

ORDINANCE NO. **2598**

**AN ORDINANCE AMENDING THE VILLAGE OF FRANKFORT
CODE OF ORDINANCES - TITLE XI, BUSINESS REGULATIONS,
BY ADDING CHAPTER 119, TOBACCO**

WHEREAS, pursuant to Section 11-20-3 of the Municipal Code (65 ILCS 5/11-20-3) the Village has the authority to regulate and inspect tobacco; and

WHEREAS, pursuant to Section 11-20-5 of the Municipal Code (65 ILCS 5/11-20-5), the Village has the authority to make regulations which may be necessary or expedient for the promotion of health or suppression of diseases;

WHEREAS, pursuant to Section 11-60-1 of the Municipal Code (65 ILCS 5/11-60-1), the Village has the authority to fix the amount, terms and manner of issuing and revoking licenses; and

WHEREAS, pursuant to Section 11-1-1 of the Municipal Code (65 ILCS 5/1-1-1), the Village has the authority to pass and enforce all necessary police ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF FRANKFORT, WILL & COOK COUNTIES, ILLINOIS AS FOLLOWS:

SECTION 1. ADOPTION OF CHAPTER 119 – TOBACCO

That Title XI, entitled BUSINESS REGULATIONS of the Village of Frankfort Code of Ordinances is hereby amended to add Chapter 119, Tobacco, which shall read as follows:

CHAPTER 119: TOBACCO

Section

- 119.01 Scope
- 119.02 Definitions
- 119.03 License Required
- 119.04 Term of License
- 119.05 Application
- 119.06 Restrictions on Issuance of License
- 119.07 Enforcement

- 119.08 Sales To or By Minors Prohibited
- 119.09 Age Verification Training Required
- 119.10 Purchase or Possession by Minors Prohibited
- 119.11 Tobacco Samples
- 119.12 Sales of Tobacco Removed From Manufacturer's Packaging Prohibited
- 119.13 Vending Machines
- 119.14 Signs
- 119.15 Responsibility of Licensees
- 119.16 Suspension or Revocation
- 119.17 Penalty

§119.01 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 sale of tobacco products.

§19.02 DEFINITIONS.

BUSINESS means any individual or person, as defined herein, owning or operating an enterprise which offers to sell, displays, sells, or gives any tobacco products to any person.

PERSON means an individual, and for the purposes of this ordinance, the term "person" also includes any and all proprietorships, partnerships, corporations, associations, or other legal entity.

TOBACCO PRODUCTS means tobacco in all its forms including, but not limited to: cigarettes, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff or snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings, and sweeping of tobacco, and all other kinds and forms of tobacco prepared in such manner so as to be suitable for snuff, chewing, smoking, and/or otherwise ingested to any degree by any means, and tobacco which is purchased or offered for sale for the manufacture of cigarettes, and any paraphernalia designated, designed for, or which could be used or is intended to be used for, the ingestion of tobacco to any degree, whether by inhalation or other means.

§119.03 LICENSE REQUIRED.

(A) Any business selling, offering for sale, or otherwise providing or giving away tobacco products in the Village will be required to hold and maintain a valid Village of Frankfort Business License - Tobacco Products, in addition to any other license/s which may also be required.

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

(C) Licenses are not transferable.

§119.04 TERM OF LICENSE.

All initial Business Licenses - Tobacco Products shall commence on the date of issuance and shall terminate on December 31st of the year of issuance. All Business License – Tobacco Products renewals shall be valid for one full year, commencing on January 1st and terminating on December 31st at midnight, unless otherwise specifically provided by this chapter. There shall be no pro-ration of the application fee for the initial year of licensing.

§119.05 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.

(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) The application fee for a Business License - Tobacco Products shall be \$100.00.

(D) Each application shall be accompanied by proof of completion by the applicant as well as anyone whom applicant believes is or will be selling, offering for sale, or otherwise providing or giving away tobacco products in connection with the license, of a state certified training program such as T.I.P.S. or BASSETT, or a similar Village pre-approved training program relating to the laws requiring verification of a consumer's age and detection of false identifications.

§119.06 RESTRICTIONS ON ISSUANCE OF LICENSE

No Business License - Tobacco Products 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 business 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 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 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 five percent (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 which is 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 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.

§119.07 ENFORCEMENT.

The Village shall inspect each licensee for compliance.

§119.08 SALES BY OR TO MINORS PROHIBITED.

