

ORDINANCE OF
ROCK COUNTY BOARD OF SUPERVISORS

Supervisor Mike Zoril
INITIATED BY



February 20, 2024
DATE DRAFTED

AMENDING CHAPTER 3, PART 7, SUBPART 2
OF THE ROCK COUNTY CODE OF ORDINANCES

1 Rock County Board of Supervisors duly assembled this 28th day of March, 2024 does ordain as
2 follows (added text appears as underlined; deleted text appears as ~~struck through~~):

3
4 I. The title to Chapter 3, Part 7, Subpart 2 shall be amended to read as follows:

5
6 Subpart 2: ~~Possession of Tobacco Products by Children~~ Sale and Possession of Tobacco Products
7 Regulated

8
9 II. Section 3.702 deleted in its entirety and re-ordained to read as follows:

10
11 3.702 Purchase or Possession of Cigarettes or Tobacco Products by Minors

12
13 (1) Authority and Scope. This section is adopted in conformity with Wis. Stat. § 254.92 and shall
14 not apply within a town, village, or city that has enacted or enacts an ordinance under this
15 subsection.

16
17 (2) Definitions. In this section:

18 (a) "Cigarette" has the meaning given in s. 139.30 (1m).
19 254.911(2)

20 (b) "Governmental regulatory authority" means the department, a local health
21 department, a state agency or a state or local law enforcement agency; or a person with
22 whom the local health department, state agency, or state or local law enforcement agency
23 contracts to conduct investigations authorized under s. 254.916 (1) (a).

24 (c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

25 (d) "Nicotine product" has the meaning given in s. 134.66 (1) (f).

26 (e) "Retailer" has the meaning given in s. 134.66 (1) (g).

27 (f) "Retail outlet" means a place of business from which cigarettes, nicotine products, or
28 tobacco products are sold at retail to consumers.

29 (g) "State agency" has the meaning given in s. 1.12 (1) (b).

30 (h) "Tobacco products" has the meaning given in s. 139.75 (12).

31 (i) "Tobacco vending machine" is any mechanical device that automatically dispenses
32 cigarettes or tobacco products when money or tokens are deposited in the device in
33 payment for the cigarettes or tobacco products.

34 (j) "Tobacco vending machine operator" means a person who acquires tobacco products
35 or stamped cigarettes from manufacturers, as defined in s. 134.66 (1) (e), or permittees,
36 stores them and sells them through the medium of tobacco vending machines that he or
37 she owns, operates or services and that are located on premises that are owned or under
38 the control of other persons.

39 (k) "Tobacco vending machine premises" means any area in which a tobacco vending
40 machine is located.

41
42 (3) No person under 18 years of age may falsely represent his or her age for the purpose of
43 receiving any cigarette, nicotine product, or tobacco product.

44
45 (4) No person under 18 years of age may purchase, attempt to purchase, or possess any cigarette,
46 nicotine product, or tobacco product except as follows:

47 (a) A person under 18 years of age may purchase or possess cigarettes, nicotine products,
48 or tobacco products for the sole purpose of resale in the course of employment during his
49 or her working hours if employed by a retailer.

50 (b) A person under 18 years of age, but not under 15 years of age, may purchase, attempt
51 to purchase or possess cigarettes, nicotine products, or tobacco products in the course of
52 his or her participation in an investigation under s. 254.916 that is conducted in
53 accordance with s. 254.916 (3).

54
55 (5) No person may purchase cigarettes, tobacco products, or nicotine products on behalf of, or
56 to provide to, any person who is under 18 years of age. Any person who violates this subsection
57 may be:

58 (a) Required to forfeit not more than \$500 if the person has not committed a previous
59 violation within 30 months of the violation.

60 (b) Fined not more than \$500 or imprisoned for not more than 30 days or both if the
61 person has committed a previous violation within 30 months of the violation.

62 (c) Fined not more than \$1,000 or imprisoned for not more than 90 days or both if the
63 person has committed 2 previous violations within 30 months of the violation.

64 (d) Fined not more than \$10,000 or imprisoned for not more than 9 months or both if the
65 person has committed 3 or more previous violations within 30 months of the violation.

66
67 (6) A law enforcement officer shall seize any cigarette, nicotine product, or tobacco product that
68 has been sold to and is in the possession of a person under 18 years of age.

69
70 (7) Enforcement. The Rock County Public Health Department and the Rock County Sheriff's
71 Office shall have authority to enforce this ordinance pursuant to Wis. Stat. §§ 134.66 & 254.916

72
73 III. Section 3.703 is created to read as follows:

74
75 3.703 Restriction on the Sale or Gift of Cigarettes, Nicotine Products, or Tobacco Products

76
77 (1) Authority and Scope. This section is adopted in conformity with Wis. Stat. 134.66(5) and shall
78 not apply within any town, village, or city that has adopted or adopts an ordinance under this
79 subsection. If a county, town, village, or city conducts unannounced investigations of retail
80 outlets, as defined in s. 254.911 (5), to determine compliance with an ordinance adopted under
81 this subsection, as authorized under s. 254.916 (1), the investigations shall meet the requirements
82 of s. 254.916 (3) (a) to (f) and any standards established by the department of health services
83 under s. 254.916 (1) (b).

