

**ORDINANCE NO. 16-2019**

**AN ORDINANCE AMENDING CHAPTER 11, LICENSES,  
TAXATION AND MISCELLANEOUS BUSINESS  
REGULATIONS, ARTICLE IX, TOBACCO DEALERS, OF  
THE EVERGREEN PARK MUNICIPAL CODE**

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BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Evergreen Park, as follows:

**Section 1**

That Chapter 11, Licenses, Taxation and Miscellaneous Business Regulations, of the Evergreen Park Municipal Code, be amended by changing Article IX, Tobacco Dealers, to read as follows:

**ARTICLE IX. TOBACCO DEALERS AND OTHER PRODUCTS**

**Sec. 11-320. Definitions.** - For the purposes of this Article, the following words and phrases shall have the meanings ascribed to them herein:

*Adult-only facility* means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe (such as by checking identification as required under State law, or by checking the identification of any person appearing to be under the age of 30) that no person under legal age is present. A facility or restricted area need not be permanently restricted to persons under 21 years of age to constitute an adult-only facility, provided that the operator ensures or has a reasonable basis to believe that no person under 21 years of age is present during the event or time period in question.

*Age restricted area* means a signed designated area in a retail establishment to which persons under 21 years of age are not permitted access unless accompanied by a parent or legal guardian.

*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. Alternative nicotine product does not include: cigarettes as defined in Section 1 of the Cigarette Tax Act and tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995; tobacco product and electronic cigarette as defined in this Section; or 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, and is being marketed and sold solely for that approved purpose.

*Electronic cigarette* means: (a) any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (b) any cartridge or container of a solution or substance intended to be used with or in the device or to

refill the device; or (c) 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: cigarettes as defined in Section 1 of the Cigarette Tax Act and tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995; tobacco product and alternative nicotine product as defined in this Section; 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, and is being marketed and sold solely for that approved purpose; any asthma inhaler prescribed by a physician for that condition and is 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.

*Line of sight* means visible to a cashier or other employee.

*Lunch wagon* means a mobile vehicle designed and constructed to transport food and from which food is sold to the general public.

*Nicotine* means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived.

*Operator* means any person, firm, corporation, partnership, or association who establishes for operation by another, or leases or distributes for the purpose of operation for another, any device or machine for the vending of tobacco products, electronic cigarettes, alternative nicotine products, tobacco accessories or smoking herbs whether or not such establishment for operation, leasing or distribution be for a fixed charge or rental, or on the basis of the division of the income obtained from said machine.

*Owner* means an operator who has acquired possession and control of a vending machine by purchase, lease or otherwise.

*Smokeless tobacco* means any tobacco products that are suitable for dipping or chewing.

*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 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 statute or of substances whose sale, gift, barter, or exchange is made unlawful hereunder.

*Tobacco Dealer* means any person, at wholesale or retail, selling, offering for sale, furnishing or offering to furnish, tobacco products, electronic cigarettes, alternative nicotine

products, tobacco accessories or smoking herbs. Tobacco Dealers include operators of vending machines.

*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. Tobacco product does not include: an electronic cigarette and alternative nicotine product as defined in this Section; or any product that has been 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, and is being marketed and sold solely for that approved purpose.

**Sec. 11-321. Tobacco License Required.** No person shall engage in the business of tobacco dealer in the Village without first having obtained a tobacco license.

**Sec. 11-322. Prohibited Acts.**

(a) No person shall 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, electronic cigarettes, alternative nicotine products, tobacco accessories or smoking herbs within the village without having first obtained a tobacco dealer's license.

(b) No person, including any tobacco dealer, shall sell, offer for sale, give away or deliver any tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb to any person under the age of 21 years.

(c) No tobacco dealer or any officer, associate, member, representative, agent or employee of such licensee under 18 years of age may sell any tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb in a licensed premises. This subsection does not apply to a sales clerk in a family-owned business which can prove that the sales clerk is in fact a son or daughter of the owner.

(d) Before selling, offering for sale, giving, or furnishing a tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb to another person, the person selling, offering for sale, giving, or furnishing the tobacco product, electronic cigarette, alternative nicotine product, smoking accessory or smoking herb shall verify that the person is at least 21 years of age by examining from any person that appears to be under 30 years of age a government-issued photographic identification that establishes the person to be 21 years of age or older.

