

3-2-18: SALES AND POSSESSION OF TOBACCO PRODUCTS

A. Definitions: The following terms shall, for the purposes of this section, have the meanings herein ascribed to them:

ALTERNATIVE NICOTINE PRODUCT: Any product or device not consisting or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, vaporizing or by any other means. The term alternative nicotine product includes any electronic device that provides a gas or vapor derived from nicotine and/or other chemicals and inhaled by the user to simulate smoking, such as e-cigarettes, electronic cigars, electronic pipes, electronic hookah pipes, vape pens, advanced personal vaporizers, box mods, or other devices capable of delivering aerosolized nicotine or other chemicals through inhalation. The term alternative nicotine product excludes any product approved by the United States Food and Drug Administration as a non- tobacco product for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

CANNABINOID PRODUCT: Any product offered for sale that contains cannabinoids, including Delta-8 tetrahydrocannabinol (“Delta-8 THC”), and kratom and is not regulated under the Compassionate Use of Medical Cannabis Program Act or the Cannabis Regulation and Tax Act.

MINOR: A person less than eighteen (18) years of age.

PERSON: An individual, corporation, partnership, association, or other legal entity.

TOBACCO PRODUCT: Any item, product, or substance containing tobacco leaf, including, without limitation, cigarettes, cigars, snuff, pipe tobacco, chewing tobacco, and dipping tobacco but also alternative nicotine products other than traditional tobacco such as e- cigarettes and vaping products that are battery-operated devices with a combination of nicotine, flavor, or chemicals or any combination thereof that are turned into vapor which is inhaled by the user.

A. License Required for Retail Tobacco and E-Cigarettes: It is unlawful to sell, barter, transport, deliver, furnish, possess, keep or offer for sale at retail tobacco products, e-cigarettes or accessories, or engage in or conduct a retail tobacco business, or conduct any place for the sale of tobacco products or vaping products or accessories within the corporate limits of the village, without having a retail tobacco dealer's license, or in violation of the terms of such licenses. Businesses who intend to sell any of these products shall be required to obtain a General Tobacco Retail license before engaging in sales.

B. License Application for Retail Tobacco and E-Cigarettes: Application for such license shall be made to the village in writing on a form prepared and furnished by the

village, signed by the applicant, if any individual; or by at least two (2) members of a partnership, if the applicant is a partnership, or if the applicant is a corporation, then by the president and secretary thereof, verified by oath or affidavit of the signers, and shall contain the following information and statement:

- i.** The name, age and address of the applicant in the case of an individual; in the case of a partnership, the persons entitled to share in five percent (5%) or more of the profits thereof; and in the case of a corporation the date of the incorporation, the state of incorporation, the objects for which it was organized, the names and addresses of the officers and directors, and the name and address of all persons owning more than five percent (5%) of the stock, along with a copy of the corporate charter currently on file with the Illinois secretary of state;
- ii.** The citizenship of the applicant, their place of birth and if a naturalized citizen, the time and place of their naturalization;
- iii.** The character of business of the applicant and, in the case of a club or corporation, the place of incorporation and the objects for which it was formed;
- iv.** The length of time that the applicant has been in business of the character specified above, or in case of a club or corporation, the date on which its charter was issued;
- v.** The location and description of the premises or place of business which is to be operated under such license and the specific name of the business.
- vi.** The names of each governmental body from which the applicant has received a tobacco license within ten (10) years immediately prior to the date of the present application.
- vii.** The applicant's current state tobacco license number from the department of revenue (unless already bonded under the cigarette tax act of the cigarette use tax act);
- viii.** The location and description of the premises or place of business which is to be operated under such license;
- ix.** A statement whether the applicant has made a similar application for a similar or other license on premises other than described in the application, and the disposition of such application;
- x.** A statement that the applicant has never been convicted of a felony and is not disqualified to receive a license by reason of any matter or thing contained in this chapter or any ordinance or statute;
- xi.** Whether a previous license by any state or subdivision thereof, or by the federal government has been revoked, and the reasons therefor;

xii. A statement that the applicant will not violate any of the laws of the state or of the United States or any ordinance of the village in the conduct of business;

xiii. A statement that the applicant has, or is eligible for and will obtain, a license from the state of Illinois in the event such a license is required by applicable statute or departmental regulation.

