



Village of Itasca

550 W. Irving Park Rd.

Itasca, IL 60143

630.773-0835 • www.itasca.com

MEMORANDUM

TO: Mayor Pruyn, Village Administrator Carie Anne Ergo and Itasca Village Board

FROM: Director of Police Robert O'Connor

DATE: August 15, 2019

SUBJECT: Ordinance 1915-19, Amending Chapter 116, Tobacco, Of the Itasca Code of Ordinances

Introduction

Effective July 1, 2019, people must now be at least 21-years-old to buy tobacco in Illinois, including cigarettes, chewing tobacco, e-cigarettes, and vapes. Governor JB Pritzker signed the initiative, known as Tobacco 21, on April 7, 2019. Illinois was the 7th state in the U.S. to implement raising the tobacco purchasing age from 18 to 21 years.

Discussion

Upon reviewing the Village of Itasca Code of Ordinance manual pertaining to tobacco products from a 1965 ordinance, has the village ordinance in conflict with the State of Illinois statute being twenty-one years of age for all related tobacco products and sales. Currently there are twelve establishments that sell tobacco products within the corporate limits of Itasca.

Fiscal Impact

The Village of Itasca does not have a tobacco tax so the financial impact to the municipality is not adversely affected.

Staff Recommendation

As Director of Police I support the requested ordinance change to the suggested ordinance to now reflect the State of Illinois statute on tobacco products.

After Action Steps

The adjusted ordinance would need to be codified and then made accessible to businesses and persons to view on the village website under the section titled; Code of Ordinances

Attachments

Copy of requested ordinance change

ORDINANCE NO. 1915-19

**AN ORDINANCE AMENDING CHAPTER 116, TOBACCO,
OF THE ITASCA CODE OF ORDINANCES**

WHEREAS, the Village of Itasca is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and

WHEREAS, the Village of Itasca is authorized and empowered under the Illinois Municipal Code, 65 ILCS 5/11-1-1 to pass and enforce all necessary police ordinances; and

WHEREAS, the corporate authorities of the Village of Itasca has determined, with advice from the Itasca Police Department, that amendments to the Itasca Municipal Code, Chapter 116 consistent with statutory changes in PA 101-0002 are reasonable and necessary to effectively address the possession and sale of tobacco products.

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Itasca, DuPage County, Illinois, as follows:

SECTION ONE: The following sections of Chapter 116, Tobacco, of the Itasca Municipal Code is hereby amended as follows:

GENERAL PROVISIONS

§ 116.01 PURPOSE.

This chapter pertains to and is in furtherance of the health, welfare and safety of the residents of the Village, particularly those residents under ~~18~~ 21 years of age.

TOBACCO RETAIL SALE LICENSE

§ 116.11 APPLICATION.

- (A) Application for a Tobacco Seller's License shall be made in writing to the Village Clerk, on a form provided by the Village Clerk, signed by the applicant (as owner or legal representative) and verified by oath.
- (B) Each application must be accompanied by a non-refundable filing fee of \$100.00.
- (C) Each applicant shall provide the following information as part of the applicant:
 - (1) Date,
 - (2) Name of business,
 - (3) Address of business,
 - (4) Number of years at location,
 - (5) Description of business conducted,
 - (6) Photo I.D. proving that the applicant is at least ~~18~~ 21 years of age,
 - (7) Permanent parcel number, and
 - (8) The applicant's tax identification number.
 - (9) If vending machine, name of person responsible for overseeing premises where machine is located.

- (D) All applications for renewal of any license shall be made on or before 30 days prior to the expiration thereof. Failure to make timely application shall cause the license not to renew. The license period shall be from January 1 to December 31.

§ 116.13 COMPLIANCE ENFORCEMENT.

- (A) The Itasca Police Department shall ensure that each retail vendor of tobacco products or e-cigarettes is inspected for compliance on an annual basis. Such inspection shall be made at reasonable times and in a reasonable manner. It shall be unlawful for any licensee to hinder compliance inspection in any manner.
- (B) It shall not be a violation of this chapter for the Itasca Police Department to use persons under ~~18~~ 21 years of age to purchase or attempt to purchase tobacco products or e-cigarettes for the purpose of monitoring compliance with this section, if those underage persons are supervised by personnel of the Itasca Police Department and the consent of a parent or guardian has been obtained.
- (C) The Chief of Police is to report to the President any violation of this chapter by a licensee holder.

TOBACCO RETAIL SALE REQUIREMENTS

§ 116.30 PROHIBITED SALES, DELIVERY.

