

## Chapter 13 TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS

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### 13.01 DEFINITIONS

In addition to those terms defined in Appendix A of this Code, for purposes of this Chapter, the following words and phrases are defined as follows:

**Alternative Nicotine Product:** Means a product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. *Ord. 572*

**Electronic Cigarette or E-Cigarette:** Means an electronic device usually composed of a mouthpiece, a heating element or atomizer, a battery, and electronic circuits that provides a gas derived from liquid nicotine and/or other substances which is inhaled by a user simulating smoking. The term includes such devices, regardless of the details of the product appearance or marketed name, generally manufactured to resemble cigarette, cigars, pipes, or other smoking devices. *Ord. 572*

**Liquid Nicotine:** Means any liquid product composed either in whole or part of nicotine, propylene glycol and/or other similar substances and manufactured for use with an e-cigarette to be converted into gas for inhaling. *Ord. 572*

**Smokeless tobacco:** Any tobacco products suitable for dipping or chewing.

**Smoking paraphernalia:** Smoking devices, accessories and paraphernalia, including cigarette paper, cigarette and cigar rolling machines, pipes, bongs, electronic cigarettes and any other devices which are manufactured or constructed for the use in connection with the preparation or consumption of smoking of tobacco products or use of alternative nicotine products. *Amended, 572*

**Tobacco products:** Any substance containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.

**Vending machine:** Any mechanical, electric or electronic self-service device, which, upon the insertion of money, tokens or any other form of payment, dispenses tobacco products.

### **13.02**      **LICENSE REQUIRED** *Amended, 572*

It shall be unlawful to sell or offer for sale, at retail; to give away, deliver or keep with the intention of selling at retail, tobacco products, smokeless tobacco, alternative nicotine products, liquid nicotine and/or smoking paraphernalia within the Village without first having obtained a Tobacco Dealer's License, pursuant to this Chapter. Such license shall be in addition to any other license or permit required by this Code.

### **13.03**      **LICENSE APPLICATION; FEE** *Amended, 514*

Application for a tobacco license (Exhibit A to this Chapter) shall be submitted to the Clerk for processing in accordance with the provisions of this Chapter. The fee for a Tobacco Dealer's License shall be \$100 per year, due and payable by May 1 of each year.

### **13.04**      **PROHIBITIONS REGARDING MINORS** *Amended, 572*

It shall be unlawful:

1. **SALE TO MINORS:** For any person, including any licensee, to sell, offer for sale, give away or deliver tobacco products, alternative nicotine products, liquid nicotine or smoking paraphernalia to any person under the age of 18 years. Signs informing the public of these age restrictions shall be posted by every licensee at or near every display of tobacco products, alternative nicotine products, liquid nicotine or smoking paraphernalia and on or upon every vending machine which offers tobacco products, alternative nicotine products, liquid nicotine or smoking paraphernalia for sale. The text of such sign shall be in red letters on a white background and the letters shall be a minimum of one inch high. Each sign shall be plainly visible and shall state:

THE SALE OF TOBACCO PRODUCTS  
ALTERNATIVE NICOTINE PRODUCTS AND LIQUID NICOTINE  
TO PERSONS UNDER 18 YEARS OF AGE  
IS PROHIBITED BY LAW

2. **SALE BY MINORS:** For any licensee or any officer, associate, member, representative, agent or employee of such licensee to engage, employ or permit any minor person under the age of 18 years to sell, deliver, barter, give or exchange tobacco products, alternative nicotine products, liquid nicotine or smoking paraphernalia in any licensed premises.
3. **PURCHASE BY MINORS:** For any persons under the age of 18 years to purchase tobacco products, alternative nicotine products, liquid nicotine or smoking paraphernalia or to misrepresent his identity or age or use any false or altered identification for the purpose of purchasing tobacco products, alternative nicotine products, liquid nicotine or smoking paraphernalia.

4. **POSSESSION BY MINORS:** For any person under the age of 18 years to possess any tobacco products, alternative nicotine products, liquid nicotine or smoking paraphernalia.

Nothing herein shall prohibit the possession or use of tobacco, tobacco products, alternative nicotine products or liquid nicotine by a minor in his or her home, under the direct supervision of his or her parent or guardian.

### **13.05 CERTAIN FREE DISTRIBUTION IS PROHIBITED** *Amended, 572*

It shall be unlawful for any licensee or person in the business of selling or otherwise distributing, promoting or advertising tobacco products, alternative nicotine products, liquid nicotine or smoking paraphernalia or any employee or agent of any such licensee or person, in the course of such licensee's or person's business, to distribute, give away or deliver tobacco products, alternative nicotine products, liquid nicotine or smoking paraphernalia free of charge to any person on any right-of-way, park, playground or other property owned by any public entity.

