

ORDINANCE

AN ORDINANCE AMENDING CHAPTER 8 ("BUSINESS LICENSING") ARTICLE 6 ("COMPREHENSIVE REGULATION OF TOBACCO PRODUCTS")

WHEREAS, the Village of Oak Park ("Village") as a home rule unit of local government as provided by Article VII, Section 6 of the Illinois Constitution of 1970 has the authority to exercise any power and perform any function pertaining to its government and affairs except as limited by Article VII, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, as a home rule unit, the Village of Oak Park's powers shall be construed liberally as held by the Illinois Supreme Court in the case of *Scadron v. City of Des Plaines*, 153 Ill.2d 164 (1992); and

WHEREAS, pursuant to the Village's home rule authority, the Village may regulate cigarette and tobacco dealers within the Village and the sale of tobacco and flavored tobacco products; and

WHEREAS, the Village further has the authority to regulate the sale of tobacco and flavored tobacco products pursuant to its statutory police powers, which are codified in the applicable provisions of the Illinois Municipal Code, including, but not limited to, Divisions 1-2, 11-1, 11-20 and 11-42 thereof (65 ILCS 5/1-2, 5/11-1, 5/11-20 and 5/11-42); and

WHEREAS, the United States Food and Drug Administration has warned about the possible adverse health effects brought about by the use of electronic cigarettes, the substances used in electronic cigarettes, and other alternative nicotine products, as they have been found to contain carcinogens and toxic chemicals such as diethylene glycol, an ingredient used in antifreeze, and has further warned that the health effects of electronic cigarettes, including any potential negative health effects of second-hand smoke inhalation, are unknown at this time; and

WHEREAS, the Village's Board of Trustees ("Village Board") make the following findings in regard to flavored tobacco and nicotine products:

- A. The United States Food and Drug Administration ("FDA") has found that flavors are added to tobacco products to improve flavor and taste by reducing the harshness, bitterness, and astringency; and
- B. The FDA has noted that research has shown that sweet-tasting flavors are particularly appealing to youth and young adults; and
- C. The FDA has noted that according to a recent survey, eighty-one percent (81%) of current youth e-cigarette users cited the availability of appealing flavors as the primary reason for use; and

WHEREAS, the Village's Board of Health has made certain recommendations to the Village Board regarding certain amendments to the Village Code concerning the regulation of e-cigarette and tobacco products; and

WHEREAS, the Village Board has determined that in the interest of promoting the health, safety and welfare of the Village, it is necessary and desirable to amend the Oak Park Village Code to further comprehensively regulate electronic cigarette, cigarette and tobacco dealers in the Village as recommended by the Board of Health; and

WHEREAS, the Village Board has further determined that in the interest of promoting the health, safety and welfare of the Village, it is necessary and desirable to prohibit the sale of flavored tobacco products and electronic cigarette skins as set forth herein.

NOW THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Oak Park, Cook County, Illinois, in the exercise of their home rule powers, as follows:

Section 1. Recitals Incorporated. The above recitals are incorporated herein by reference as though fully set forth.

Section 2. Village Code Amended. Chapter 8 ("Business Licensing"), Article 6 ("Comprehensive Regulation of Tobacco Products") of the Oak Park Village Code is amended to add the underlined language and delete overstricken language to read as follows:

**Article 6
COMPREHENSIVE REGULATION OF TOBACCO PRODUCTS**

8-6-1: DEFINITIONS:

8-6-2: LICENSE REQUIRED:

8-6-3: LICENSE APPLICATION:

8-6-4: LICENSE FEES:

8-6-5: PROHIBITED SALES, DELIVERY; SIGNS:

8-6-6: PROHIBITED LOCATIONS – RETAIL TOBACCO DEALERS:

~~8-6-6~~ 8-6-7: MINIMUM AGE TO SELL TOBACCO PRODUCTS OR TOBACCO ACCESSORIES:

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

8-6-8: CERTAIN FREE DISTRIBUTIONS PROHIBITED:

8-6-9: VENDING MACHINES; LOCKING DEVICES:

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8-6-11: SALE OF IMPROPERLY PACKAGED TOBACCO PRODUCTS, TOBACCO ACCESSORIES OR E-CIGARETTES PROHIBITED:

