

CHAPTER 120: TOBACCO

Tobacco

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§ 120.01 SCOPE

This chapter shall be liberally construed to the end that the health, safety and welfare of the inhabitants of the village shall be protected by regulation of the retail sale of tobacco products.

§ 120.02 DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY TOBACCO SALES. A business that offers tobacco products and/or tobacco paraphernalia for sale at retail but derives less than 30% of its gross revenue from the sale of tobacco products and tobacco paraphernalia, and in which the sale of other non-tobacco-related products is the primary function.

BUSINESS. Any business, occupation, activity, or establishment for which a registration or permit is required under Chapter 114 of this Code.

PERSON. An individual, and any and all proprietorships, partnerships, corporations, associations, or other legal entities.

TOBACCO PRODUCTS. Any product in leaf, flake, plug, liquid, or any other form that is made from or derived from tobacco or otherwise contains nicotine derived from the tobacco plant or any other source, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. Tobacco products includes, but is not limited to, cigarettes, cigars, pipe tobacco, chewing tobacco, snuff, and e-liquids such as propylene glycol, glycerin, nicotine, flavorings, or other products for use in electronic cigarettes, personal vaporizers, or electronic nicotine delivery systems. The term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation aid.

TOBACCO PARAPHERNALIA. Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, smoking or vaping devices, and any other item designed for the smoking or ingestion of tobacco products. Tobacco paraphernalia also includes electronic cigarettes, personal vaporizers, electronic nicotine delivery systems, or any item designed to aerosolize or atomize liquid solutions that simulate smoking. Devices classified as tobacco paraphernalia include but are not limited to the following: pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, e-cigarette juice, vaporizers, hookahs, and devices for holding burning material. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.

TOBACCO STORE. A business that derives 30% or more of its gross revenue from the retail sale of tobacco products and/or tobacco paraphernalia.

§ 120.03 LICENSE REQUIRED *Effective January 1, 2020*

(A) Every person or business operating a tobacco store or otherwise engaged in the retail sale of tobacco products and/or tobacco paraphernalia, including accessory tobacco sales, as defined herein, within the Village shall be required to obtain, hold, and maintain a valid Village of Huntley tobacco license in addition to any other license(s) that may also be required for such business.

(B) A separate license shall be required for each point of sale.

§ 120.04 LICENSE NOTIFICATION REQUIREMENTS

A tobacco licensee shall immediately notify the Village Clerk and the Village Manager in writing, by either personal service or by certified U.S. Mail (return receipt requested) within 30 days of the occurrence of any of the following:

(A) The cessation of a business licensed under this chapter; or

(B) The cessation of the sale of tobacco products and tobacco paraphernalia by a business licensed under this chapter: or

(C) The sale, transfer, assignment or alienation of any interest in a business licensed under this chapter.

§ 120.05 TERM OF LICENSE; PRORATION OF FEE

(A) A tobacco license shall be purely a personal privilege valid for not more than one year after its issuance. The one-year period shall be from the 1st day of January each year to the 31st day of December of the same year unless sooner revoked or suspended as provided in this chapter. Licenses issued after the 1st day of January of any year shall pay the license fee as provided in this section and shall expire on the 31st day of December of the same year.

(B) For all licenses issued and in effect on or before June 30 of each year, the full annual license fee shall be paid. For all licenses issued on or after July 1 of each year, the license fee shall be 50% of the annual fee. All license fees shall be paid at the time of the application.

(C) A tobacco license issued to a licensee shall automatically terminate and become null and void, and the number of available tobacco licenses authorized in the classification (class) of the terminated license shall automatically be reduced by one (if applicable), upon any of the following:

(1) Permanently closing or ceasing to do business at the licensed premises; or

(2) Permanently ceasing or discontinuing the sale of tobacco products and tobacco paraphernalia at the licensed premises; or

(3) The licensee ceases to meet the eligibility requirements for a tobacco license as set forth in this Chapter.

(4) In the case of a license issued to corporation, partnership, or other entity, the sale, transfer, or alienation of 10% or more of the ownership interest in the licensee to a person or entity with no ownership interest in the licensee prior to such transfer.

§ 120.06 APPLICATION

(A) All applications for a license under this chapter shall be made in writing to the Village Clerk on a form provided for that purpose, accompanied by the applicable license fee, and shall contain all information reasonably required by the Village to demonstrate eligibility for a tobacco license in accordance with this chapter, including but not limited to a listing of all categories of tobacco and non-tobacco products offered for sale at the applicant's place of business and the average monthly gross revenue derived from sale of each such product type.