(e) The sale or distribution by any person of a tobacco product, including but not limited to a single or loose cigarette, that is not contained within a sealed container, pack, or

package as provided by the manufacturer, which container, pack, or package bears the health warning required by federal law, is prohibited.

(f) All single packs of tobacco products, electronic cigarettes, alternative nicotine products, tobacco accessories and smoking herbs must be sold from behind the counter or in an age restricted area or in a sealed display case. Any other tobacco products must be sold in line of sight. The restrictions described in this subsection do not apply to a retail tobacco store that (1) derives at least 90% of its revenue from tobacco and tobacco related products; (2) does not permit persons under the age of 21 to enter the premises unless accompanied by a parent or legal guardian; and (3) posts a sign on the main entrance way stating that persons under the age of 21 are prohibited from entering unless accompanied by a parent or legal guardian. This subsection does not prohibit the sale of tobacco products, electronic cigarettes, alternative nicotine products, tobacco accessories and smoking herbs from vending machines if the location of the vending machines are otherwise in compliance with the provision of this Article.

(g) No person shall sell, offer for sale, give away or deliver any tobacco product or alternative nicotine product within 100 feet of any school, child care facility or other building used for education or recreational programs for persons under 18 years of age.

(h) No person shall distribute without charge samples of any tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herbs to any other person, regardless of age. This subsection does not apply to the distribution of a tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb sample in any adult-only facility.

(i) No person, including shall sell, offer for sale, give away or deliver any tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb without posting at or near every display of such products, or upon every vending machine which offers those products for sale, a sign stating the following:

THE SALE OF TOBACCO PRODUCTS, ELECTRONIC CIGARETTES, ALTERNATIVE NICOTINE PRODUCTS, 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.

The text of such signs shall be in red letters on a white background; the letters to be at least one inch high. Such signs shall be posted in a conspicuous place upon the premises or vending machine as the case may be.

**Sec. 11-323. Purchase and Possession by Certain Persons Prohibited.** Unless otherwise expressly permitted by State law, no person under 21 years of age shall buy, purchase, or possess any tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb.

**Sec. 11-324. Vending Machines.** No tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb may be sold through a vending machine except if such tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb is not placed together with any non-tobacco product, other than matches, and only if the vending machine is in any of the following locations: (a) places to which persons under 21 years of age are not permitted access at any time; or (b) places where alcoholic beverages are sold and consumed on the premises and vending machine operation is under the direct supervision of the owner or manager.

**Sec. 11-325. Penalty and Administration.**

(a) Any person found in violation of the provisions of this Article shall be fined not less than \$125 not more than \$500 for each offense. Each day a violation continues shall constitute a separate and distinct offense. To the extent applicable, tobacco business licensees shall be responsible for the violations of this Article by their employees and agents.

(b) Any tobacco dealer licensee found in violation of the provisions of this Article shall, in addition to any fine that may be imposed, be subject to license suspension and/or revocation proceedings.

(c) Violations of this Article may be administered in accordance with the provisions of Chapter 12, Miscellaneous Provisions and Offenses, Article X, Administrative Adjudication of Non-Vehicular Regulation Violations, of the Evergreen Park Municipal Code.

**Section 2**

This Ordinance is enacted pursuant to the home rule powers of the Village of Evergreen Park.

**Section 3**

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.

**Section 4**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed insofar as they conflict herewith.

**Section 5**

This ordinance shall be immediately in full force and effect after passage, approval and publication. This ordinance is authorized to be published in pamphlet form.

This ordinance was passed and deposited in my office the 15<sup>th</sup> day of July, 2019.

*Catherine T. Aparo*

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CATHERINE T. APARO, Village Clerk

APPROVED by me this 15<sup>th</sup>  
day of July, 2019.



*James J. Sexton*  
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JAMES J. SEXTON, Mayor

I DO HEREBY CERTIFY that this ordinance was, after its passage and approval, published in pamphlet form by authority of the Village of Evergreen Park, in accordance with law, this 15<sup>th</sup> day of July, 2019.

*Catherine T. Aparo*

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CATHERINE T. APARO, Village Clerk