(A) It shall be unlawful for any person under the age of eighteen (18) to sell tobacco products, or for any licensee, or its agent, director, manager, employee, officer or representative, to permit any person under eighteen (18) years of age to sell tobacco products in any licensed premises.

(B) It shall be unlawful for any person to sell, offer for sale, give, or deliver tobacco products to any person under eighteen (18) years of age.

§119.09 AGE VERIFICATION TRAINING REQUIRED.

Each person who will be, or is selling, offering for sale, or otherwise providing or giving 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 BASSETT, or a similar Village pre-approved training program relating to the law requiring verification of a customer's age and detection of false identifications.

§119.10 PURCHASE OR POSSESSION BY MINORS PROHIBITED.

(A) It shall be unlawful for any person under eighteen (18) years of age to purchase any tobacco product or to misrepresent his or her age or identity for the purpose of purchasing any tobacco product.

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

§119.11 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 which hold a current and valid Tobacco License.

§119.12 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 of tobacco which are not sealed and contained in the manufacturer's packaging. Such packaging must include all required health warnings and a tax stamp verifying that the cigarettes have been legally taxed.

§119.13 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 this ordinance, July 20, 2009.

(B) Vending machines or other such devices which were in place prior to the date of the passage of this ordinance, July 20, 2009, 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.

§119.14 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.

(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.

§119.15 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, offering for sale, or otherwise providing or giving away tobacco products in connection with the license.

§119.16 SUSPENSION OR REVOCATION.

(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/her Tobacco License.

1. The Village Administrator or his/her designee may seek the suspension or revocation of said license by filing charges with the Village President alleging a violation of this chapter.

2. 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. Notice shall be served upon the licensee at the address stated in the Business License – Tobacco Products application at least seven (7) 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 Village Attorney or his/her designee shall present sufficient evidence from witnesses having personal knowledge of the offense to prove, by a preponderance of the evidence, that a violation of the aforementioned provisions occurred. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings under this section. The record of each hearing shall include (i) a record of the testimony presented at the hearing by a certified court

reporter or recorded by other appropriate means; (ii) any document presented at the hearing; and (iii) a copy of the written notice of hearing that was served.

3. Following review and consideration of the record, the Village President shall issue in writing a determination as to whether a violation occurred. If a violation is found, the Village President may suspend the license for a period not to exceed thirty (30) days, or may revoke the license. The licensee may seek administrative review of a suspension or revocation order in a court of competent jurisdiction.

(B) A violation of this chapter shall also constitute grounds for suspension and/or revocation of any and all village licenses issued to the business, person(s) or premises where such violations occur. Such revocation or suspension shall be as provided for in the ordinance granting such license.

§119.17 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 \$250.00 for the first offense and not less than \$500.00 for each subsequent offense.

SECTION 2. REPEALER

That all other ordinances of parts or provisions of ordinances of the Village of Frankfort in conflict with any of the provisions of the Ordinance shall be, and the same are hereby repealed.

SECTION 3. SEVERABILITY

This Ordinance and every provision thereof, shall be considered severable. In the event that any court of competent jurisdiction may find and declare any word, phrase, clause, sentence, paragraph, provision of section or part of a phrase, clause, sentence, paragraph, provision or section of this Ordinance is void or unconstitutional, the remaining words, phrases, clauses, sentences, paragraphs and provisions and parts of phrases, clauses, sentences, paragraphs, provisions and sections not ruled void or unconstitutional shall continue in full force and effect.


SECTION 4. EFFECTIVE DATE

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

PASSED, this 20th day of July, 2009, with four members voting AYE;
no members voting NAY; and two members absent; the President not voting; with no members

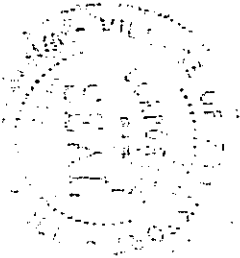
abstaining or passing and said vote being:


KEVIN EGAN	<u>AYE</u>	CYNTHIA CORSO HEATH	<u>AYE</u>
TODD S. MORGAN	<u>ABSENT</u>	MIKE STEVENS	<u>AYE</u>
RICHARD TREVARTHAN	<u>AYE</u>	R. DOUGLAS WALKER	<u>ABSENT</u>



ROBERT J. KENNEDY
VILLAGE CLERK

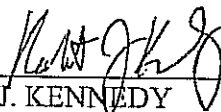
APPROVED this 20th day of July, 2009.





JIM HOLLAND
VILLAGE PRESIDENT

ATTEST:



ROBERT J. KENNEDY
VILLAGE CLERK