### **13.06 VENDING MACHINE; LOCKING DEVICES** *Amended, 572*

It shall be unlawful for any licensee to sell or offer for sale, give away, deliver or to keep with the intention of selling, giving away or delivering tobacco products, alternative nicotine products, liquid nicotine or smoking paraphernalia by use of a vending machine unless such vending machine is equipped with a manual or electronic locking device controlled by the licensee so as to prevent its operation by persons under the age of 18 years of age. Any premises where access by persons under the age of 18 years is prohibited by law, or premises where the public is not permitted where vending machines are strictly for use of the employees of the business located at such premises, shall be exempt from the requirements of this Section.

### **13.07 POSSESSION AND USE OF BIDI CIGARETTES, SMOKING HERBS, TOBACCO ACCESSORIES AND TOBACCO PRODUCTS; TOBACCO RETAILER'S LICENSE** *Amended, Ord. 514, 716*

A. **DEFINITIONS:** In addition to those terms defined in Appendix A of this Code, terms used in this Section 9.16 are defined as follows:

**Bidi cigarette:** A product that contains tobacco that is wrapped in temburni or tendu leaf or that is wrapped in any other material identified by rules of the Illinois Department of Public Health that is similar in appearance or characteristics to the temburni or tendu leaf.

**Compliance check:** An inspection conducted with the intention of assessing retail sales of tobacco products to minors and enforcing age-of-sales law. Compliance checks are conducted by having designated persons under the age of 18 years of age attempt to purchase tobacco products from vendors.

**License:** A license issued by the Village for the retail sale of tobacco products.

**Licensee:** The holder of a valid Village license for the retail sale of tobacco products.

**Minor:** Any person under the age of 18.

**Self-service displays:** The open display of tobacco products and point-of-sale tobacco promotional products that the public has access to without intervention of a store employee.

**Smoking herbs:** All substances of plant origin and their derivatives, including but not limited to broom, calea, California poppy, damiana, hops, ginseng, lobelia, jimson weed and other members of the Datura genus, passion flower and wild lettuce, which are processed or sold primarily for use as smoking materials.

**Smokeless tobacco:** Any finely cut, ground, powdered or leaf tobacco that is intended to be placed in the oral cavity; any tobacco product that is suitable for dipping or chewing.

**Tobacco accessories:** cigarette papers, pipes, holders of smoking materials of all types, cigarette rolling machines and other items, designed primarily for the smoking or ingestion of tobacco products or of substances made illegal under any statute or of substances whose sale, gift, barter or exchange is unlawful.

**Tobacco products:** Cigars, cigarettes, smoking tobacco or tobacco in any form.

**Vending machine:** Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any form of payment, dispenses tobacco products.

**B. PURCHASE AND USE OF TOBACCO PRODUCTS PROHIBITED:**

1. No person under 18 years of age shall purchase any tobacco product in any of its forms. No person shall sell, purchase for, distribute samples of or furnish tobacco product in any of its forms to any person under 18 years of age. Tobacco products may be sold through a vending machine only when such tobacco products are not sold along with non-tobacco products in the vending machine and only in the following locations:
  - a. Factories, businesses, offices, private clubs and other places not open to the general public.
  - b. Places to which persons under 18 years of age are not permitted access.
  - c. Places where alcoholic beverages are sold and consumed on the premises.
  - d. Places where the vending machine is under the direct supervision (which means that the owner or employee has an unimpeded line of sight to the vending machine) of the owner of the establishment

or an employee over 18 years of age. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco products by that person.

- e. Places where the vending machine can only be operated by the owner or an employee over age 18 either directly or through a remote control device if the device is inaccessible to all customers.

- 2. Penalty: Any person violating any provision of this Section 9.16-B is guilty of a petty offense and for the first offense shall be fined \$200, \$400 for the second offense in a 12-month period, and \$600 for the third or any subsequent offense in a 12-month period and be responsible for the Village's cost of prosecution, including reasonable attorney fees.

#### C. POSSESSION OF TOBACCO PRODUCTS:

- 1. No person under 18 years of age shall possess tobacco products in any of its forms.
- 2. Penalty: If a minor violates this Section 9.16-C the minor shall be guilty of a petty offense and may be fined \$25 or sentenced to 15 hours of community service for the first offense. If a second violation occurs within a 12-month period of the first offense, the fine shall be \$50 and 25 hours of community service. For a third or subsequent violation that occurs within a 12-month period of the first offense, the fine shall be \$100 and 30 hours of community service. If there is a second or subsequent violation not within a 12-month time period after the first violation, a fine of \$25 or 15 hours of community service shall be assessed. For any violation the violator shall be responsible for the Village's cost of prosecution, including reasonable attorney fees.