8-6-12: SUSPENSION; NONRENEWAL; REVOCATION OF LICENSE; FINES AND COSTS:

8-6-13: USE OF PREMISES AFTER REVOCATION:

8-6-14: PENALTIES:

8-6-1: DEFINITIONS:

For the purpose of this article, the following words or combinations of words are defined as follows:

ELECTRONIC CIGARETTE OR E-CIGARETTE: An electronic device usually composed of a mouthpiece, a heating element or atomizer, a battery, and electronic circuits that provides vapor of nicotine and/or other substances which is inhaled by a user to simulate smoking. The term includes such devices generally manufactured, marketed or sold to resemble cigarettes, cigars, pipes, or other smoking devices regardless of the details of the product appearance or marketed name or as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or under any other product or descriptor. The term "electronic cigarette" shall not include any asthma inhaler or other similar device that has been specifically approved by the United States Food and Drug Administration.

ELECTRONIC CIGARETTE SKIN: A sticker, sleeve and/or magnetic cover applied to an electronic cigarette device as a form of decoration and/or to hide the identity of an electronic cigarette device.

FLAVORED TOBACCO PRODUCTS: Any tobacco or electronic cigarette product that contains a constituent that imparts a characterizing flavor that contain nicotine in liquid, non-leaf form. As used in this definition, the term "characterizing flavor" means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product including but not limited to tastes or aromas of menthol, mint, wintergreen, chocolate, vanilla, honey, cocoa, any candy, any dessert, any alcoholic beverage, any fruit, any herb, or any spice. No tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate such statement or claim, that a tobacco product has or produces a characterizing flavor shall establish that the tobacco product is a flavored tobacco product.

LICENSEE: Any business that is issued a tobacco dealer's license pursuant to this article.

TOBACCO ACCESSORIES: Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed primarily for the smoking, vaping or ingestion of tobacco products.

TOBACCO DEALER: Any individual, corporation, business, partnership or other entity that engages in the sale or delivery of tobacco products or tobacco accessories.

TOBACCO PRODUCTS: Any product or substance containing, made or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, without

limitation, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, electronic cigarettes as defined herein or other similar products that rely on vaporization or aerosolization and shall include electronic cigarettes or e-cigarettes as defined in this section. "Tobacco product" includes any component, part, or accessory of a tobacco product, including cartridges containing liquid nicotine. "Tobacco product" does not include any product that has been approved by the United States food and drug administration for sale as a tobacco cessation product and that is marketed and sold solely for that approved purpose.

VENDING MACHINE: Any mechanical, electric or electronic self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products, tobacco accessories or liquid nicotine products.

8-6-2: LICENSE REQUIRED:

It shall be unlawful to sell or offer for sale at retail, to give away, deliver or to keep with the intention of selling at retail, giving away or delivering tobacco products or tobacco accessory within the Village without having first obtained a tobacco dealer's license pursuant to this article. Said license shall be required regardless of the method of sale or dispensing and shall include sales and dispensing by self-help, manual service, mechanical service or coin operated device. Said license shall be nonassignable and nontransferable by the licensee, but may be transferred from one machine to a replacement device. In the event a licensee chooses to offer tobacco products or tobacco accessory for sale by means of a vending machine device exclusively, the provisions of this section shall not be interpreted to require an additional license and fee for the premises whereon such device is located.

Such license shall be in addition to any other license required by this code.

8-6-3: LICENSE APPLICATION:

Application for a license hereunder shall be made in writing to the Village and shall be processed in accordance with the provisions of article 1 of this chapter.

8-6-4: LICENSE FEES:

The license fees for a tobacco license shall be as set forth in article 2 of this chapter.

8-6-5: PROHIBITED SALES, DELIVERY; SIGNS:

A. It shall be unlawful for any person, including any licensee, to sell, offer for sale, give away or deliver tobacco products or tobacco accessory to any person under the age of twenty one (21) years.

B. It shall be unlawful to sell, offer for sale, give away, or display tobacco products or tobacco accessory for sale at any location where the consumer can acquire those products through self-

service, except that this restriction shall not apply to customer self-service from vending machines as described in section 8-6-9 of this article. All tobacco products or tobacco accessories shall be displayed from behind a sales/service counter so that no consumer can access tobacco products or tobacco accessories without assistance by an employee of the licensee.

