

**[MODEL]
ORDINANCE
of the
VILLAGE/CITY OF _____**

**AN ORDINANCE LICENSING RETAILERS OF TOBACCO PRODUCTS,
ALTERNATIVE NICOTINE PRODUCTS, AND ELECTRONIC CIGARETTES IN THE
VILLAGE/CITY OF _____**

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the leading preventable cause of death in the United States; and

WHEREAS, substantial scientific evidence exists to show that tobacco use causes cancer, heart disease, stroke, lung diseases, and chronic obstructive pulmonary disease (COPD) and increases risk for tuberculosis, certain eye diseases, and immune system issues; and

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act was signed into law in 2009, giving the United States Food and Drug Administration (FDA) the authority to regulate the manufacture, distribution, and marketing of tobacco products; and

WHEREAS, Congress made numerous findings in support of the Family Smoking Prevention and Tobacco Control Act, including the following:

- The use of tobacco products by the Nation’s children is a pediatric disease of considerable proportions that results in new generations of tobacco-dependent children and adults; and
- Virtually all new users of tobacco products are under the minimum legal age to purchase such products; and
- An overwhelming majority of Americans who use tobacco products begin using such products while they are minors and become addicted to nicotine in those products before reaching the age of 18; and

WHEREAS, nicotine use in youths has been shown to impact learning, memory and attention and to increase risk of future addiction to other drugs; and

WHEREAS, according to the United States Surgeon General’s Advisory on E-cigarette Use Among Youth from 2018, electronic cigarettes have been the most commonly used tobacco product by youths since 2014; and

WHEREAS, tobacco use continues to be an urgent public health issue in Illinois, as evidenced by the following statistics from the Centers for Disease Control and Prevention:

- 14.5% of adults in Illinois smoked cigarettes in 2019.
- 18,300 adults in Illinois die from smoking-related illnesses each year.
- \$5.5 billion was spent on healthcare costs due to smoking in Illinois in 2019.
- 22.7% of Illinois high school students reported currently using a tobacco product in 2019, including electronic cigarettes.

WHEREAS, according to the 2021 County Health rankings for the State of Illinois, published by the University of Wisconsin Population Health Institute, 21% of adults in Winnebago County, Illinois, smoked in 2021, as compared to 16% of adults in the State of Illinois; and

WHEREAS, the 2020 Illinois Youth Survey for Winnebago County, Illinois, found that within 12 months prior to completing the survey: 1) 3% of 8th graders, 3% of 10th graders, and 5% of 12th graders reported smoking cigarettes; and 2) 10% of 8th graders, 22% of 10th graders, and 24% of 12th graders reported using e-cigarettes or other vaping products; and

WHEREAS, the Youth Survey further learned that of tobacco users in Winnebago County, 16% of 8th graders, 24% of 10th graders, and 42% of 12th graders reported purchasing tobacco products from a gas station, store or mall; and

WHEREAS, the Youth Survey also found that of e-cigarette and vaping products' users in Winnebago County, 7% of 8th graders, 16% of 10th graders, and 34% of 12th graders reported purchasing them from a gas station, store or mall; and

WHEREAS, effective July 1, 2019, the minimum age for purchasing tobacco products, alternative nicotine products, electronic cigarettes, tobacco accessories, and smoking herbs in the State of Illinois was increased to twenty-one (21) years old; and

WHEREAS, the Village Board/City Council finds that the health hazards associated with the use of tobacco products, alternative nicotine products, and electronic cigarettes are well-documented and substantiated and that use of these products adversely affects the health of the residents of the Village/City; and

WHEREAS, the Village Board/City Council finds that the Village/City has a substantial interest in reducing the number of individuals of all ages who use tobacco products, alternative nicotine products, and electronic cigarettes, and a particular interest in protecting adolescents from tobacco dependency and the illnesses and premature death associated with tobacco use; and

WHEREAS, the Village Board/City Council finds that a local licensing system for tobacco retailers is necessary and appropriate to protect the public health, safety, and welfare of the residents of the Village/City of ____; and

