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VILLAGE OF OAK PARK

AGENDA ITEM COMMENTARY

Item Titles: 1. ORDINANCE AMENDING CHAPTER 8, ARTICLE 6 OF THE VILLAGE CODE ENTITLED "COMPREHENSIVE REGULATION OF TOBACCO PRODUCTS" and
2. ORDINANCE CREATING CHAPTER 17, ARTICLE 2, "OFFENSES RELATING TO UNDERAGE DRINKING AND ILLICIT DRUG USE" AND AMENDING SECTION 3-5-9(A) OF THE VILLAGE CODE ENTITLED "SALES TO MINORS, HABITUAL DRUNKARDS, AND MENTAL INCOMPETENTS"; and
3. ORDINANCE AMENDING CHAPTER 29, ARTICLE 1 OF THE VILLAGE CODE RELATED TO THE SCOPE OF AUTHORITY OF ADMINISTRATIVE LAW JUDGES TO AUTHORIZE ADMINISTRATIVE LAW JUDGES


Resolution or Ordinance No.s _____

Date of Board Action: June 4, 2012

Law Department

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Village Manager 's Office

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Item History: The attached ordinances are presented for final reading and adoption. These ordinances were first presented to the Board on January 18th and then presented for second reading on March 6, 2012. There were no changes to the ordinances since the last reading.

The Village of Oak Park, the Village of River Forest, the Oak Park Township and several citizens have been working together to address issues of teenage alcohol, cannabis and tobacco use in the community. The goal is to create ordinances prohibiting those behaviors and to enforce those ordinances in a manner designed to deter recurrent violations rather than to strictly emphasize punishment. Enforcement strategies include using a combination of warnings, fines, referrals to community based education, counseling and treatment programs, performing community service and referrals to any available mental health or treatment services that may become available in the future. The availability of these alternatives will allow the Administrative Law Judges a range of appropriate alternatives depending on the facts of each case.

At the March 6, 2012 meeting, District 200 School Board member Sharon Patchak-

Layman addressed the Board and introduced the concept of teen court for consideration in conjunction with the adoption of these ordinances. The Board deferred adopting these ordinances to obtain more information on teen court and to be provided with information on the extent to which the enforcement of these ordinances will create a criminal record that could negatively effect youthful violators. The attached memo describes the concept of teen court and provides a legal opinion on juvenile privacy concerns.

Item Policy Commentary: The first ordinance amends the existing Regulation of Tobacco Products ordinance to prohibit minors from being in possession of tobacco. Currently that ordinance only prohibits the sale of tobacco, making it only enforceable against the seller. This ordinance would make possession of tobacco by a minor a violation enforceable against the minor. The Police Department intends to adopt a policy on enforcement of this ordinance which would require that the first contact with a minor in possession of tobacco result in a warning, rather than a citation. The second contact would result in a citation. Consequences for possession of tobacco are established in the ordinance using a tiered approach such that the first offense results in a minimum fine of \$25 and the second offense results in a minimum fine of \$50.

The second set of ordinances creates a new article in the Village Code related to Underage Drinking and Illicit Drug Use. The ordinances prohibit minors from possessing alcohol, from possessing less than 30 grams of cannabis or any cannabis paraphernalia, and from attending a party where alcohol or drugs are present.

The cannabis ordinance is designed so that only possession of a small amount of cannabis is punishable under local ordinance, while more serious offenses and all offenses committed by adults are punishable in the Criminal Court system.

Minors will be liable for attending an underage drinking party if they knew or should have known of the presence of alcohol or illicit drugs. This language prevents the innocent minor from being cited while still allowing officers to write citations to those in attendance when alcohol is obviously present. The effect of this ordinance is that if a minor arrives at a party where others are drinking or consuming illicit drugs, the minor is responsible to leave or risk being cited. It is no longer a defense to say, "I wasn't drinking." In addition, there is an exception for minors present in the house who are not the host of the party. This prevents enforcement against an innocent sibling who is home while an older brother or sister is hosting a party over which they have no control.