C. License; Conditions for Denial: If the license application, pre-license investigation, or any other information reasonably relied on by the village reveal any of the following circumstances, then the village shall promptly notify the applicant that the license or renewal of a license is denied and that, therefore, no license or renewal of a license shall be issued:

i. A person who is not of good character and reputation;

ii. A person who is not a citizen or lawful permanent resident of the United States;

iii. A person who has been convicted of a felony under any federal or state law, unless the Village Board determines that such person has been sufficiently rehabilitated to warrant the public trust after considering matters set forth in such person's application and the Village Board's investigation. The burden of proof of sufficient rehabilitation shall be on the applicant;

iv. A person who has been convicted of pandering or any other crime or misdemeanor opposed to decency and morality;

v. A person who at the time of application for renewal of any license issued would not be eligible for a license upon a first application;

vi. A partnership, if any general partner thereof, or any limited partner thereof, owning more than five percent (5%) of the aggregate limited partner interest in such partnership would not be eligible to receive a license hereunder for any reason;

vii. A corporation, if any officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than five percent (5%) of the stock of such corporation, would not be eligible to receive a license hereunder for any reason other than citizenship;

viii. A corporation unless it is incorporated in Illinois, or is qualified under the "business corporation act of 1983" to transact business in Illinois;

ix. A person whose place of business is conducted by a manager or agent unless the manager or agent possess the same qualifications required for the licensee;

x. A person who does not beneficially own the premises for which a license is sought, or does not have a lease thereon for the full period the license is to be issued;

xi. A person who does not qualify for a state license, in the event such a license is required by applicable statute or departmental regulation.

xii. The failure to agree to refrain from selling delta-8 and kratom, including products that contain delta-8 THC, kratom, and/or kratom's two main chemical components, from the premises for which the license is sought. This provision may be waived for products that have been approved by the United States Food and Drug Administration.

D. Ownership Changes: Any change in the names, addresses, or identity of any owner or holder of five percent (5%) or more of any stock, shares, equity, or other instrument of ownership of a licensee licensed under this chapter, shall be reported to the Village within ten (10) days of any such change.

E. License Fee: Each such license shall terminate on December 31 next following the date of issuance.

i. The fee to be paid shall be applicable for a full year, or any part thereof, without proration or other reduction if purchased for less than a full year. All fees for licenses pursuant to this chapter shall be paid at the time the application is made.

ii. In the event that a license is denied, the license fee shall be refunded to the applicant, less a fifty-dollar (\$50.00) processing fee.

iii. Annual tobacco license fees can be found in title 13, chapter 1, "Fee Schedule", of this Code. (Ord. 2018-12-279, 12-3-2018).

F. License; Posting: Every licensee shall cause the license or licenses to be framed and hung in a conspicuous place on the licensee's premises.

G. License; Proximity to Certain Institutions: It is unlawful for any person or licensee to sell, offer for sale, give away or deliver regulated products within one hundred feet (100') of any school, childcare facility or other building used for educational or recreational purposes by persons under eighteen (18) years of age. For the purpose of this subsection, measurement shall be made in a straight line, without regard to intervening structures or objects, from nearest portal of the building or structure used as a part of the premises where a licensed establishment is located, to the nearest portal of a school, childcare facility or other building used for educational or recreational purposes by persons under eighteen (18) years of age.

H. License; Issuance: Upon the approval by the Village Board of the application as provided in this Section and the payment of the required license fee, the village shall issue

to the person or persons applying therefor a license allowing the retail sale of tobacco and e-cigarette products under the provisions of this chapter, indicating the classification under which the license is issued, and the term for which such license is issued.

I. License; Renovation or Suspension: The Village may revoke or suspend any license if it is determined that the licensee has violated any State Statute or any of the provisions of any ordinance or resolution of the Village or any applicable rule or regulation established by the Village. However, no such license shall be revoked or suspended until after a Village public hearing with a written notice to the licensee affording the licensee a minimum of five (5) business days in which to appear and defend. In all such hearings, the Village shall reduce, or cause to be reduced, all evidence to writing and shall maintain an official record of the proceedings. The Village shall within five (5) days after such hearing, state the reasons for such determination in a written order of revocation or suspension and shall serve a copy of such order upon the licensee. The decision of the village on any license suspension or revocation proceeding shall constitute a final administrative action and is subject to review in the courts under the Illinois Administrative Review Act, 735 Illinois Compiled Statutes 5/3-101 et seq.

i. Any licensee determined by the Village to have violated any of the provisions of this Section shall pay to the Village costs of the hearing on such violation. The Village shall determine the costs of the hearing, including, but not limited to: court reporter fees, attorney fees incurred by the Village, the cost of preparing and mailing notices and orders and all other miscellaneous expenses incurred by the Village and such costs assessed shall be in addition to the fine imposed. Notice of the suspension shall be posted in plain view of the public at the licensee's premises.

ii. The licensee shall pay said costs to the Village within thirty (30) days of notification of the costs. Failure to pay said costs within thirty (30) days of notification is a violation of this chapter and may cause the levy of an additional fine or revocation of license at the discretion of the Village Board.

iii. While it shall not be a defense to an action brought under this Section that the retailer's employee conducted the unlawful sale or transaction, the Village may, at its discretion, direct prosecution of an ordinance violation case against that employee in lieu of taking formal action on the establishment's license and licensee.