(B) Each application shall be made at least 30 days before it is requested to be issued, in order to allow a period for a proper examination and investigation into whether the license should not be granted pursuant to the terms of this chapter.

(C) Each application shall be accompanied by proof of successful completion by the applicant and all individuals employed by the applicant to sell or otherwise provide or give away tobacco products in connection with the license, of a state-certified training program such as T.I.P.S. or B.A.S.S.E.T., or a comparable program approved by the Village relating to the laws requiring verification of a consumer's age and detection of false identifications.

§ 120.07 RESTRICTIONS ON ISSUANCE OF LICENSE

No tobacco license shall be issued to:

(A) A person who is not a resident of the village, unless such person shall appoint a registered agent in the county where the licensed premises is located for the purpose of receiving a summons, mail and notices; provided that such registered agent shall be a person who would be eligible to receive a license hereunder.

(B) A person who is not a citizen of the United States.

(C) An applicant who has previously had a tobacco, liquor, or other type of business license or permit revoked for cause, or a partnership in which a partner has previously had a tobacco, liquor, or other type of business license revoked for cause, or any other type of business entity in which an officer, director, manager or managing member has previously had a tobacco, liquor, or other type of business license or permit revoked for cause.

(D) A person who, at the time of application for renewal of any license issued hereunder, would not be eligible for such license upon a first application.

(E) A partnership or limited liability company, unless all of the members of such partnership or limited liability company are qualified to obtain a license.

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

(G) A corporation, unless it is incorporated in the State of Illinois, or unless it is a foreign corporation qualified under the Illinois Business Corporation Act to transact business in Illinois.

(H) An applicant whose business on the licensed premises will be conducted by a manger or agent, unless the manager or agent would be qualified to obtain a license.

(I) A person who has been convicted of a violation of any federal or state law concerning the manufacture, possession or sale of tobacco, or has forfeited his or her bond to appear in court to answer charges for any such violations, or a partnership in which a partner has previously has been convicted of such a violation or failed to appear in court to answer to such charges, or any other type of business entity in which an officer, director, manager or managing member has previously been convicted of such a crime or failed to appear in court to answer to such charges.

(J) An applicant who does not beneficially own the premises for which a license is sought or does not have a lease thereon for the full period for which the license is to be issued.

§ 120.08 CLASSIFICATION OF LICENSES; FEES

There shall be two classes of tobacco licenses as follows:

(A) *Class A - Accessory tobacco sales.* “Class A,” which shall authorize accessory tobacco sales, as defined in this chapter. The annual fee for such license shall be \$200.

(B) *Class B - Tobacco store.* “Class B,” which shall authorize the operation of a tobacco store, as defined in this chapter. The annual fee for such license shall be \$500.

§ 120.09 LIMITATION ON NUMBER OF LICENSES

There shall be available for issuance within the Village the following number of licenses for each of the classifications:

(A) Class A licenses: No limitation.

(B) Class B licenses: Four (4)

§ 120.10 ENFORCEMENT

The Village shall inspect the business premises of any tobacco licensee as needed to ensure compliance with this chapter. Refusal by a tobacco licensee to permit such inspections shall be considered a violation of this chapter and the tobacco license.

§ 120.11 SALES BY OR TO MINORS PROHIBITED

(A) It shall be unlawful for any person under the age of 16 to sell tobacco products or tobacco paraphernalia and or for any licensee, or its agent, director, manager, employee, officer or representative, to employ or permit any person under 16 years of age to sell tobacco products or tobacco paraphernalia in any licensed premises.

(B) It shall be unlawful for any person to sell, offer for sale, give, or deliver tobacco products or tobacco paraphernalia to any person under 21 years of age.

§ 120.12 AGE VERIFICATION TRAINING REQUIRED

Each license holder and all individuals employed by the license holder to sell or otherwise provide or give away tobacco products in connection with the license must have a certificate of completion, or other proof of completion, of a state-certified training program such as T.I.P.S. or B.A.S.S.E.T., or a comparable program approved by the Village relating to the laws requiring verification of a consumer's age and detection of false identifications. All individuals required to complete such training shall have 90 days after their date of initial employment within which to complete the program and provide the required certification of completion. Failure of a license holder to comply with the training and certification requirements of this chapter shall be considered a violation hereof and subject the license holder to any penalty set forth in this chapter including, but not limited to, license suspension or revocation. No new license shall be issued, and no existing license shall be renewed unless the application or license holder provides all required training certifications.

