

**CITY OF WEST ALLIS
ORDINANCE O-2024-0006**

**ORDINANCE TO ADOPT STATE LICENSING LAW REGARDING ELECTRONIC
VAPING DEVICE RETAILERS**

AMENDING SECTION 9.65 AND REPEALING SECTION 9.74

WHEREAS, 2023 Wisconsin Act 73 incorporated electronic vaping device sales into the state cigarette and tobacco products license effective March 6, 2024; and

WHEREAS, Wis. Stat. 134.65(8) says the "uniform licensing of cigarette , electronic vaping devices, and tobacco products retailers is a matter of statewide concern"; and

WHEREAS, the City may adopt an ordinance licensing electronic vaping device sales only if the ordinance strictly conforms to state law; and

WHEREAS, the City's local license regulating nicotine product sales is superseded by state law as of March 6, 2024, and the common council seeks to conform the local regulations of electronic vaping devices to the new state law;

NOW THEREFORE, the common council of the City of West Allis do ordain as follows:

SECTION 1: **AMENDMENT** “9.47 General Provisions” of the City Of West Allis Municipal Code is hereby *amended* as follows:

A M E N D M E N T

9.47 General Provisions

1. Vicarious Liability. A licensee is liable for any violations of any provision of this chapter committed in the course of conducting the licensed activity by the licensee's employee, agent, or contractor. Each licensee has the affirmative duty to see that every regulation is obeyed by employees, agents, and contractors. The licensee may be convicted for a violation committed by an employee, agent, or contractor only in a civil forfeiture action. None of the following are defenses to the liability imposed under this section:
 - a. The licensee was deceived about or ignorant of the violation.
 - b. The licensee was absent at the time of the violation.
 - c. The licensee had prohibited employees, agents, and contractors from doing the act that resulted in a violation.
2. State Law Applicable. Any duty or authority assigned by state law to a City body, officer, or department shall be in effect unless explicitly declined or rejected in this code. Nothing in this chapter may be construed to implicitly preclude, decline, or reject

any authority or duty in state law.

3. License List. The table below indicates by type of license which city officer issues the license, whether the issuing officer may grant the license without council approval, whether a record check is required, the term of the license, and which city departments receive notification of an application for that license.

Type	Issuing Officer	I.O. may Grant(a)	Expires	Departments Notified							
				Co de Enf .	Clerk	Engineer	Fire	Health	Planning	Police	Public Works
Adult-Oriented Entertainment	Clerk	No	June 30	X	X		X	X		X	
Alcohol Beverages											
Class "B" Beer (provisional)	Clerk	Yes(b)	60 days	X	X		X	X		X	
Class "B" Beer (regular)	Clerk	No	June 30	X	X		X	X		X	
Class "B" Beer (temporary)	Clerk	Yes	As stated on license		X					(d)	
"Class B" Liquor (provisional)	Clerk	Yes(b)	60 days	X	X		X	X		X	
"Class B" Liquor (regular)	Clerk	No	June 30	X	X		X	X		X	
"Class B" Wine (temporary)	Clerk	Yes	As stated on license		X					(d)	

<u>Electronic Vaping Devices,</u> and Tobacco Products Retailer	Clerk	Yes	June 30		X					X	
Concrete Contractor	Engineer	Yes	June 30		X						
Escort Service	Clerk	No	June 30		X					X	
Fitness Center	Health Commissioner	Yes	June 30					X			
Hotel or Motel	Health Commissioner	Yes	June 30(e)					X			
Junk Picker	Clerk	Yes	4 months		X					X	X
Lodging House	Health Commissioner	Yes	June 30	X				X			
Manufactured and Mobile Home Community	Clerk	Yes	June 30	X	X					X	
Nicotine Products Retailer	Clerk	Yes	June 30	X	X			X		X	
Pawnbroker	Clerk	No	Dec. 31		X					X	
Public Entertainment											
			June								

Regular	Clerk	No	30	X	X		X	X	X	X	
Temporary	Clerk	No	As stated on license		X					(d)	
Public Swimming Pool	Health Commissioner	Yes	June 30(e)					X			
Recreational and Educational Camp	Health Commissioner	Yes	June 30(e)					X			
Retail Food Establishment	Health Commissioner	Yes	June 30(e)					X			
Secondhand Article Dealer	Clerk	No	Dec. 31		X					X	
Secondhand Jewelry Dealer	Clerk	No	Dec. 31		X					X	
Tattoo	Health Commissioner	Yes	June 30					X			
Tourist Rooming House	Health Commissioner	Yes	June 30(e)	X				X			
Transient Merchant	Clerk	Yes	4 months		X			X		X	