The ordinances also make it an offense for anyone, whether a minor or adult, to host a party where minors are or will consume alcohol or illicit drugs. The ordinance sets

forth Reasonable Steps that, if taken by the responsible adult, avoid their liability for hosting the party. Those steps include controlling access to alcohol in the house, supervising a gathering of young people, checking IDs of attendees at a party, ending the party, calling the police when a party is occurring, and notifying the police when the parents intend to leave town. Failing to take any of the steps is an offense in and of itself. The ordinance makes exceptions for religious events and consumption of alcohol with a parent's permission at the parent's residence. It is not the intent of these ordinances to use police resources to interrupt family events.

Next, the existing provision in the Village Code which prohibits buying alcohol and providing it to a minor was moved from the Liquor License Code to this section of the Village Code for ease of reference.

These ordinances are written with a range of penalties, including a fine of up to \$750, community service, or referral to a community based education, counseling or treatment program.

Finally, in order to provide authorization for the Administrative Law Judges to order attendance at a community based education, counseling or treatment program, the Administrative Adjudication ordinance is amended to authorize the judges to impose these consequences. Because the existing Township based educational programs require the attendance of the minor's parent or guardian, the draft ordinance also authorizes an Administrative Law Judge to order the attendance of a minor's parent or guardian at these programs. This language is adopted from state law which contains a similar authorization.

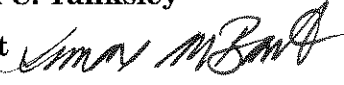
Item Budget Commentary: None.

Proposed Action: Adopt the Ordinances.



VILLAGE OF OAK PARK
LAW DEPARTMENT

Memo

To: President Pope and Board of Trustees
cc: Cara Pavlicek, Interim Village Manager
Robert Anderson, Director of Adjudication
Police Chief Rick C. Tanksley
From: Simone M. Boutet 
Date: May 31, 2012
Re: Teen Court and teen privacy concerns in Administrative Adjudication

1. Teen Court

Teen court is a legally sanctioned process where a teen's peers make a determination as to the consequences of a violation of either school rules or local ordinances. The teen court process is a court diversion program, meaning that it is an alternative to being issued a citation. Upon arrest, the youth and his parents agree to participate in the teen court process as an alternative to going to juvenile court or to the administrative adjudication process, as the case may be depending on the severity of the violation. Typically in the teen court setting, teen peers hear a case and make a decision imposing consequences for a violation. The teen court decision becomes an agreement signed by the minor and his parents who, by signing, agree to the terms and conditions of the teen court panel. These conditions may be the completion of community service, restitution, staying in school or any other behaviors the panel recommends. If the minor does not comply with the terms and conditions in the agreement, then the violation goes back to the police and processed through Adjudication or the Courts depending on the severity of the conduct. In this regard, the teen court process is similar to the station adjustment process, in that the result is a contract and the consequence for not following the contract is to go back to the normal criminal or quasi-criminal process, depending on the violation.

Teen court is an initiative that would need to be supported by staff and financial resources. Typically, teen courts are established and operated by a local police department in collaboration with other governmental and non-governmental bodies such as townships, schools and youth oriented not for profits. Teen courts are funded by various means, including previously identified grants which could be applied for.

The decision as to whether to proceed with establishing a teen court is a broader issue than the adoption of these teen alcohol, tobacco and possession of cannabis ordinances, because teen

court would apply to any other ordinances violated by youth, such as curfew, disorderly conduct and the like.

2. Privacy

The Board inquired as to the confidentiality of law enforcement records and whether Administrative Adjudication hearings for youth could be closed to the public. The records of Administrative Adjudication, unlike the court files and records of the Circuit Court of Cook County are not transmitted to any other entity, such as the Secretary of State or the state police. The records are kept in house. This means that when an authorized entity obtains an individual's criminal record, local ordinance violations processed in local adjudication do not appear on that record, regardless of whether the individual is a minor.