§ 120.13 PURCHASE OR POSSESSION BY MINORS PROHIBITED

(A) It shall be unlawful for any person under 21 years of age to purchase any tobacco product or tobacco paraphernalia, or to misrepresent his or her age or identity for the purpose of purchasing any tobacco product or tobacco paraphernalia.

(B) It shall be unlawful for any person under 18 years of age to possess or use any tobacco product or tobacco paraphernalia.

§ 120.14 TOBACCO SAMPLES

It shall be unlawful to distribute free tobacco products or coupons for such products in or at any event or place open to the public, except upon premises that hold a current and valid tobacco license.

§120.15 SALES OF TOBACCO REMOVED FROM MANUFACTURER'S PACKAGING PROHIBITED

It shall be unlawful for any person to sell or offer for sale cigarettes or other forms tobacco products that are not sealed and contained in the manufacturer's original packaging. Such packaging must include all health warnings and a tax stamps required by law.

§ 120.16 VENDING MACHINES

(A) Vending machines and other devices for the sale or distribution of tobacco products are prohibited, unless the machine or device was in place prior to the date of the passage of Ordinance (O)2019.06.39

(B) Vending machines or other such devices that were in place prior to the date of the passage of Ordinance (O)2019.06.39, must be in view of a licensee or its agent, director, manager, employee, officer or representative, and must require an action by the licensee or its agent, director, manager, employee, officer or representative to activate it for each sale if minors are permitted in the premises.

§ 120.17 SALES OF CERTAIN SMOKING PARAPHERNALIA PROHIBITED

It shall be unlawful for any person to sell or offer for sale within the Village the following items of smoking-related paraphernalia:

- (a) Water pipes;
- (b) Bongs or water bongs;
- (c) Electric pipes;
- (d) Carburetion tubes and devices;
- (e) Carburetor pipes;
- (f) Chillums; and
- (g) Ice pipes or chillers;

provided, however, that this section shall not be interpreted as prohibiting the sale of e-cigarettes, personal vaporizers, electronic nicotine delivery systems, or similar devices that are designed specifically to aerosolize or atomize liquid solutions that simulate the smoking of tobacco.

§ 120.18 SIGNS

(A) Each licensee shall obtain from the Village, a sign informing the public of the age restrictions upon the sale, purchase and possession of tobacco products and tobacco paraphernalia.

(B) The licensee shall prominently post such a sign in a location visible from each cash register where tobacco products can be paid for, and/or at each location within the premises where tobacco products may be otherwise provided or given away.

(C) The licensee shall post such a sign on or as near as possible to every display, machine, or device offering tobacco products for sale.

§ 120.19 RESPONSIBILITY OF LICENSEES

(A) Every act or omission constituting a violation of any of the provisions of this chapter by an agent, director, manager, employee, officer or representative of a licensee shall also be deemed and held to be the act or omission of such licensee, and the licensee shall be punishable in the same manner as if it were directly responsible for the act or omission.

(B) The business shall keep, maintain, and have readily available for inspection by the village, original certificates of completion of the training program required under this chapter for each person who is or will be selling or otherwise providing or giving away tobacco products or tobacco paraphernalia in connection with the license.

§ 120.20 SUSPENSION OR REVOCATION OF LICENSE

(A) In addition to all other applicable fines and penalties, any licensee who violates any provision of this chapter shall be subject to the suspension or revocation of his or her tobacco license.

(B) The Village Manager, or his or her designee, may seek the suspension or revocation of the license by filing charges with the Village President alleging a violation of this chapter.

(C) Before any suspension or revocation order shall be issued, the Village shall notify the licensee of the specific charges against it and of its right to a hearing before the Village President and Board of Trustees. Notice shall be served upon the licensee, at the address stated in the tobacco license application, at least seven days prior to the hearing date, by first class or express mail, overnight carrier or personal service. At the hearing, the licensee may be represented by counsel, cross-examine witnesses, and present documentary evidence and witnesses. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings under this section. The record of each hearing shall include (a) a record of the testimony presented at the hearing by a certified court reporter or recorded by other appropriate means; (b) any document presented at the hearing; and (c) a copy of the written notice of hearing that was served.

(D) Following review and consideration of the record, the Village President and Board of Trustees shall issue, in writing, a determination as to whether a violation occurred and the reason or reasons for that determination. If a violation is found, the determination may include a written order suspending the

license for a period not to exceed 30 days, revoking the license, or imposing any other penalty authorized by this chapter. The determination of the Village President and Board of Trustees shall be final.

§ 120.21 PENALTY

In addition to the suspension or revocation provided for herein, any business or person found to have violated any provision of this chapter shall be fined not less than \$250 for the first offense, and not less than \$500 for each subsequent offense.