

LEGAL SERVICES DEPARTMENT

Office of the City Attorney

100 North Appleton Street

Appleton, WI 54911

Phone: 920/832-6423

Fax: 920/832-5962

TO: Safety and Licensing Committee

CC: Board of Health

FROM: Amanda Abshire and Darrin Glad, Assistant City Attorneys

DATE: December 3, 2019

RE: Resolution #9-R-19 Update

I. History of Resolution #9-R-19

Resolution #9-R-19 was submitted by Ald. Spears requesting that the Appleton Health Department, Appleton Police Department, and the Attorney's office work together to propose language that would prohibit the use and possession of any vapor products by anyone under the age that the State Statute age sets forth for possession and use of nicotine. This Resolution was passed by Common Council on August 21, 2019.

II. Steps Taken

Director Eggebrecht, Assistant Police Chief Potter and Lieutenant Frisch, and Assistant City Attorneys Glad and Abshire met several times to discuss ways in which the City could effectively address the vaping epidemic. Dir. Eggebrecht pointed out that data from the recent youth risk behavior survey indicated that more Appleton students use vapor products than the State average. Health, Police, and Legal have continued to reach out to representatives from mental health, substance use, nurses from other school districts, prosecutors from other municipalities that have adopted similar legislation, and other police departments to provide a suitable recommendation to combat this epidemic. In doing so, City staff remains committed to improving the health of all by continuing to view this issue through the lens of equity and the Health in All Policies ordinance.

Staff agreed that issuing a citation and securing a conviction was not, by itself, an effective way to change the behavior of youth addiction. Instead, we felt that a collaborative approach where youth are able to receive education and counseling regarding the dangers of vapor products was the best method to combat the youth vaping epidemic.

We also discussed having a process for confiscating and destroying vapor products that are in the possession of those under the legal age to possess nicotine products. After speaking with other schools and prosecutors, we learned that currently many schools confiscate vapor products but without any legislation banning the possession of the product, they sometimes

return the vapor product to parents who request the return of the product. However, if the city makes the possession of these products unlawful, the Appleton Police Department's evidence destruction policy could allow for the seizure and destruction of vapor products by youth offenders.

III. Proposed Language

The recommended modifications to Appleton's municipal code are set forth below in **bolded print**:

Sec. 10-37. Possession or purchase of cigarettes **nicotine, vapor,** and tobacco products by persons under the age of 18

(a) The provisions W.S.A. §254.92 as amended regarding the possession or purchase of cigarettes, **nicotine,** and tobacco products by persons under the age of eighteen (18), exclusive of any penalty contained therein, is hereby adopted by reference and made an offense punishable as a violation of this Code. **It shall be unlawful for anyone under the age in which that person can possess or purchase cigarettes, nicotine, or tobacco products to possess or purchase vapor products.**

(b) The provisions of W.S.A. §134.66, regarding the sale or gift of cigarettes or **nicotine or** tobacco products, exclusive of any monetary penalty contained therein, is hereby adopted by reference and made an offense punishable as a violation of this Code.

(c) *Definitions. As used in this Section:*

Vapor product means any noncombustible product or device, regardless of whether it contains nicotine, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce a vapor that is intended to be inhaled by the person using the product. "Vapor product" includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device; and any cartridge or other container of a solution or other substance, regardless of whether it contains nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

(d) **Penalty. Any person who violates this section shall be penalized pursuant to section 1-18(b).**

IV. Effects of Changes Modifications set forth above

Staff from Legal, Health, and the Police Department recommend adopting the language set forth above for several reasons. First, the addition of "nicotine" allows the Code to mirror the language that already exists in State law. Further, by adding the possession of vapor products by anyone not lawfully able to possess nicotine products, we are fulfilling the directive of the Resolution.

The City has previously adopted a bond schedule (Sec. 1-18) setting forth the penalties for violations of the municipal code. The possession of vapor products would mirror what already exists for cigarettes, nicotine, or tobacco products.

- If it is a violation involving the possession or use of the products mentioned above: \$200.50

Additionally, as referenced earlier, the Appleton Police Department could destroy the cigarettes, nicotine, tobacco, and vapor products when possessed by youth in violation of the municipal code consistent with the evidence destruction policy. A policy that allows for the destruction of these items (and is in conformity with Wis. Stat. §968.20) effectively ensures that these products will not be returned to the youth offender.

Finally, it is the intent of City staff to work to collaborate to provide access to programming for violators of this ordinance so that youth can receive education and counseling regarding the dangers of nicotine, vapor, and tobacco products. Youth that successfully complete the City approved programming will receive consideration and may avoid the issuance of a citation, receive a dismissal of the citation, or costs can be waived or reduced upon completion of the programming at the discretion of the police officer and/or prosecutor.

V. Conclusion

Staff recommends approving the proposed ordinance language set forth within this memo.

Thank you for your consideration. As always, if you have any questions please do not hesitate to contact Director Eggebrecht, Assistant Police Chief Potter, or Assistant City Attorneys Abshire and Glad.