SUBSTITUTE AMENDMENT #1
ORDINANCE NO. 813

AN ORDINANCE
TO AMEND SECTION 58-148 OF THE CITY OF FORT ATKINSON MUNICIPAL CODE RELATING TO THE SALE OF TOBACCO, NICOTINE PRODUCTS, ELECTRONIC SMOKING DEVICES, AND ELECTRONIC SMOKING DEVICE PARAPHERNALIA NEAR CERTAIN LOCATIONS

NOW, THEREFORE, the City Council of the City of Fort Atkinson, Wisconsin, do ordain as follows:

Section 1. Section 58-148 of the City of Fort Atkinson Municipal Code is hereby amended to read as follows:

"Sec. 58-148. Sale of tobacco and possession of tobacco and electronic cigarettes by minors.

(A) *The City Council finds and declares the following:*

(1) Tobacco is the leading cause of preventable death in the United States and the leading risk factor contributing to the burden of disease in the world's high-income countries. According to the Centers for Disease Control and Prevention (CDC), more than 400,000 deaths each year are attributable to tobacco use, including one-third of all cancer deaths.

(2) Social norms about smoking influence smoking rates, particularly among those not addicted. Studies have found that strong governmental regulation of smoking corresponds and may contribute to anti-smoking norms. Social unacceptability has been repeatedly shown to be an important influence on both initiation and quitting.

(3) Local regulations are necessary to control the location and operation of the sale or exchange of tobacco products for the protection of public health, safety, and welfare.

(B) *Definitions.*

(1) *Electronic smoking device* means an electronic device that can be used to deliver an inhaled dose of nicotine or any other substance intended for human consumption that may be used by a person to simulate smoking through inhalation of vapor or aerosol from the product. It includes any such device whether manufactured, distributed, marketed, or sold as an electronic cigarette, commonly known as e-cigarettes; an electronic cigar; an electronic cigarillo; an electronic pipe; an electronic hookah; vape pen; or any other product name or descriptor.

(2) ~~*Electronic smoking device paraphernalia* means a cartridge, cartomizer, e-liquid,~~ smoke juice, tip, atomizer, electronic smoking device battery, electronic smoking device charger, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices. It does not include any cigarette, as defined in

Wis. Stats. § 139.30(1m), nicotine product, as defined in Wis. Stats. § 134.66(1)(f), or tobacco products, as defined in Wis. Stats. § 139.75(12).

(3) *Person* means any individual, partnership, firm, organization, association, corporation, trustee, or other legal entity of any kind.

(4) *Vending machine* means any mechanical device that automatically dispenses electronic smoking devices or electronic smoking device paraphernalia when money or tokens are deposited in the device in payment for electronic smoking devices or electronic smoking device paraphernalia.

(5) *Out-of-School Time Program* means a place or setting dedicated to the development of youth outside of schools. These environments operate during non-school hours and are supervised by adults focused on the academic, social, emotional, and physical growth of young people. These organizations fall under a broader asset-based model known as Positive Youth Development (PYD), which emphasizes building a youth's strengths and resiliency rather than simply treating problems.

(6) *Youth Center* means a community-based space that accommodates unstructured social interaction, recreation, and institutional classes in a safe, supervised environment.

(7) *Youth-Serving Organization* means a larger, long-standing association that provides a wide array of activities, mentorship, and career pathways, such as Boys and Girls Clubs, YMCA, 4-H, and Badgerland Afterschool Enrichment Program (BASE).

(8) *Out-of-School Youth (OSY)* means a legal classification (often used in workforce or community service grants) for youth under specific age limits who are not attending any standard educational institution.

(C) *Prohibition.*

(1) No person may sell or give any person under the age of 18 any tobacco, nicotine product, electronic smoking device, or electronic smoking device paraphernalia at any time.

(2) No person under 18 years of age may purchase or possess any tobacco, nicotine product, electronic smoking device, or electronic smoking device paraphernalia.

(3) No person may purchase any tobacco, nicotine product, electronic smoking devices, or electronic smoking device paraphernalia on behalf of, or to provide to, any person who is under 18 years of age.

(4) No person may provide for nominal or no consideration any tobacco, nicotine product, electronic smoking device, or electronic smoking device paraphernalia to any person except in a place where no person younger than 18 years of age is present or permitted to enter unless the person who is younger than 18 years of age is accompanied by his or her parent or guardian or by his or her spouse who has attained the age of 18 years.

(D) *Regulations.*

(1) The owner or operator of an establishment that sells tobacco, nicotine products, electronic smoking devices, or electronic smoking device paraphernalia shall post a

sign in the immediate area where those products are sold stating that the sale of any said products to a person under the age of 18 is unlawful under this section.

(2) A person or vending machine operator may not sell tobacco, nicotine products, electronic smoking devices, or electronic smoking device paraphernalia from a vending machine, except in an establishment where individuals under the age of 18 are not present or permitted at any time, as provided in § 21 CFR Part 1140.16(c)(2)(ii).

(3) No sale of tobacco, nicotine products, electronic smoking devices, nor electronic smoking device paraphernalia is permitted within 1,000 feet of the nearest point of the property line of a public or private school and any out-of-school youth programming location, youth center, or youth-serving organization per the definitions included in (B).

(4) Establishments currently operating at a location where sales would otherwise under (3) be prohibited may continue to operate.

(5) Only those establishments which derive more than 50% of their gross income from the sale of tobacco, nicotine products, electronic smoking devices, and/or electronic smoking device paraphernalia shall be subject to this ordinance.

(E) *Defense of seller.* Proof of all the following facts by a person who sells electronic smoking devices or electronic smoking device paraphernalia to a person under the age of 18 is a defense to any prosecution for a violation of subsection (b)(1):

(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.

(F) *Penalties.*

(1) Any person convicted of violating this section, shall be subject to the following forfeitures:

a. Not less than $100.00 nor more than $400.00 if the person has not committed a previous violation within 12 months of the violation.

b. Not less than $200.00 nor more than $500.00 if the person has committed a previous violation within 12 months of the violation.

(Ord. No. 774, 2-5-19)"

Section 2. This ordinance shall take effect upon passage, posting, or publication as provided by law.

Enacted by the City Council of the City of Fort Atkinson, Jefferson County, Wisconsin, this 15 day of Sept., 2026.

CITY OF FORT ATKINSON

Kyle Jaeckel, City Council President

ATTEST:

Michelle Ebbert, City Clerk/Treasurer/Finance Director