J. Warning Signs: It is unlawful for any person to sell, offer for sale, give away or deliver tobacco products or tobacco accessories in any place that does not post signs informing the public of the age of sale restrictions and Surgeon General warning in a conspicuous place at or near every display of tobacco products. Each sign shall be plainly visible.

K. Vending Machines Prohibited: Tobacco vending machines or any other devices for the sale or distribution of regulated products are prohibited.

L. Out of Package Sales Prohibited: It is unlawful to sell traditional tobacco or vaping products out of the manufacturer's original package with required health warnings. It is unlawful to sell cigarettes individually or regulated products in any form other than in the manufacturer's original packaging.

M. Responsibility for Agents and Employees: Every act or omission of any nature constituting a violation of any provisions of this chapter by any officer, director, manager or other agent or employee of any licensee shall be deemed and held to be the act of such licensee; and such licensee shall be punishable in the same manner as if such act or omission had been done or omitted by the licensee personally. Notwithstanding this provision, nothing herein shall prevent the individual prosecution of such officers, directors, managers or other agents or employees in the discretion of the licensing authority or arresting authority.

N. Inspection: The chief of police is hereby authorized to establish protocols and procedures appropriate for the purpose of ascertaining whether the laws of the state and of the Village in relation to the same, are being complied with at all licensed establishments.

O. State License Required: All licenses issued pursuant to this chapter shall be conditioned on the acquisition and maintenance in good standing by the applicant of a Tobacco Products Retailer license issued by the State of Illinois. If any license is refused, suspended or revoked by the State, then any license issued or conditionally issued by the Village shall immediately become null and void without further action by the Village required.

P. Sales To Persons Under Twenty One Years Of Age Prohibited: It shall be unlawful for any person to sell, give away, offer to sell, offer to give away, or deliver any tobacco product or alternative nicotine product to a person under twenty one (21) years of age. It also shall be unlawful for any person to cause or allow any person under twenty-one (21) years of age to purchase any tobacco product or alternative nicotine product within the corporate limits of the Village.

Q. Sale By Persons Under Twenty One Years Of Age Prohibited: It shall be unlawful for any person under twenty one (21) years of age to sell any tobacco product or alternative nicotine product within the corporate limits of the Village, except only that tobacco products and alternative nicotine products may be sold by any employee of a business properly licensed to sell tobacco products and alternative nicotine products so long as such employee sells such tobacco products and alternative nicotine products only on the licensed premises, only during regular business hours, and only to a person legally authorized to purchase such tobacco products and alternative nicotine products.

R. Purchase By Persons Under Twenty One Years Of Age Prohibited: It shall be unlawful for any person under twenty one (21) years of age to purchase any tobacco product or alternative nicotine product within the corporate limits of the Village.

S. Possession By Persons Under Twenty One Years Of Age Prohibited: It shall be unlawful for any person under twenty one (21) years of age to possess any tobacco product or alternative nicotine product within the corporate limits of the Village.

T. Free Distribution Prohibited: It shall be unlawful for any person to distribute, give away, or deliver any tobacco product or alternative nicotine product free of charge to any person on any public right-of-way or any Village owned property for the purpose of advertising or promoting any tobacco product or alternative nicotine product.

U. Sales Prohibited In Certain Locations: It shall be unlawful for any person to sell, give away, offer to sell, offer to give away, or deliver any tobacco product or alternative nicotine product within one hundred feet (100') of the property of any school or the property intended for use by minors for education or recreational purposes.

V. Responsibility For Agent Or Employee: Every act constituting a violation of this section by an agent or employee of any person shall be deemed and held to be the act of such person, and such person shall be punishable in the same manner as if such act had been done by such person personally. (Ord. 2018-11-275, 12-3-2018)

W. Penalty: Any person who violates any provision of this section shall be fined pursuant to title 13, chapter 1, "Fee Schedule", of this Code for each offense.

X. Payments To Avoid Prosecution For Penalties Under Subsection P, Q, or R: Any person who receives a citation for a violation of subsection P, Q, or R of this section may avoid prosecution by paying a fine pursuant to title 13, chapter 1, "Fee Schedule", of this Code. (Ord. 2018-11-275, 12-3-2018; amd. Ord. 2018-12-279, 12-3-2018)

Any such fines are subject to adjudication by and through the Village administrative hearing system. (Ord. 2018-11-275, 12-3-2018)

This Village Code shall be in full force and effect on January 1, 2025. No sales of -8 THC or kratom are permitted after December 31, 2024. Licensees regulated under this section shall not order any additional products containing delta-8 THC or kratom as of August 5, 2024.