

CHAPTER 7

Offenses Involving Smoking
(Ordinance No. 2019-19; Adopted 12/03/19)

<i>Section Number</i>	<i>Title</i>	<i>Ordinance Number</i>	<i>Date of Ordinance</i>
11-7-1	Purpose.		
11-7-2	Findings.		
11-7-3	Adoption of State Law.		
11-7-4	Definitions.		
11-7-5	Prohibition of Smoking and Tobacco Products.		
11-7-6	Sale of Cigarettes, Electronic Smoking Devices, and Tobacco Products to Persons Under the Age of Eighteen.		
11-7-7	Possession of Cigarettes, Electronic Smoking Devices, and Tobacco Products to Persons Under the Age of Eighteen.		
11-7-8	Seizure.		
11-7-9	Designation of Outside Smoking Areas.		
11-7-10	Penalties.	2020-01	01/20/20
11-7-11	Severability.		
11-7-12	Effect of Future Amendment to Wisconsin Statutes.	2020-01	01/20/20

SEC. 11-7-1 PURPOSE.

This section is adopted for the purpose of protecting the public health, safety, comfort, and general welfare of the people of the Village of Caledonia. This Chapter is adopted under the authority of Wis. Stat. § 101.123(4m).

SEC. 11-7-2. FINDINGS.

- (a) Tobacco smoking is a well-recognized health risk for young people and adults and tobacco use is recognized as the single most preventable cause of death in the United States. Inhalation of nicotine is proven to be dangerous to everyone, as exposure to ultrafine particles may exacerbate respiratory illness such as asthma and may constrict arteries which could trigger a heart attack.
- (b) Electronic Smoking Devices are known by many different names. They are sometimes called “e-cigarettes”, “e-cigs”, “e-hookahs”, “mods”, “juuls”, “vapes”, “vape pens”, “tank systems” and “electronic nicotine delivery systems.” Some devices are made to look like regular cigarettes, cigars, or pipes while other resemble pens, USB sticks, and other everyday items.

- (c) Electronic Smoking Devices produce an aerosol by heating a liquid that may contain nicotine, the addictive drug in regular cigarettes and other tobacco products, as well as flavoring and other chemicals that help to make the aerosol. Users inhale this aerosol into their lungs. Bystanders can also breathe in this aerosol when the user exhales into the air. Electronic smoking devices can be used to deliver marijuana and other drugs.
- (d) Electronic Smoking Devices are not currently approved by the United States Food and Drug Administration (“FDA”) as a “smoking cessation” device. Electronic Smoking Devices have been found to contain between 10 to 115 times more nicotine in second-hand air-levels over cigarettes. This causes risk to those around the devices; especially children who are unable to remove themselves from the risks. The aerosol can contain harmful and potentially harmful substances, including nicotine, heavy metals like lead, volatile organic compounds, and cancer-causing agents such as formaldehyde and diacetyl.

SEC. 11-7-3 ADOPTION OF STATE LAW.

The provisions of Wis. Stat. § 101.123, as amended from time-to-time, regulating smoking in various enclosed places are hereby adopted in their entirety and made part of this Chapter by reference. As prescribed by state statutes, a warning notice shall be issued to the “person in charge” for the first violation. As defined in this section, “smoking” shall include Electronic Smoking Devices.

SEC. 11-7-4 DEFINITIONS.

“Cigarette” means any roll of tobacco wrapped in paper or any substance other than tobacco.

“Electronic Smoking Device” means any product, which may or may not contain nicotine or any other similar substance, intended for human consumption that can be used by a person to simulate smoking through inhalation or exhalation of vapor or aerosol from the product. "Electronic smoking device" includes any product 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 vapor from a solution or other substance. “Electronic smoking device” includes any component part of such product whether or not sold separately. The term shall include such devices whether they are manufactured as electronic cigarettes, electronic cigars, electronic pipes or any other product name. The term shall include any cartridge or other container of a solution or other substance, that is intended to be used with or in electronic smoking device.

“Law enforcement officer” means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed to enforce.

“Smoke” or “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated oral smoking device, including lighted pipes, cigars, cigarettes, tobacco, and hookah. Smoking shall

include the use of Electronic Smoking Devices that creates an aerosol or vapor, in any manner or in any form.

“Tobacco Products” means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

“Village Buildings” or “Village Property” mean all Village owned or operated buildings and portions of buildings leased or operated by the Village, and Village property such as motor vehicles.

SEC. 11-7-5 PROHIBITION OF SMOKING AND TOBACCO PRODUCTS.