#### D. TOBACCO ACCESSORIES AND SMOKING HERBS:

- 1. Sale to Minors Prohibited: No person shall knowingly sell, barter, exchange, deliver or give away or cause or permit or procure to be sold, bartered, exchanged, delivered or given away tobacco accessories or smoking herbs to any person under 18 years of age.
- 2. Sale of Bidi Cigarettes: No person shall knowingly sell, barter, exchange, deliver or give away a bidi cigarette to another person, nor shall a person cause or permit or procure a bidi cigarette to be sold, bartered, exchanged, delivered or given away to another person.
- 3. Sale of Cigarette Paper: No person shall knowingly offer, sell, barter, exchange, deliver or give away cigarette paper or cause, permit or procure

cigarette paper to be sold, offered, bartered, exchanged, delivered or given away except from premises or an establishment where other tobacco products are sold.

4. Sale of Cigarette Paper from Vending Machines: No person shall knowingly offer, sell, barter, exchange, deliver or give away cigarette paper or cause, permit or procure cigarette paper to be sold, offered, bartered exchanged, delivered or given away by use of a vending or coin-operated machine or device. For purposes of this Section 9.16-D4, cigarette paper shall not include any paper that is incorporated into a product to which a tax stamp must be affixed under the Cigarette Tax Act (35 ILCS 130/1 *et seq.*) or the Cigarette Use Tax Act (35 ILCS 135/1 *et seq.*).
5. Use of Identification Cards: No person in the furtherance or facilitation of obtaining smoking accessories and smoking herbs shall display or use a false or forged identification card or transfer, alter or deface an identification card.
6. Warning to Minors: Any person, firm, partnership, company or corporation operating a place of business where tobacco accessories and smoking herbs are sold or offered for sale shall post in a conspicuous place upon the premises a sign which there shall be imprinted the following statement: SALE OF TOBACCO ACCESSORIES AND SMOKING HERBS TO PERSONS UNDER 18 YEARS OF AGE OR THE MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS PROHIBITED BY LAW. The sign shall be printed on a white card in red letters at least one-half inch in height.
8. Penalty:
  - a. Except for Section 43-15-D2, any person who knowingly violates or shall knowingly cause the violation of any provision of this Section 9.16-E shall be guilty of a Class C misdemeanor and shall be fined pursuant to 730 ILCS 5/5-4.5-65(e). The violator shall be responsible for the Village's cost of prosecution, including reasonable attorney fees.
  - b. Any person who knowingly violates or shall knowingly cause the violation of Section 9.16-D2 shall be guilty of a petty offense for which the offender shall be fined as follows: for the first offense, not less than \$100 or more than \$500, for a second offense within a 2-year period of the first offense, not less than \$250 or more than \$600, and for a third or subsequent offense within a 2-year period of the first offense, not less than \$500 or more than \$1,000. In addition, the violator shall be responsible for the Village's cost of

prosecution, including reasonable attorney fees.

E. **TOBACCO RETAILER'S LICENSE REQUIRED:** It shall be unlawful to sell or offer for sale at retail, give away, deliver or to keep with the intention of selling at retail, giving away or delivery tobacco products within the Village without having first obtained a valid tobacco retailer's license from the Village for each location in which tobacco products are sold.

1. **FEE:** The fee for an annual tobacco retailer's license shall be \$100. Said license shall expire on April 30 and is non-transferable except when a licensee changes location.
2. **IDENTIFICATION REQUIRED:** No licensee shall sell or permit to be sold any tobacco products to an individual appearing younger than 27 years of age without requesting and examining photographic identification establishing the purchaser's age as 18 years of age or greater.
3. **LOCATION:** It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco products within 100 feet of any school, child care facility or other building used for educational or recreational purposes by persons under 18 years of age.
4. **TOBACCO SAMPLES, DISTRIBUTION:** It shall be unlawful for any licensee or any person, business or tobacco retailer to distribute, give away or deliver tobacco products free of charge, or deliver any coupon or rebate for tobacco products to any person on any right-of-way, park, playground or other property owned by the Village or any unit of government.
5. **PROHIBITED SALES:** It shall be unlawful for any licensee, person, business or tobacco retailer to sell, permit to be sold or offer for sale any tobacco product by means of self-service displays or any other means other than vendor-assisted sales. Tobacco vending machines or any other devices for the sale or distribution of tobacco products is prohibited.
6. **LICENSEE'S RESPONSIBILITIES:** Every act or omission of any nature constituting a violation of any provision of this Section 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. Such licensee shall be punishable in the same manner as if such act or omission had been done or omitted by the licensee personally.
7. **INSPECTIONS; COMPLIANCE CHECKS:** It shall be the duty of Chief and the Building Inspector to conduct annual random, unannounced inspections of all licensed premises for compliance with this Section and the laws of this State. Not less than 3 compliance checks shall take place each year.