Records of Administrative Adjudication would need to be obtained by a FOIA request. The FOIA act exempts from disclosure any records prohibited to be disclosed by law and specifically limits criminal history records to those that are otherwise available under State or local law. The Juvenile Justice Act limits access to law enforcement records to those involved in the juvenile justice system, such as law enforcement agencies, DCFS, prosecutors, probation officers, and a prisoner review board; and to military personnel, appropriate school officials, and those involved in the hiring of law enforcement officers. Should the Village receive a FOIA for juvenile law enforcement records from anyone other than those identified above, the Village would deny that FOIA.

The next question, whether Administrative Adjudication hearings can be closed to the public is not clearly established in the law. The Juvenile Justice Act allows juvenile delinquency proceedings to be open to only limited individuals, such as the minor, parents, victims, attorneys and a few others. However, Adjudication hearings are civil in nature and the violations are considered quasi-criminal. They do not amount to juvenile delinquency petitions and therefore are not authorized to be closed to the public under the Juvenile Justice Act. There is no statutory authority to close Administrative Adjudication hearings of juvenile offenses to the public. In addition, the hearings themselves are taped. If a juvenile were to appeal a case to Circuit Court, that appeal would be heard in the Civil Division. The tape recording of the hearing is transcribed and provided to the court for review of error. This recording thus becomes a public record as circuit court files are available to the public. In addition, the Circuit Court hearings where Administrative Adjudication cases are heard, are, obviously, open to the public.

THIS ORDINANCE shall be in full force and effect from and after its adoption and publication in pamphlet form as required by law.

ADOPTED this 19th day of March, 2012, pursuant to a roll call vote as follows:

AYES:

NAYS:

ABSENT:

APPROVED by me this 19th day of March, 2012.

David G. Pope
Village President

ATTEST:

Teresa Powell
Village Clerk

Published by me in pamphlet form this _____ day of March, 2012.

Teresa Powell, Village Clerk

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**ORDINANCE AMENDING CHAPTER 8, ARTICLE 6
OF THE VILLAGE CODE ENTITLED
"COMPREHENSIVE REGULATION OF TOBACCO PRODUCTS"**

BE IT ORDAINED by the President and Board of Trustees of the Village of Oak Park, County of Cook, State of Illinois, in accordance with the Home Rule Powers granted to it under Article VII, Section 6 of the Constitution of the State of Illinois (1970), as amended, that Chapter 8, Article 6 of the Village Code entitled "Comprehensive Regulation of Tobacco Products" is hereby amended as follows:

8-6-7: PURCHASE OR POSSESSION OF TOBACCO PRODUCTS BY MINORS:

- A. It shall be unlawful for any person under the age of eighteen (18) years to purchase or possess any tobacco product as defined in Section 8-6-1 of this Article, or to misrepresent their identity or age, or to use any false or altered identification for the purpose of purchasing or possessing a tobacco product.
- B. Any law enforcement officer who finds a person under the age of eighteen (18) years of age to be in possession of a tobacco product is authorized to seize and destroy the tobacco product.

8-6-13: PENALTIES:

- A. Any person convicted of violating Section 8-6-7 of this Article shall be fined not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300.00) for the first offense, and not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for any subsequent offense. In addition to, or, in lieu of a fine, violators may be ordered to perform some reasonable public service work or be ordered to complete a community based education, counseling or treatment program.
- B. Any person convicted of violating any section of this Article other than Section 8-6-7 of this Article, shall be fined not less than fifty dollars (\$50.00) and not more than seven hundred and fifty dollars (\$750.00) for each offense.

**ORDINANCE CREATING CHAPTER 17, ARTICLE 2, "OFFENSES
RELATING TO UNDERAGE DRINKING AND ILLICIT DRUGS" AND
AMENDING SECTION 3-5-9(A) OF THE VILLAGE CODE ENTITLED
"SALES TO MINORS, HABITUAL DRUNKARDS, AND MENTAL
INCOMPETENTS"**

BE IT ORDAINED by the President and Board of Trustees of the
Village of Oak Park, County of Cook, State of Illinois, acting pursuant to its
Home Rule powers as set forth in Article VII Section 6 of the Illinois
Constitution (1970), as follows:

SECTION ONE: That Chapter 17 of the Village Code is amended to
add a new Article 2, entitled "Offenses Relating to Underage Drinking and
Illicit Drugs" to read as follows:

17-2-1: DEFINITIONS. For purposes of this Article 2, the following words
shall have the following meanings:

Alcohol: Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey,
rum, brandy, gin, or any other distilled spirits including dilutions and
mixtures thereof from whatever source or by whatever process produced.