- a. The issuing officer may only grant a license to an applicant who is clearly qualified.
- b. The issuing officer shall grant a provisional retail license under [Wis. Stat.](#)

- [125.185](#) only to applicants whose applications are pending before the common council and all the following applies:
- i. The Public Safety Committee has recommended granting the license.
 - ii. The applicant has obtained all required licenses and permits.
 - iii. The applicant has passed all required inspections.
- c. The issuing officer shall grant a provisional operator's license to any applicant who meets the qualifications under [Wis. Stat. 125.17\(5\)](#).
- d. No record check is required.
- e. Licenses initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year.
- f. The issuing officer may grant and issue a regular operator's license only if the applicant does not have any of the following:
- i. A pending criminal charge for any offense under [Wis. Stat. 111.335\(4\)\(a\)](#)
 - ii. A conviction for an offense counted under [Wis. Stat. 343.307](#) within two years of the application date
 - iii. A second or subsequent conviction for an offense counted under [Wis. Stat. 343.307](#) within five years of the application date
 - iv. Convictions for three or more violations of [Wis. Stat. 343.44](#) within two years of the application date
 - v. A conviction for any offense under [Wis. Stat. Ch. 125](#) or any offense for which the consumption, possession, or sale of alcohol is an element within ten years of the application date, except no violation of [Wis. Stat. 125.07](#) may be considered unless the applicant has committed two or more violations within one year;
 - vi. A conviction for a felony offense where the sentence for confinement, extended supervision, or probation has ended within five years of the application date; or
 - vii. Convictions for three or more misdemeanors within five years of the application date.
4. Fees. An applicant for a license shall pay any applicable fees listed in the [Fee Schedule](#).

SECTION 2: AMENDMENT “9.65 Cigarette And Tobacco Products Retailer” of the City Of West Allis Municipal Code is hereby *amended* as follows:

AMENDMENT

9.65 Cigarette, Electronic Vaping Devices, And Tobacco Products Retailer

1. License Required. [Wis. Stat. 134.65\(1d\)](#) is adopted.
2. Exceptions. (Reserved)
3. Application Process. The application process in [Wis. Stat. 134.65\(2\)\(a\)](#) is adopted.
4. Regulations. The regulations in [Wis. Stat. 134.65](#) are adopted.
5. Discipline Process. The discipline process in [Wis. Stat. 134.65\(5\)](#) is adopted.

SECTION 3: REPEAL “9.74 Nicotine Products Retailer” of the City Of West Allis Municipal Code is hereby *repealed* as follows:

R E P E A L

~~9.74 Nicotine Products Retailer~~ (*Repealed*)

1. License Required. No person may 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 to any person any nicotine products, as defined in [Wis. Stat. 134.66\(1\)\(f\)](#), or any item designed or used for the inhalation of nicotine products without first obtaining a nicotine products retailer license.
2. Exceptions. (Reserved)
3. Application Process. The application process in [WAMC 9.50](#) is adopted.
4. Regulations
 - a. Vending Machines and Self-Service Displays. No licensee shall sell, give, furnish, or cause to be sold, given, or furnished any nicotine products or any item designed or used for the inhalation of nicotine products by use of a vending machine or self-service display unless minors are not allowed to enter the premises at any time.
5. Discipline Process. The discipline process in [WAMC 9.51](#) is adopted.

SECTION 4: EFFECTIVE DATE This Ordinance shall be in full force and effect on and after the date identified in 2023 Wis. Act 73, s. 65(1).

PASSED AND ADOPTED BY THE CITY OF WEST ALLIS COUNCIL MARCH 05, 2024.

	AYE	NAY	ABSENT	ABSTAIN
Ald. Vince Vitale	<u> </u>	<u> </u>	<u> X </u>	<u> </u>
Ald. Ray Turner	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Tracy Stefanski	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Suzzette Grisham	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Danna Kuehn	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Thomas Lajsic	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Dan Roadt	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Rosalie Reinke	<u> X </u>	<u> </u>	<u> </u>	<u> </u>
Ald. Kevin Haass	<u> X </u>	<u> </u>	<u> </u>	<u> </u>

Attest

Presiding Officer



Rebecca Grill, City Clerk, City Of
West Allis



Dan Devine, Mayor, City Of West
Allis