8. VIOLATIONS; ENFORCEMENT: The President shall initiate enforcement against any person who violates any provision of this Section, and shall conduct hearings upon the request of the licensee. The President and the Police Department shall have the authority to enforce this Section.
9. SUSPENSION; LICENSE REVOCATION: Except for Sections 9.16-B and C, a license shall be suspended or revoked for any violation of this Section after notice and a hearing has been conducted on the violation.

The Village's cost of prosecution shall include all costs associated with the hearing, which may include, but not be limited to, court reporter's fees, cost of preparing and mailing notices and orders and all other miscellaneous expenses incurred by the Village, or such lesser sum as the President may allow. Said costs shall be paid to the Village within 30 days of the notification of the costs. Failure to pay said costs within 30 days of notification is a violation of this Section and may cause the levy of an additional fine.
10. NON-RETALIATION: No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment or customer, because such employee, applicant or customer reported violations of any provisions of this Section.

### **13.08 ADMINISTRATION AND ENFORCEMENT**

- A. ADMINISTRATION: The Village Administrator shall be charged with the administration of this Chapter.
- B. SUSPENSION AND REVOCATION OF LICENSE: The Administrator may suspend or revoke any license issued under the provisions of this Chapter if it is determined that the licensee has violated any provisions of this Chapter.
- C. FINE IN LIEU OF SUSPENSION OR REVOCATION: In lieu of suspension or revocation of a license, the Administrator may levy a fine on the licensee. The fine imposed shall not exceed \$500 for each violation. Each day on which the violation continues shall constitute a separate violation.



**D. HEARING; DECISIONS; FEES:**

1. Notice of Hearing: No such license shall be suspended or revoked, or the licensee fined, except after a public hearing before the Administrator, after a seven day written notice has been delivered by regular first class mail, affording the licensee an opportunity to appear and defend against the charges contained in such notice. The seven day notice provision shall begin the day following delivery by certified mail or personal service.
2. Administrator's Decision: Within seven days after such hearing the Administrator shall determine if the licensee is guilty or not guilty. If the licensee is found guilty the license may be revoked or suspended and the licensee may be fined. The order of the Administrator shall be in writing, include the reasons for the determination and mailed to the licensee.
3. Fees: Any licensee determined by the Administrator to have violated any of the provisions of this Chapter shall be responsible for the cost of the hearing, including, but not limited to, court reporter's fees, transcripts or records, attorney's fees incurred by the Village and administrative fees.

The licensee shall pay said fine and costs to the Village within 30 days of notification of the costs by the Village. Failure to pay said fine and costs within 30 days shall be a violation of this Chapter and grounds for license suspension or revocation.

**E. USE OF PREMISE AFTER LICENSE REVOCATION:** When any license has been revoked a Tobacco Dealer's License shall not be eligible for re-issuance for the premises described in the revoked license for the following six-month period.

**F. RESPONSIBILITY OF LICENSEE FOR AGENTS AND EMPLOYEES:** Every act or omission of whatsoever nature constituting a violation of any provisions of this Chapter by any officer, director, manager or other agent or employee of the licensee shall be deemed and held to be the act of such licensee and shall be punishable in the same manner as if the act or omission had been done or admitted by the licensee personally.

**13.09 PENALTIES**

Any person, firm or corporation violating any provision of this Chapter shall be fined not less than \$50 and not more than \$500. Any persons, firm or corporation convicted of a second or subsequent offense shall be punished by a fine not less than \$150 and not more than \$500.

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**EXHIBIT A**  
**VILLAGE OF PRAIRIE GROVE**

**Application for Dealer's License Relating to  
Tobacco and Alternative Nicotine Products**

*License Year May 1<sup>st</sup> to April 30<sup>th</sup>*

Name of Applicant: \_\_\_\_\_

First                      Middle                      Last

Address \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Name of Business: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Illinois Business Tax Number: \_\_\_\_\_

**The annual license fee is \$100 per year.**

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(For Office Use Only)

Total Payment: \$ \_\_\_\_\_

Approved: \_\_\_\_\_

Date Issued: \_\_\_\_\_

License Number: \_\_\_\_\_

Return completed form to: Prairie Grove Village Hall, 3125 Barreville Road, Prairie Grove,  
Illinois 60012, Attention: Village Clerk