vending machine whenever the premises are open.
 - (3) Except as provided in subsection (4) below, a vending machine operator shall remove all of his or her vending machines that are located in any place prohibited by this paragraph.
 - (4) Notwithstanding subparagraph (3) above, if a written agreement binding on a vending machine operator governs his or her vending machine that is located in any place prohibited by this paragraph, the vending machine operator shall remove the vending machine on the date that the written agreement expires or would be extended or renewed, whichever occurs first.
- E.
- (1) Notwithstanding paragraph D. above, no retailer may place a vending machine within 500 feet of a school.
 - (2) Except as provided in subparagraph (3) below, a vending machine operator shall remove all of his or her vending machines which are located within 500 feet of a school.
 - (3) Notwithstanding subparagraph (2) above, if a written agreement binding on a vending machine operator governs the location of his or her vending machine which is located within 500 feet of a school, the vending machine operator shall remove the vending machine on the date that the written agreement expires or would be extended or renewed, whichever occurs first.
 - (4) No manufacturer, distributor, jobber, subjobber or retailer, or their employees or agents, may provide cigarettes or tobacco products for nominal or no consideration to any person under the age of 18.
 - (5) No retailer may sell cigarettes in a form other than as a package or container on which a stamp is affixed under Section 139.32(1), Wisconsin Statutes.

F. Defense of Retailer, Manufacturer and Distributor.

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 of Section 34.03 A:

- (1) That the purchaser falsely represented that he or she had attained the age of 18 and presented an identification card; and
- (2) 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
- (3) 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.

34.04 REVOCATION OR SUSPENSION OF LICENSES.

- A. The Village Board shall have the power to revoke or suspend any license or permit issued under this Chapter for a violation of this ordinance.
- B. The proceedings shall be commenced by a summons, signed by the Village Clerk-Treasurer, directed to any peace officer, commanding the licensee to appear before the Village Board on a day certain and at a place named in such summons, not less than 20 days from the date it is served on the licensee, to show cause why the license or licenses should not be revoked or suspended. The summons may be served on the licensee personally or upon the person in charge of the place to which the license related.
- C. A complaint signed by the Village Clerk-Treasurer, stating the grounds for the proposed revocation or suspension, shall be served at the same time as the summons.
- D. If the licensee does not appear at the hearing, the complaint shall be taken as true. If the licensee appears at the hearing and denies the complaint, each party may produce witnesses and be heard by counsel. If, upon such hearing, the Board shall find that any of the alleged grounds stated in the complaint are true, the license may be suspended for not less than 10 days nor more than 90 days, or be revoked. If the Board shall find the complaint to be untrue, the proceedings shall be dismissed without costs to the accused. When a license is suspended or revoked, it shall be so entered of record by the Village Clerk-Treasurer, and the Village Clerk-Treasurer shall forthwith notify the Wisconsin Department of Revenue of such suspension or revocation. No other license shall be granted to such person within 12 months of the date of a license revocation nor shall any part of the money paid for any license so suspended or revoked be refunded.

34.1000 PENALTIES.

- A. Any person violating Section 34.02 of this ordinance shall be subject to a forfeiture of not more than \$100 nor less

than \$25 for the first offense and not more than \$200 nor less than \$25 for the second or subsequent offense. If, upon such second or subsequent violation, the person so violating this section was personally guilty of a failure to exercise due care to prevent violation thereof, the person shall be subject to a forfeiture of not more than \$300 nor less than \$25. Conviction shall immediately terminate the license or permit of the person convicted of being personally guilty of such failure to exercise due care and the person shall not be entitled to another license or permit hereunder for a period of five years thereafter, nor shall the person in that period act as the servant or agent of a person licensed hereunder for the performance of the acts authorized by such license or permit.

- B. A person who commits a violation of Section 34.03 of this ordinance is subject to a forfeiture of:
- (1) Not more than \$500 if the person has not committed a pervious violation within 12 months of the violation;
or
 - (2) Not less than \$200 nor more than \$500 if the person has committed a previous violation within 12 months of the violation.
- C. A court shall suspend any license or permit issued under Sections 134.65, 139.34 or 139.79, Wisconsin Statutes, or Section 34.02 of this ordinance, to a person for:
- (1) Not more than 3 days, if the court finds that the person committed a violation within 12 months after committing one previous violation;
 - (2) 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
 - (3) 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.
- D. The court shall promptly mail notice of a suspension under subsection C. above to the Department of Revenue and to the Clerk-Treasurer of the Village of Allouez.