C. Signs informing the public of the age restrictions provided for herein shall be posted by every licensee at or near every display of tobacco products or tobacco accessories and on or upon every vending machine which offers tobacco products or tobacco accessories for sale. Each such sign shall be plainly visible and shall state:

THE SALE OF ELECTRONIC CIGARETTES, TOBACCO PRODUCTS OR TOBACCO ACCESSORIES TO PERSONS UNDER TWENTY-ONE YEARS OF AGE IS PROHIBITED BY LAW AND THE SALE OF FLAVORED TOBACCO PRODUCTS AND ELECTRONIC CIGARETTE SKINS ARE PROHIBITED BY LAW.

The text of such signs shall be in red letters on a white background; said letters to be at least one inch (1") high.

D. No signs advertising the sale of tobacco products or tobacco accessories shall be displayed on any windows, doors or other area of a licensed establishment that are in public view from any street or sidewalk.

E. It shall be unlawful for any person, including any licensee, to sell, offer for sale, give away or deliver flavored tobacco products or electronic cigarette skins.

8-6-6: PROHIBITED LOCATIONS – RETAIL TOBACCO DEALERS:

A. No licensee engaged in the business of retail tobacco dealer shall sell, give away, barter, exchange or otherwise deal in tobacco products or tobacco accessories at any location that has a property line within 500 feet of the property line of any building or other location used primarily as a school, child care facility, or for the education or recreation of children under twenty one (21) years of age.

B. The Village shall not issue any new tobacco license to engage in the business of retail tobacco dealer at any location that has a property line within five hundred (500) feet of the property line of a school, child care facility, or other facility for the education or recreation of children under twenty one (21) years of age as of January 1, 2020. This subsection B shall not apply to: (1) renewals of licenses existing as of January 1, 2020; or (2) applications for a new tobacco license to engage in the business of retail tobacco dealer pursuant to a purchase of a retail tobacco business at a location that holds such a license on or after January 1, 2020.

~~8-6-6~~ 8-6-7: MINIMUM AGE TO SELL TOBACCO PRODUCTS OR TOBACCO ACCESSORIES:

It shall be unlawful for any licensee or any 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 or tobacco accessories in any licensed premises. A licensee may engage, employ or permit a person between eighteen (18) years of age and twenty one (21) years of age to sell tobacco products in any licensed premises until August 1, 2017.

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

~~A. It shall be unlawful for any person under the age of twenty one (21) 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 twenty one (21) years of age to be in possession of a tobacco product is authorized to seize and destroy the tobacco product.~~

8-6-8: CERTAIN FREE DISTRIBUTIONS PROHIBITED:

A. It shall be unlawful for any licensee or any person in the business of selling or otherwise distributing, promoting or advertising tobacco products or tobacco accessories or any employee or agent of any such licensee or such person, in the course of such licensee's or such person's business, to distribute, give away or deliver tobacco products or tobacco accessories free of charge to any person ~~on~~ in any right of way, park, playground or other property owned by the Village, any school district, any park district, ~~or~~ any public library, or other area open to the public.

B. No person shall give away, barter, exchange, distribute or in any way dispense any coupon or other price reduction instrument for any free or nominally priced tobacco product or tobacco accessory sample in any right of way, park, playground or other property owned by the Village, any school, any park, any public library, or other area open to the public. This subsection B shall not apply to coupons or price reduction instruments included in newspapers, magazines or other publications or received by a person through the mail or on-line.

8-6-9: VENDING MACHINES; LOCKING DEVICES:

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 or tobacco accessories by use of a vending machine, except under the following circumstances:

A. Such vending machine is clearly visible to the licensee or licensee's agent and is equipped with a manual, electric or electronic locking device controlled by the licensee so as to prevent its operation by persons under the age of twenty one (21) years;

B. Such vending machine is located on any premises where access by persons under the age of twenty one (21) years is prohibited by law; or

C. Such vending machine is located on any premises where the public is generally not permitted and where vending machines are strictly for the use of employees of the business located at such premises.

8-6-10: RESPONSIBILITY FOR AGENTS AND EMPLOYEES:

Every act or omission of whatever nature, constituting a violation of any of the provisions of this article by any officer, director, manager or other agent or employee of any licensee shall be deemed and held to be the act of such licensee; and such licensee shall be punishable in the same manner as if such act or omission had been done or omitted by the licensee personally.