84
85 (2) Definitions. In this section:

86 (a) "Cigarette" has the meaning given in s. 139.30 (1m).

87 (am) "Direct marketer" has the meaning given in s. 139.30 (2n).

88 (b) "Distributor" means any of the following:

89 1. A person specified under s. 139.30 (3).

90 2. A person specified under s. 139.75 (4).

91 (c) "Identification card" means any of the following:

92 1. A license containing a photograph issued under ch. 343.

93 2. An identification card issued under s. 343.50.

94 3. An identification card issued under s. 125.08, 1987 stats.

95 4. A tribal identification card, as defined in s. 134.695 (1) (cm).

96 (d) "Jobber" has the meaning given in s. 139.30 (6).

97 (e) "Manufacturer" means any of the following:

98 1. A person specified under s. 139.30 (7).

99 2. A person specified under s. 139.75 (5).

100 (f) "Nicotine product" means a product that contains nicotine and is not any of the
101 following:

102 1. A tobacco product.

103 2. A cigarette.

104 3. A product that has been approved by the U.S. food and drug administration for
105 sale as a smoking cessation product or for another medical purpose and is being
106 marketed and sold solely for such an approved purpose.

107 (g) "Retailer" means any person licensed under s. 134.65 (1).

108 (h) "School" has the meaning given in s. 118.257 (1) (d).

109 (hm) "Stamp" has the meaning given in s. 139.30 (13).

110 (i) "Subjobber" has the meaning given in s. 139.75 (11).

111 (j) "Tobacco products" has the meaning given in s. 139.75 (12).

112 (k) "Vending machine" has the meaning given in s. 139.30 (14).

113 (L) "Vending machine operator" has the meaning given in s. 139.30 (15).

114
115 (3) Restrictions.

116 (a) No retailer, direct marketer, manufacturer, distributor, jobber or subjobber, no agent,
117 employee or independent contractor of a retailer, direct marketer, manufacturer,
118 distributor, jobber or subjobber and no agent or employee of an independent contractor
119 may sell or provide for nominal or no consideration cigarettes, nicotine products, or
120 tobacco products to any person under the age of 18, except as provided in s. 254.92 (2)

121 (a). A vending machine operator is not liable under this paragraph for the purchase of
122 cigarettes, nicotine products, or tobacco products from his or her vending machine by a
123 person under the age of 18 if the vending machine operator was unaware of the purchase.

124 (am) No retailer, direct marketer, manufacturer, distributor, jobber, subjobber, no agent,
125 employee or independent contractor of a retailer, direct marketer, manufacturer,
126 distributor, jobber or subjobber and no agent or employee of an independent contractor
127 may provide for nominal or no consideration cigarettes, nicotine products, or tobacco
128 products to any person except in a place where no person younger than 18 years of age is
129 present or permitted to enter unless the person who is younger than 18 years of age is
130 accompanied by his or her parent or guardian or by his or her spouse who has attained
131 the age of 18 years.

132 (b)

133 1. A retailer shall post a sign in areas within his or her premises where cigarettes or
134 tobacco products are sold to consumers stating that the sale of any cigarette or
135 tobacco product to a person under the age of 18 is unlawful under this section and
136 s. 254.92.

137 2. A vending machine operator shall attach a notice in a conspicuous place on the
138 front of his or her vending machines stating that the purchase of any cigarette or
139 tobacco product by a person under the age of 18 is unlawful under s. 254.92 and
140 that the purchaser is subject to a forfeiture of not to exceed \$50.

141 (cm)

142 1m. A retailer or vending machine operator may not sell cigarettes or tobacco
143 products from a vending machine unless the vending machine is located in a place
144 where the retailer or vending machine operator ensures that no person younger
145 than 18 years of age is present or permitted to enter unless he or she is
146 accompanied by his or her parent or guardian or by his or her spouse who has
147 attained the age of 18 years.

148 2. Notwithstanding subd. 1m., no retailer may place a vending machine within 500
149 feet of a school.

150 (e) No retailer or direct marketer may sell cigarettes in a form other than as a package or
151 container on which a stamp is affixed under s. 139.32 (1).

152
153 (4) Training.

154 (a) Except as provided in par. (b), at the time that a retailer hires or contracts with an
155 agent, employee, or independent contractor whose duties will include the sale of cigarettes
156 or tobacco products, the retailer shall provide the agent, employee, or independent
157 contractor with training on compliance with sub. (3) (a) and (am), including training on
158 the penalties under sub. (6) (a) 2. for a violation of sub. (3) (a) or (am). The department
159 of health services shall make available to any retailer on request a training program
160 developed or approved by that department that provides the training required under this
161 paragraph. A retailer may comply with this paragraph by providing the training program
162 developed or approved by the department of health services or by providing a comparable
163 training program approved by that department. At the completion of the training, the
164 retailer and the agent, employee, or independent contractor shall sign a form provided by
165 the department of health services verifying that the agent, employee, or independent
166 contractor has received the training, which the retailer shall retain in the personnel file of
167 the agent, employee, or independent contractor.