- (A) It shall be unlawful for any person, including any licensee, to sell, offer for sale, buy for, give away or deliver tobacco products or e-cigarettes to any person under the age of ~~18~~ 21 years of age.
- (B) It shall be unlawful for any person, including any licensee, to sell, offer for sale, buy for, give away or deliver any cigarette papers or any other paraphernalia that is designed for the smoking or ingestion of any tobacco or e-cigarettes to any person under the age ~~18~~ 21 years of age.
- (C) It shall be an affirmative defense that the seller of a tobacco product, or other prohibited item, to a person under ~~18~~ 21 years of age in violation of this section had requested and examined a government-issued photographic identification from such person establishing that person's age to be at least 18 prior to selling that person a tobacco product or e-cigarette. The failure of the seller to request and examine photographic identification from a person under ~~18~~ 21 years of age prior to the sale of a tobacco product, or e-cigarette, or other prohibited item, to that person shall be construed against the seller and form a conclusive basis for the seller's violation of this section.

§ 116.31 SIGNS.

- (A) 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 e-cigarettes and on or upon every vending machine which offers tobacco products or e-cigarettes for sale. Each such sign shall be plainly visible and shall state:

**THE POSSESSION OF TOBACCO PRODUCTS BY PERSONS
UNDER THE AGE OF ~~18~~ 21 YEARS, AND THE SALE OF
TOBACCO PRODUCTS, E-CIGARETTES, CARTRIDGES OR
E-CIGARETTE COMPONENTS TO SUCH
PERSONS IS PROHIBITED BY LAW**

- (B) The text of such signs shall be in red letters on a white background, said letters to be at least one inch high. The signs shall be provided by the Village Clerk's Office.

§ 116.32 MINIMUM AGE TO SELL TOBACCO PRODUCTS.

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 ~~18~~ 21 years of age to sell tobacco products or e-cigarettes in any licensed premises unless such person is supervised by someone over 21 years of age. Any violation of this section shall be punishable by fine.

§ 116.33 PURCHASE BY MINORS PROHIBITED.

It shall be unlawful for any person under the age of ~~18~~ 21 years to purchase tobacco products or e-cigarettes, or to misrepresent their identity or age, or to use false or altered identification for the purpose of purchasing tobacco products or e-cigarettes. Any violation of this section shall be punishable by fine.

§ 116.34 POSSESSION BY MINORS PROHIBITED.

It shall be unlawful for any person under the age ~~18~~ 21 years to possess any tobacco products or e-cigarettes; provided that the possession by a person under the age of ~~18~~ 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. Any violation of this section shall be punishable by fine.

§ 116.35 PROXIMITY TO CERTAIN INSTITUTIONS.

It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco products or e-cigarettes within 100 feet of any school, childcare facility or other building used for education or recreational programs for persons under the age of ~~18~~ 21 years. Any violation of this section shall be punishable by fine.

§ 116.36 CERTAIN FREE DISTRIBUTIONS PROHIBITED.

It shall be unlawful for any licensee or any other person in the business of selling or otherwise distributing, promotion or advertising tobacco products or e-cigarettes, or any employee or agent of any such licensee or person, in the course of such licensee's or person's business, to distribute, give away or deliver tobacco products or e-cigarettes free of charge to any person on any right-of-way, park, playground or other property owned by the Village, any school district or any public library. Any violation of this section shall be punishable by fine.

§ 116.37 OTHER SALES PROHIBITED.

It shall be unlawful for any person, business or organization including any licensee to sell, offer for sale, give away or deliver tobacco products other than in the original manufacturer's packaging, sealed and with the required health warning or to sell, offer for sale, give away or deliver cigarettes. This subsection does not apply to cigars. Single sales of cigarettes are expressly prohibited. Any violation of this section shall be punishable by fine.

§ 116.38 VENDING MACHINES.

- (A) 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 e-cigarettes by use of a vending machine, unless such vending machine 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 ~~18~~ 21 years. Any violation of this section shall be punishable by fine.
- (B) In such cases where the licensee places a vending machine within the premises of another, the licensee must identify in the license the location of the vending machine and the name of the individual responsible for overseeing the premises. Both the licensee and the person responsible for overseeing the premises may be fined for violations of this chapter.
- (C) Any premises where access by persons under the age of ~~18~~ 21 years is prohibited by law, places where alcoholic beverages are sold and consumed on the premises, or premises where the public is generally not permitted and where vending machines are strictly for the use of employees of a business located at such premises, shall be exempt from application of the provisions of subsection (A) of this section.

§ 116.39 RESPONSIBILITY FOR AGENTS AND EMPLOYEES.

Every act or omission of whatsoever nature, constituting a violation of any of the provisions stated herein 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.

SECTION TWO: SEVERABILITY. The various provisions of this Ordinance are to be considered as severable, and if any part or portion of this Ordinance shall be held invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this Ordinance.

SECTION THREE: REPEAL OF PRIOR ORDINANCES. All prior Ordinances and Resolutions in conflict or inconsistent herewith are hereby expressly repealed only to the extent of such conflict or inconsistency.

SECTION FOUR: 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.

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

APPROVED and ADOPTED by the Village President and Board of Trustees of the Village of Itasca this 3rd day of September, 2019.

APPROVED:

Village President Jeffery J. Pruyn

ATTEST:

Village Clerk Jody Conidi