WHEREAS, the following provisions of Illinois law authorize the Village/City to enact a local retail tobacco licensing ordinance:

- Section 11-20-3 of the Illinois Municipal Code, 65 ILCS 5/11-20-3, authorizes municipalities to provide for and regulate the inspection of tobacco; and
- Section 11-20-5, 65 ILCS 5/11-20-5, permits municipalities do all acts and make all regulations necessary for the promotion of health or the suppression of diseases; and
- Section 11-1-1, 65 ILCS 5/11-1-1, allows municipalities to pass and enforce all necessary police ordinances; and

WHEREAS, the Village Board/City Council finds that a local licensing system for tobacco retailers will help ensure that retailers comply with the federal Family Smoking Prevention and Tobacco Control Act, the Illinois Prevention of Tobacco Use by Persons under 21 Year of Age and Sale and Distribution of Tobacco Products Act, the Illinois Preventing Youth Vaping Act, the Illinois Prevention of Cigarette and Electronic Cigarette Sales to Persons under 21 Years of Age Act, and the Illinois Tobacco Accessories and Smoking Herbs Control Act; and

WHEREAS, the Village Board/City Council expressly declares that the enactment of this Ordinance directly pertains to, and is in furtherance of, the health, welfare and safety of the residents of the Village/City, and in particular those residents who are under twenty-one (21) years of age.

NOW, THEREFORE, BE IT ORDAINED by the Village Board/City Council of the Village/City of ___ as follows:

SECTION ONE. The above recitals are incorporated herein and made a part hereof.

SECTION TWO. Article/Chapter ___ of the Village/City of ___ Code of Ordinances is hereby amended to read as follows:

Sec. __. DEFINITIONS. The following words and phrases, whenever used in this Article/Chapter, shall have the meanings set forth in this section, unless the context clearly requires otherwise:

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.

Electronic Cigarette means:

- (1) Any device that employs a battery or other mechanism to heat a solution or substance to product a vapor or aerosol intended for inhalation;
- (2) Any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or

(3) Any solution or substance, whether or not it contains nicotine, intended for use in the device.

Electronic Cigarette includes, but is not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any components or parts that can be used to build the product or device.

Electronic Cigarette does not include any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, that is being marketed and sold solely for that approved purpose; any asthma inhaler prescribed by a physician for that condition and being marketed and sold solely for that approved purpose; or any therapeutic product approved for use under the Compassionate Use of Medical Cannabis Pilot Program Act.

Person means any natural person, company, corporation, cooperative association, firm, partnership, business, organization, or other legal entity.

Retail Tobacco License means a license issued by the Village/City to a Person to engage in the sale of Tobacco Products, Alternative Nicotine Products, and/or Electronic Cigarettes in the Village/City.

Smoking Herbs means 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.

Tobacco Accessories means any 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 ordinance or statute or of substances whose sale, gift, barter, or exchange is made unlawful under any ordinance or statute.

Tobacco Product means any product containing or made from tobacco that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, and any other smokeless tobacco product which contains tobacco that is finely cut, ground, powdered, or leaf and intended to be placed in the oral cavity. *Tobacco Product* includes any component, part, or accessory of a tobacco product, whether or not sold separately.

Vending Machine means any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, and/or Smoking Herbs.

Sec. __. RETAIL TOBACCO LICENSE REQUIRED.

- A. No Person shall sell, offer for sale, or permit the sale of Tobacco Products, Alternative Nicotine Products, or Electronic Cigarettes to consumers within the corporate limits of the Village/City without a valid Retail Tobacco License issued by the Village/City. A Retail Tobacco License is not required for a wholesale dealer who sells to retail dealers for the purpose of resale only and does not sell any Tobacco Products, Alternative Nicotine Products, or Electronic Cigarettes directly to consumers.
- B. All Retail Tobacco Licenses issued pursuant to this section are nontransferable and non-assignable and are valid only for the applicant and the specific address listed on the Retail Tobacco License. No license may issue for other than a fixed location. A separate Retail Tobacco License is required for each address at which Tobacco Products, Alternative Nicotine Products, or Electronic Cigarettes are sold or offered for sale. Any change in business ownership or business address requires a new Retail Tobacco License.