Alcoholic Beverage: Alcohol, spirits, liquor, wine, beer, and every liquid or
solid containing alcohol, spirits, wine, or beer, and which contains one-half of
one percent or more of alcohol by volume and which is fit for beverage
purposes either alone or when diluted, mixed, or combined with other
substances.

Cannabis: The definition of Cannabis shall be that set forth in the
Cannabis Control Act, 720 ILCS 550/3(a).

Cannabis Paraphernalia: Cannabis Paraphernalia is defined as articles or
equipment commonly used in the consumption or ingestion of cannabis or
synthetic cannabis including but not limited to pipes, water pipes, roach
clips, cannabis grinders, or rolling papers.

Event or Gathering: A group of three or more Underage Persons who have
assembled or gathered together for a social occasion or other activity.

Host: (verb). 1) To knowingly authorize or permit Underage Persons to consume Alcoholic Beverages or Illicit Drugs at the Host's Residence or Premises by failing to control access to the Residence or Premises or access to the Alcoholic Beverages or Illicit Drugs in the Residence or Premises; or 2) to conduct, supervise, control, suffer or permit Underage Persons to consume Alcoholic Beverages or Illicit Drugs at an Event or Gathering at the Host's Residence or Premises regardless of whether or not the Host is present. (noun). A person who Hosts.

Illicit Drugs: Any drug, substance, or compound prohibited by law, including drugs prescribed by a physician that are in the possession of or used by someone other than the person to whom the drug was prescribed.

Minor: A minor is any person under the age of 18.

Reasonable Steps: Steps taken to prevent Underage Persons from possessing or consuming Alcoholic Beverages or Illicit Drugs, including, but not limited to:

- a. Controlling access to Alcoholic Beverages and Illicit Drugs at the Event or Gathering in such a manner that no Underage Person has access to them at the Event or Gathering;
- b. Verifying the age of persons attending the Event or Gathering by inspecting drivers licenses or other government-issued identification cards to ensure that minors do not consume Alcoholic Beverages or Illicit Drugs while at the Event or Gathering;
- c. Supervising the activities of Underage Persons at the Event or Gathering either in person or through a responsible adult;
- d. Calling for police assistance in the event Underage Persons are in possession of Alcoholic Beverages or Illicit Drugs at the Event or Gathering;
- e. Terminating the Event or Gathering because the Host has been unable to prevent Underage Persons from consuming Alcoholic Beverages or Illicit Drugs;
- f. Advising law enforcement in advance of departing one's Residence or Premises for any length of time that no Underage Person is authorized to be present and consume Alcoholic Beverages or Illicit Drugs at the Residence or Premises

Residence or Premises: Any location, including a home, yard, land, apartment, condominium, hotel room, or other dwelling unit, or a hall or meeting room, park, or any other place of assembly, public or private,

whether occupied i) on a temporary or permanent basis, ii) as a dwelling or specifically for a Event, Gathering or other social function; and whether owned, leased, rented, or used with or without permission or compensation.

Underage Person: A person under the age of 21.

17-2-2: POSSESSION OF ALCOHOLIC BEVERAGES BY UNDERAGE PERSONS

It is unlawful for an Underage Person to be in possession of any Alcoholic Beverage, except in connection with the Underage Person's employment and except as provided in Section 17-2-6 below

17-2-3: PROVIDING ALCOHOLIC BEVERAGES TO UNDERAGE PERSONS

It is unlawful for any person, after purchasing or otherwise obtaining any Alcoholic Beverage, to sell, give or deliver such Alcoholic Beverage to an Underage Person

17-2-4: SOCIAL HOSTING PROHIBITED

A. It is unlawful for any person to Host an Event or Gathering when the Host knows or should reasonably know that an Underage Person:

1. Is consuming or will consume any Alcoholic Beverage or Illicit Drugs; or
2. Possesses any Alcoholic Beverage or Illicit Drug with the intent to consume it; and
3. The Host fails or has failed to take Reasonable Steps to prevent possession or consumption by the Underage Person.