- (a) No person shall smoke in a place prohibited by Wis. Stat. 101.123(2).
- (b) No person shall smoke in Village Buildings or Village-owned or leased motor vehicles.
- (c) No person shall smoke or use tobacco products, including chewing tobacco and other smokeless tobacco products, in Village Buildings or Village-owned motor vehicles.
- (d) No person shall smoke an Electronic Smoking Devices in Village Buildings or Village-owned motor vehicles.

SEC. 11-7-6 SALE OF CIGARETTES, ELECTRONIC SMOKING DEVICES, AND TOBACCO PRODCUTS TO PERSONS UNDER THE AGE OF EIGHTEEN.

No person shall sell or offer for sale or provide for nominal fee or no consideration any cigarettes, Electronic Smoking Devices, or tobacco products to a person under the age of eighteen (18) years of age.

SEC. 11-7-7 POSSESSION OF CIGARETTES, ELECTRONIC SMOKING DEVICES, AND TOBACCO PRODUCTS TO PERSONS UNDER THE AGE OF EIGHTEEN.

No person under the age of eighteen (18) years of age shall possess or use any cigarette, Electronic Smoking Device, or tobacco product.

SEC. 11-7-8 SEIZURE.

A Law Enforcement Officer shall seize any Cigarette, Electronic Smoking Device, or Tobacco Product from a person under the age of eighteen (18) found in violation of Sections 11-7-5 and 11-7-6 of this Chapter.

SEC. 11-7-9 DESIGNATION OF OUTSIDE SMOKING AREAS.

Notwithstanding any other provision of this section, any person in charge of a restaurant, tavern, private club or retail establishment may designate an outside area that is a reasonable distance from any entrance to the restaurant, tavern, private club or retail establishment where customers, employees, or persons associated with the restaurant, tavern, private club or retail establishment may smoke as provided in Wis. Stat. § 101.123(4m), governing local authority to regulate smoking on public property. Any person in charge of a restaurant, tavern, private club or retail establishment that designates an area for smoking which is a reasonable distance from any entrance to a restaurant, tavern, private club or retail establishment shall assure that the designated area is kept free of litter including cigarette butts or other tobacco products.

SEC. 11-7-10 PENALTIES.

- (a) Any person violating the prohibition against smoking in enclosed places or upon those unenclosed spaces identified in Wis. Stats. § 101.123(2)(d) and (e), shall be subject to a forfeiture of not less than \$100 nor more than \$250. Any person over the age of 18 violating Section 11-7-5 or Section 11-7-6 of this Chapter shall be subject to a forfeiture of not less than \$100 nor more than \$250. Any person over the age of 18, upon failure to pay the forfeiture, may be subject to not less than two (2) nor more than five (5) days of confinement in the county jail or house of correction.
- (b) Any person in charge of property as defined in Wis. Stat. § 101.123(1)(d), who violates the provisions of Wis. Stats. § 101.123(2m)(b) to (d) or Section 11-7-6 or Section 11-7-7 of this Chapter, shall be subject to a forfeiture of \$100 and, upon failure to pay the forfeiture, may be confined in the county jail or house of correction for a period of 2 days. No person in charge may be held subject to more than \$100 total forfeiture for violations occurring on the same calendar day. For violations subject to the forfeiture provided in this paragraph, no citation shall be issued to a person in charge who has not received a prior written warning notice.
- (c) Any person under the age of eighteen (18) who has been issued a citation under this Chapter shall be subject to penalties set forth in Wis. Stat. § 938.343 and § 938.344.

SEC. 11-7-11 SEVERABILITY.

Each section, paragraph, sentence, clause, word, and provision of this ordinance is severable, and if any such section or provision shall be held unconstitutional or invalid for any reason, such

decision or ruling shall not affect the remainder of the ordinance nor any part thereof other than that affected by such decision or ruling.

SEC. 11-7-12 EFFECT OF FUTURE AMENDMENT TO WISCONSIN STATUTES.

In the event that the provisions of Wis. Stat. § 101.123 are amended to delete the regulation of smoking in various enclosed places or the State removes the authority of municipalities to regulate smoking in enclosed places, this Section shall have no effect and shall not be enforced within the Village, regardless of whether the ordinance remains included as a section of the Village's Code of Ordinances. In the event that the provisions of Wis. Stat. § 254.92 or other state statutes are amended to change the age of sale or possession of Cigarettes, Electronic Smoking Devices, or Tobacco Products from eighteen (18) to twenty-one (21), the amendment shall apply to Sections 11-7-6 to 11-7-10 of this Chapter.