Sec. __. LICENSE APPLICATION.

- A. Application for a Retail Tobacco License hereunder shall be in writing to the Village/City Clerk, on the application form provided by the Village/City, signed by the applicant, if an individual, or by at least two 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:
 - 1. The name, date of birth 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 incorporation, the state of incorporation, the objects for which it was organized, the names and addresses of the officers and directors, and the names and addresses 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;
 - 2. If an individual, the citizenship of the applicant, their place of birth, and, if a naturalized citizen, the time and place of their naturalization;
 - 3. The character of business of the applicant;
 - 4. The length of time that the applicant has been in business of that character;
 - 5. If the business is to be run by a manager or agent, the name, date of birth, and address of the manager or agent;
 - 6. If a partnership, the date of formation of the partnership;
 - 7. The applicant's current state tobacco license number from the Illinois Department of Revenue;
 - 8. The location and description of the premises or place of business which is to be operated under the license;

9. A statement that the applicant owns the premises to be operated under the license or has a lease for the premises for the full period of the license;
 10. 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;
 11. 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 article/chapter or any ordinance or statute;
 12. Whether a previous license issued to the applicant by any state or subdivision thereof, or by the federal government, has been revoked and the reasons therefore;
 13. 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/City in the conduct of its business; and
 14. A statement that the applicant has, or is eligible for and will obtain, any license from the State of Illinois that is required by applicable statute or departmental regulation.
- B. A licensee shall inform the Village/City in writing of any material change in the information submitted on an application for a Retail Tobacco License within ten (10) business days of the change.
- C. No license shall be granted to:
1. A person who is not a citizen or lawful permanent resident of the United States.
 2. A person who knowingly provides inaccurate or false information in the license application.
 3. A person who has been convicted of a felony under any federal or state law, unless the Village Board/City Council determines that such person has been sufficiently rehabilitated to warrant the public trust. The burden of proof of sufficient rehabilitation shall be on the applicant.
 4. A person who has been convicted of pandering or any other crime or misdemeanor opposed to decency and morality.
 5. 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.
 6. A partnership, if any general partner or limited partner thereof, owning more than five percent (5%) of the aggregate interest in such partnership would not be eligible to receive a license hereunder for any reason.
 7. A corporation, if any officer, manager or director thereof, or any stockholder 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.
 8. A corporation unless it is incorporated in Illinois or is qualified under the Business Corporation Act of 1983, 805 ILCS 5/1.01 *et seq.*, to transact business in Illinois.
 9. A person whose place of business is conducted by a manager or agent unless the manager or agent possesses the same qualifications as those required of the applicant.
 10. 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 of the license to be issued.

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

Sec. __. LICENSE FEE; TERM.

- A. The annual fee for a Retail Tobacco License shall be \$_____. The full license fee shall be paid at the time the application is submitted. In the event a license is denied, the license fee shall be refunded to the applicant, less a fifty-dollar (\$50.00) processing fee.
- B. All Retail Tobacco Licenses shall be valid for a term of one (1) year and shall terminate on the ___ day of (month) next following issuance of the license, except that any license issued for a portion of a year shall have a term of less than one (1) year and the term thereof shall terminate on the ___ day of (month) next following issuance of the license.

Sec. __. ISSUANCE AND DISPLAY OF LICENSE.

No Retail Tobacco License shall be issued or renewed to a licensee until the licensee acknowledges in writing that they have read and understood this Article/Chapter, that they have reviewed the FDA's Guidance on Tobacco Retailer Training Programs, available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/tobacco-retailer-training-programs>, and that they have a documented training program in place to ensure employee compliance with this Article/Chapter, Illinois law and federal law.

Upon completion of the foregoing requirements, approval by the Village Board/City Council of the application, and payment of the required license fee, the Village/City Clerk shall issue a Retail Tobacco License to the applicant. Each Retail Tobacco License shall be prominently displayed at all times in a publicly visible location at the licensed premises.