B. It is also unlawful for any person to fail to take Reasonable Steps to prevent possession or consumption of Alcoholic Beverages or Illicit Drugs by an Underage Person at an Event or Gathering held at his or her Residence or Premises.

17-2-5: ATTENDANCE AT AN EVENT WHERE ALCOHOLIC BEVERAGES OR ILLICIT DRUGS ARE CONSUMED

It is unlawful for an Underage Person to attend any Event or Gathering where the person knows or reasonably should know that Alcoholic Beverages or Illicit Drugs are being consumed.

For purposes of this Ordinance, an Underage Person is presumed to know that Alcoholic Beverages or Illicit Drugs are being consumed at an Event or Gathering if Illicit Drugs or open containers of Alcoholic Beverages are so conspicuous that a reasonable person of the same age would have knowledge of their presence.

It shall be a defense to a charge of violating this ordinance that the Underage Person was not present at the Residence for a sufficient length of time to have an opportunity to observe the presence of Illicit Drugs or open containers of Alcoholic Beverages.

It shall be a defense if the Underage Person lives at the Residence and is not the Host of the Event or Gathering.

17-2-6: EXCEPTIONS

The prohibitions set forth in Sections 17-2-2, 17-2-3, 17-2-4 and 17-2-5 of this Code shall not apply in the following situations:

1. When the Underage Person is in the presence of his or her parent or legal guardian, with the supervision and approval of the parent or legal guardian; or
2. In connection with the performance of a religious ceremony or service in observation of a religious holiday.

17-2-7: POSSESSION OR SALE OF CANNABIS AND CANNABIS PARAPHERNALIA BY MINORS:

A. Possession of Cannabis:

It is unlawful for a Minor to be in possession of Cannabis in any amount which does not exceed thirty grams. Nothing in this ordinance shall be construed to prohibit the Village from enforcing cannabis offenses under the Illinois Criminal Code.

B. Possession of Cannabis Paraphernalia:

It shall be unlawful for a Minor to be in possession of any Cannabis Paraphernalia.

C. Sale To Minors:

It is unlawful for any person to sell or offer to sell Cannabis in an amount less than thirty grams, or Cannabis Paraphernalia, to a Minor.

17-2-8: PENALTY:

The maximum fine for a violation of this Article shall not exceed Seven Hundred and Fifty dollars (\$750.00). In addition to, or, in lieu of a fine, any person found to be in violation of any provision of this Article may be ordered to perform some reasonable public service work, or be ordered to complete a community based education, counseling or treatment program.

SECTION TWO: That Section 3-5-9 entitled "Sales to Minors,

Habitual Drunkards, and Mental Incompetents" shall be amended as follows:

SALES TO MINORS.

- A. No licensee or officer, associate, agent or employee of such licensee shall sell, give or deliver alcoholic liquor to any person under the age of twenty one (21) years. It shall be unlawful for any person under the age of twenty one (21) years to misrepresent his or her age for the purpose of purchasing or obtaining alcoholic liquor. In any place in the Village where alcoholic liquor is sold, including at each cash register at which alcoholic liquor may be sold, there shall be displayed at all times in a prominent place a printed card which shall be supplied by the Village Clerk and which shall read substantially as follows:

WARNING TO PERSONS UNDER THE AGE OF 21 YEARS:

You are subject to a fine up to \$750.00 under the ordinances of the Village of Oak Park, if you purchase alcoholic liquor, or misrepresent your age for the purpose of purchasing or obtaining alcoholic liquor.