168 (b) Paragraph (a) does not apply to an agent, employee, or independent contractor who
169 has received the training described in par. (a) as part of a responsible beverage server
170 training course or a comparable training course, as described in s. 125.04 (5) (a) 5., that
171 was successfully completed by the agent, employee, or independent contractor. The
172 department of health services shall make the training program developed or approved by
173 that department under par. (a) available to the technical college system board, and that
174 board shall include that training program or a comparable training program approved by
175 that department in the curriculum guidelines specified by that board under s.
176 125.04 (5) (a) 5. The department of health services shall also make the training program

177 developed or approved by that department under par. (a) available to any provider of a
178 comparable training course, as described in s. 125.04 (5) (a) 5., on request, and the
179 department of revenue or the department of safety and professional services may approve
180 a comparable training course under s. 125.04 (5) (a) 5. only if that training course includes
181 the training program developed or approved by the department of health services under
182 par. (a) or a comparable training program approved by that department.

183 (c) If an agent, employee, or independent contractor who has not received the training
184 described in par. (a) commits a violation of sub. (3) (a) or (am), a governmental regulatory
185 authority, as defined in s. 254.911 (2), may issue a citation based on that violation only to
186 the retailer that hired or contracted with the agent, employee, or independent contractor
187 and not to the agent, employee, or independent contractor who has not received that
188 training. If an agent, employee, or independent contractor who has received the training
189 described in par. (a) commits a violation of sub. (2) (a) or (am) for which a governmental
190 regulatory authority issues a citation to the retailer that hired or contracted with the agent,
191 employee, or independent contractor, the governmental regulatory authority shall also
192 issue a citation based on that violation to the agent, employee, or independent contractor
193 who has received that training.

194
195 (5) Defense; sale to minor. Proof of all of the following facts by a retailer, manufacturer,
196 distributor, jobber, or subjobber, an agent, employee, or independent contractor of a retailer,
197 manufacturer, distributor, jobber, or subjobber, or an agent or employee of an independent
198 contractor who sells cigarettes or tobacco products to a person under the age of 18 is a defense to
199 any prosecution, or a complaint made under s. 134.65 (7), for a violation of sub. (3) (a):

200 (a) That the purchaser falsely represented that he or she had attained the age of 18 and
201 presented an identification card.

202 (b) That the appearance of the purchaser was such that an ordinary and prudent person
203 would believe that the purchaser had attained the age of 18.

204 (c) That the sale was made in good faith, in reasonable reliance on the identification card
205 and appearance of the purchaser and in the belief that the purchaser had attained the age
206 of 18.

207
208 (6) Penalties.

209 (a)

210 1. In this paragraph, "violation" means a violation of sub. (3)(a), (am), (cm), or (e).

211 2. A person who commits a violation is subject to a forfeiture of:

212 a. Not more than \$500 if the person has not committed a previous violation
213 within 12 months of the violation; or

214 b. Not less than \$200 nor more than \$500 if the person has committed a
215 previous violation within 12 months of the violation.

216 3. A court shall suspend any license or permit issued under s. 134.65, 139.34 or
217 139.79 to a person for:

218 a. Not more than 3 days, if the court finds that the person committed a
219 violation within 12 months after committing one previous violation;

220 b. Not less than 3 days nor more than 10 days, if the court finds that the
221 person committed a violation within 12 months after committing 2 other
222 violations; or

223 c. Not less than 15 days nor more than 30 days, if the court finds that the
224 person committed the violation within 12 months after committing 3 or
225 more other violations.

226 4. The court shall promptly mail notice of a suspension under subd. 3. to the
227 department of revenue and to the clerk of each municipality which has issued a
228 license or permit to the person.

229 (b) Whoever violates sub. (3) (b) shall forfeit not more than \$25.

230
231 (7) Enforcement. The Rock County Public Health Department and the Rock County Sheriff's
232 Office shall have authority to enforce this ordinance pursuant to Wis. Stat. §§ 134.66 & 254.916

FISCAL NOTE:

Minimal fiscal impact.

Sherry Oja
Finance Director

LEGAL NOTE:

The County Board is authorized to take this action pursuant to Wis. Stat. § 59.02(2). Under Wis. Stat. § 254.92(4), County's may enact ordinances regulating the purchase or possession of tobacco products by minors, but only if such ordinance strictly conforms to State law. Similarly, under Wis. Stat. § 134.66(5), County's may regulate the sale of tobacco products to minors, but only if such regulation strictly conforms to State law.

Richard Greenlee
Corporation Counsel

ADMINISTRATIVE NOTE:

Matter of policy.

Josh Smith
County Administrator