8-6-11: SALE OF IMPROPERLY PACKAGED TOBACCO PRODUCTS OR TOBACCO ACCESSORIES OR E-CIGARETTES PROHIBITED:

It shall be unlawful for any retail establishment to sell, give away, barter, exchange, or otherwise furnish to any other person any tobacco product or tobacco accessory including, but not limited to, a single or loose cigarette or e-cigarette, that is not contained within a sealed package provided by the manufacturer that has affixed to it any tax stamps required by law and that complies with all requirements imposed by federal law regarding warnings and other information on packages of tobacco products manufactured, packaged, or imported for sale, distribution, or use in the United States.

8-6-12: SUSPENSION; NONRENEWAL; REVOCATION OF LICENSE; FINES AND COSTS:

A. The Village Manager may suspend or not renew any license issued under the provisions of this article if he or she determines that the licensee has violated any of the provisions of this article; or revoke any license issued under the provisions of this article, if he or she determines that the licensee has intentionally or repeatedly violated any of the provisions of this article. The Village Manager may also levy a fine against the licensee in addition to a suspension, nonrenewal or revocation of a license or in lieu of a suspension, nonrenewal or revocation. The fine imposed shall not exceed five hundred dollars (\$500.00) for each violation. Each day on which a violation continues shall constitute a separate violation.

However, no such license shall be suspended, not renewed or revoked and no licensee shall be fined except after a public hearing by the Village Manager, with a seven (7) day prior written notice to the licensee, affording the licensee an opportunity to appear and defend against the

charges contained in such notice. The seven (7) day notice provisions shall begin the day following delivery by certified mail or by personal service.

B. The Village Manager shall within seven (7) days after such hearing, if he or she determines after such hearing that the license should be revoked, not renewed or suspended, and/or that the licensee should be fined, state the reason for such determination in a written order and either the amount of the fine, the period of suspension or that the license has been revoked or not renewed and serve a copy of such order within the seven (7) days upon the licensee.

C. Any licensee determined by the Village Manager to have violated any of the provisions of this article shall pay to the Village the costs of the hearing before the Village Manager on such violation. The Village Manager shall determine the costs incurred by the Village for said hearing, including, but not limited to, court reporter fees, the costs of transcripts or records, attorney fees, the cost of preparing and mailing notices and orders and all other miscellaneous expenses incurred by the Village or such lesser sum as the Village Manager may allow.

The licensee shall pay said costs to the Village within thirty (30) days of notification of the costs by the Village Manager. Failure to pay said costs within thirty (30) days of notification is a violation of this article and may be cause for an additional license suspension, nonrenewal or revocation, or the levy of a fine in addition to any fine previously imposed.

8-6-13: USE OF PREMISES AFTER REVOCATION:

When any license shall have been revoked for any cause, no license shall be granted to said licensee for the period of six (6) months thereafter for the conduct of the business of selling "tobacco products" or "tobacco accessories" as defined in section 8-6-1 of this article, in the premises described in such revoked license.

8-6-14: 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 one hundred dollars (\$100.00) and not more than seven hundred fifty dollars (\$750.00) for a first offense, and not less than two hundred dollars (\$200.00) and not more than one thousand dollars (\$1000.00) for any subsequent ~~for each~~ offense in addition to the penalties set forth in section 8-6-12 of this article with regard to an applicable license. Any fines issued pursuant to this subsection shall be used to fund compliance checks of licensees.~~

Section 3. Severability and Repeal of Inconsistent Ordinances. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance. All ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Effective Date. This Ordinance shall be in full force and effect after its approval, passage and publication as provided by law on January 1, 2020.

ADOPTED this day 3rd of September, 2019, pursuant to a roll call vote as follows:

Voting	Aye	Nay	Abstain	Absent
President Abu-Taleb				
Trustee Andrews				
Trustee Boutet				
Trustee Buchanan				
Trustee Moroney				
Trustee Taglia				
Trustee Walker-Peddakotla				

APPROVED this 3rd of September, 2019.

Anan Abu-Taleb, President

ATTEST

Vicki Scaman, Village Clerk

Published in pamphlet form this 3rd day of September, 2019.

Vicki Scaman, Village Clerk