Sec. __. PROHIBITED ACTIVITIES.

- A. No person, with or without a license, or officer, associate, member, representative, agent or employee of a licensee shall sell, offer for sale, give away or deliver Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, or Smoking Herbs to a person under the age of twenty-one (21) years.
- B. No licensee shall sell or permit to be sold, given away or delivered any Tobacco Product, Alternative Nicotine Product, Electronic Cigarette, Tobacco Accessory, or Smoking Herb to an individual appearing to be younger than the age of thirty (30) without requesting and examining a government-issued, non-expired photographic identification that establishes the person to be twenty-one (21) years of age or older.
- C. [OPTIONAL] It shall be unlawful for any person to sell, offer for sale, give away or deliver Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, or Smoking Herbs within one hundred (100) feet of any school, childcare facility or other building used for education or recreational programs for persons under the age of twenty-one (21) years. In the event premises engaged in retail sale of Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, or

Smoking Herbs prior to adoption of this Article/Chapter are located in technical violation of this Section, the premises will be considered to have legal non-conforming status, which will remain intact as long as a Retail Tobacco License is obtained for the premises within sixty (60) days of adoption of this Article/Chapter, the License is renewed without lapse or permanent revocation, and the business does not cease operation or substantially change its operations.

- D. [CAN BE MODIFIED: RECOMMENDED AGE IS 21, BUT LEGAL AGE TO SELL IS 16 – 720 ILCS 675/1(a-5)] It shall be unlawful for any licensee, officer, associate, member, representative, agent or employee of such licensee to engage, employ or permit any person under twenty-one (21) years of age to sell Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, or Smoking Herbs in any licensed premises.
- E. It shall be unlawful for any person under the age of twenty-one (21) years to purchase Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, or Smoking Herbs or to misrepresent their identity or age or to use any false or altered identification for the purpose of purchasing Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories or Smoking Herbs. This provision shall not apply to any person under the age of twenty-one (21) who purchases or attempts to purchase Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, or Smoking Herbs as a member of a tobacco enforcement program.
- F. [OPTIONAL] It shall be unlawful for any person under the age of twenty-one (21) years to possess any Tobacco Product, Alternative Nicotine Product, Electronic Cigarette, Tobacco Accessory, or Smoking Herb provided that the possession by a person under the age of twenty-one (21) years under the direct supervision of the parent or guardian of such person in the privacy of the parent's or guardian's home shall not be prohibited.
- G. [OPTION 1] Vending Machines or any other device for the sale or distribution of Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, or Smoking Herbs are prohibited within the corporate limits of the Village/City.
- [OPTION 2: COMPLIES WITH 720 ILCS 675/1(b)] Vending machines or any other device for the sale or distribution of Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, or Smoking Herbs are prohibited except in places where persons under twenty-one (21) years of age are not permitted at any time or places where alcoholic beverages are sold and consumed on the premises and the vending machine operation is under the direct supervision of the owner or manager.
- H. It shall be unlawful for any licensee to sell, offer for sale, give away or deliver Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, or Smoking Herbs to any person in any manner which violates federal or state law. The violation of such federal or state laws by the licensee shall also be deemed a violation of this Article/Chapter.

- I. It shall be unlawful for any licensee to sell, offer for sale, give away or deliver any Tobacco Product, Alternative Nicotine Product, or Electronic Cigarette to any consumer unless the product is sold in the original manufacturer's packaging intended for sale to consumers and conforms to all applicable federal labeling requirements.

Sec. __. WARNING SIGNS.

Signs informing the public of the age restrictions provided herein and of surgeon general warnings shall be posted by every licensee at or near every display of Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, and Smoking Herbs. Each sign shall be plainly visible and shall state:

1. SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, ELECTRONIC CIGARETTES, TOBACCO ACCESSORIES AND SMOKING HERBS TO PERSONS UNDER 21 YEARS OF AGE OR THE MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS PROHIBITED BY LAW.
2. SURGEON GENERAL'S WARNING: SMOKING BY PREGNANT WOMEN MAY RESULT IN FETAL INJURY, PREMATURE BIRTH, AND LOW BIRTH WEIGHT.