- B. It shall be unlawful for any holder of a liquor license, or the licensee's agent or employee, to suffer or permit any minor to be in, or remain in, any room or compartment adjoining or adjacent to or situated in the room or place where such licensed premises is located; provided that this subsection shall not apply to any minor who is accompanied by his or her parent or guardian, or to any licensed premises which derives its principal business from the sale of service or other commodities than alcoholic

liquor. In addition to all other fines and penalties, the Local Liquor Control Commissioner may revoke the liquor dealer's license for any violation of the preceding subsection. It shall be unlawful for any parent or guardian to permit any minor child of whom he or she be parent or guardian to violate any provisions of this section.

- C. It shall be unlawful for any holder of a liquor license or the licensee's agent or employee to employ any persons under the age of twenty one (21) years for the purpose of drawing, pouring, mixing or selling any alcoholic liquor or employ any person under the age of eighteen (18) years for the purpose of serving alcoholic liquor.

SECTION 3: Each section, paragraph, clause and provision of this Ordinance is severable, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance, nor any part thereof, other than that part affected by such decision.

SECTION 4: This Ordinance shall be in full force and effect after its passage, approval and publication in pamphlet form as provided by law.

ADOPTED this 19th day of March, 2012, pursuant to a roll call vote as follows:

AYES:

NAYS:

ABSENT:

APPROVED by me this 19th March, 2012.

David G. Pope
Village President

ATTEST:

Teresa Powell
Village Clerk

Published by me in pamphlet form this _____ day of March, 2012.

Teresa Powell, Village Clerk

**ORDINANCE AMENDING CHAPTER 29, ARTICLE 1 OF THE VILLAGE CODE
RELATED TO THE SCOPE OF AUTHORITY OF ADMINISTRATIVE LAW
JUDGES**

BE IT ORDAINED by the President and Board of Trustees of the Village of Oak Park, Cook County, State of Illinois, acting pursuant to its home rule powers established under Article VII Section 6 of the Illinois Constitution (1970) as amended as follows:

Section One: That Chapter 29, Article 1, Section 9 of the Village Code related to the Scope of Authority of Administrative Law Judges be amended as follows:

Administrative Law Judges shall preside over adjudicatory hearings. Administrative Law Judges shall have the authority to perform all acts necessary to conduct a fair and impartial adjudicatory hearing, including, but not limited to:

[Subsections A through H to remain the same]

- I. 1. Upon determining that a respondent has violated one or more charged code provisions, imposing fines and penalties, including supervision and/or community service, and/or the completion of a community based education, counseling or treatment program and such other actions that the Administrative Law Judge determines to be necessary and appropriate for the correction of the violation of the specific code provision(s) found to have been violated. However, in no event shall an Administrative Law Judge have authority to: 1) impose a penalty of incarceration, or 2) impose a fine in excess of fifty thousand dollars (\$50,000.00) exclusive of costs of enforcement or costs imposed to secure compliance with this code, except, however, that the maximum fine amount of fifty thousand dollars (\$50,000.00) does not apply to cases brought to enforce the collection of any tax imposed and collected by the Village.

When applicable, each day a code provision is found to have been violated by the respondent shall constitute a separate offense, and each separate offense subjects the respondent to the fine and penalty provided by the governing penalty provision.

2. The Village recognizes the critical role families play in the rehabilitation of troubled minors. Therefore, Administrative Law Judges shall have the authority to order parents, guardians and legal custodians to participate in any community based education, counseling or treatment program which their minor child or minor ward has been ordered to attend to assist the minor in recognizing and accepting responsibility for his or her behavior. Administrative Law Judges may also order the parents, guardian or legal custodian to take certain actions or to refrain from certain actions to serve public safety, to develop competency of the minor, and to promote accountability by the minor for his or her actions.

[Subsections J through N to remain the same].

THIS ORDINANCE shall be in full force and effect from and after its adoption, approval and publication as required by law.

ADOPTED this 19th day of March 2012, pursuant to a roll call vote as follows:

AYES:

NAYS:

ABSENT:

APPROVED by me, this 19th day of March 2012.

David G. Pope
Village President

ATTEST:

Teresa Powell
Village Clerk