The text of such signs must be in red letters on a white background and said letters must be at least one-half inch (1/2") in height.

Sec. __. STORAGE OF PRODUCTS; INSPECTIONS.

- A. All Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, and Smoking Herbs shall be stored and offered for sale only from counters or in locked cases which shall not be readily accessible to persons under the age of twenty-one (21) years.
- B. The tobacco commissioner, or anyone designated by the tobacco commissioner, shall be permitted to inspect and examine all licensed premises under this Article/Chapter to determine whether the Village/City ordinances and state and federal laws relating to the operation of the licensee are being complied with and observed. Every licensee shall permit and cooperate fully with any inspection.

Sec. __. RESPONSIBILITY OF LICENSEE FOR AGENTS AND EMPLOYEES.

Every act or omission of any nature constituting a violation of any provisions of this Article/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 committed by the licensee personally.

Sec. __. TOBACCO COMMISSION; SUSPENSION OR REVOCATION OF LICENSE; FINES; COSTS.

- A. The Local Liquor Control Commissioner shall serve as the Village/City tobacco commissioner and shall be charged with the administration of this Article/Chapter and of such other ordinances relating to sales and licensing of Tobacco Products, Alternative Nicotine Products, Electronic Cigarettes, Tobacco Accessories, and Smoking Herbs as may be from time to time enacted by the Village Board/City Council. A tobacco commission is created which shall be composed of the same members as the Local Liquor Control Commission.
- B. The tobacco commissioner, after a hearing conducted by the tobacco commission, may suspend or revoke any license issued under this Article/Chapter if he or she determines that the licensee has violated any of the provisions of this Article/Chapter. In lieu of suspension or revocation, the tobacco commissioner may instead levy a fine on the licensee, which shall be not less than one hundred dollars (\$100.00) or more than seven hundred fifty dollars (\$750.00) for each violation. Each day that a violation occurs or is permitted to continue shall constitute a separate violation.
- C. No license issued under this Article/Chapter shall be suspended or revoked and no fine shall be issued except after a public hearing by the tobacco commission affording the licensee the opportunity to appear and defend against the charges.
- D. If the tobacco commission determines after such hearing that the license should be revoked or suspended or that the licensee should be fined, the tobacco commission shall recommend to the tobacco commissioner the amount of the fine, the period of suspension or that the license be revoked.
- E. If the tobacco commission determines that a licensee has violated any of the provisions of this Article/Chapter, the licensee shall pay to the Village/City the costs of the hearing before the tobacco commission on such violation, which may include attorney's fees incurred by the Village/City, court reporter fees, the cost of preparing and mailing notices and orders, and other miscellaneous expenses incurred by the Village/City. Such costs shall be in addition to any fine imposed.
- F. The licensee shall pay such costs and any fine imposed to the Village/City within thirty (30) days of notification of the costs and fines by the tobacco commissioner. Failure to pay such costs and/or fines within thirty (30) days of notification is a violation of this Article/Chapter and may be cause for license suspension or revocation or imposition of a fine.
- G. All decisions of the tobacco commissioner are appealable to the 17th Judicial Circuit Court in Winnebago County as provided by the Illinois Administrative Review Law.

Sec. __. PENALTY.

Any person, firm or corporation violating any of the provisions of this Article/Chapter shall be fined not less than one hundred dollars (\$100.00) or more than seven hundred fifty dollars (\$750.00) for each offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

SECTION THREE. The various portions of this Ordinance are hereby expressly declared to be severable and the invalidity of any portion of this Ordinance shall not affect the validity of any other portions of this Ordinance, which shall be enforced to the fullest extent possible.

SECTION FOUR. All ordinances or portions of ordinances previously passed or adopted by the Village/City of ___ that conflict with or are inconsistent with the provisions of this Ordinance are hereby repealed.

SECTION FIVE. This Ordinance shall be in full force and effect on _____.

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