

ORDINANCE NO. 2019 - _____

AN ORDINANCE AMENDING CHAPTER 7.96, ENTITLED "TOBACCO PRODUCTS – POSSESSION BY OR SALE TO MINORS," OF THE WESTCHESTER MUNICIPAL CODE

WHEREAS, the Illinois General Assembly amended the title of the Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act (720 ILCS 675/0.01 *et seq.*) to the Prevention of Tobacco Use by Persons Under 21 Years of Age and Sale and Distribution of Tobacco Products Act (the "Act") and by prohibiting the sale or purchase of tobacco products, electronic cigarettes or alternative nicotine products to any person under 21 years of age; and

WHEREAS, the corporate authorities of the Village of Westchester desire to amend Chapter 7.96, entitled "Tobacco Products – Possession By or Sale to Minors," of the Westchester Municipal Code, in order to prohibit the sale and purchase of tobacco products, electronic cigarettes or alternative nicotine products to any persons under 21 years of age, consistent with the Act.

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

Section 1. The facts and statement contained in the preamble clauses to this Ordinance are found to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. The title of Chapter 7.96 is hereby amended as follows:

Chapter 7.96 – Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales.

Section 3. Section 7.96.010, entitled "Definitions," of Chapter 7.96, entitled "Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales," of the Westchester Municipal Code is hereby amended as follows:

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them:

"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: (1) any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (2) any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or (3) 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.

"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.

"Vending Machine" means any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

Section 4. Section 7.96.030, entitled "Sale of tobacco to any minor prohibited," of Chapter 7.96, entitled "Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales," of the Westchester Municipal Code is hereby retitled and amended as follows:

7.96.030 – Sale of tobacco products, electronic cigarettes or alternative nicotine products to persons under twenty-one (21) years of age prohibited.

No person or persons in the village shall sell, buy or furnish any tobacco products, electronic cigarettes, or alternative nicotine products to any person under twenty-one (21) years of age.

Section 5. Section 7.96.040, entitled “Possession of tobacco by any minor prohibited,” of Chapter 7.96, entitled “Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales,” of the Westchester Municipal Code is hereby retitled and amended as follows:

7.96.040 – Verifying the age of persons appearing to be under thirty (30) years of age; Prerequisite for sale.

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

Section 6. Section 7.96.050, entitled “Purchase by minors,” of Chapter 7.96, entitled “Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales,” of the Westchester Municipal Code is hereby retitled and amended as follows:

7.96.050 – Purchase by persons under 21 years of age prohibited.

It shall be unlawful for any person under the age of twenty-one (21) years to purchase any tobacco products, electronic cigarettes or alternative nicotine products, or to misrepresent their identity or age or use any false or altered identification for the purpose of purchasing tobacco products, electronic cigarettes or alternative nicotine products.

Section 7. Section 7.96.060, entitled “Minimum age to sell tobacco products,” of Chapter 7.96, entitled “Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales,” of the Westchester Municipal Code is hereby amended as follows:

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, electronic cigarettes or alternative nicotine products in any licensed premises.

Section 8. Section 7.96.070, entitled “Prohibited sales, delivery,” of Chapter 7.96, entitled “Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales,” of the Westchester Municipal Code is hereby amended as follows:

Signs informing the public of the age restrictions provided for therein shall be posted by every licensee at or near every display of tobacco products, electronic cigarettes or alternative nicotine products which offers such products for sale. Each such sign shall be plainly visible and shall state:

"THE SALE OF TOBACCO PRODUCTS, ELECTRONIC CIGARETTES OR ALTERNATIVE
NICOTINE PRODUCTS TO PERSONS UNDER TWENTY-ONE (21) YEARS OF AGE IS
PROHIBITED BY LAW."

Section 9. Section 7.96.080, entitled “Certain free distributions prohibited,” of Chapter 7.96, entitled “Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales,” of the Westchester Municipal Code is hereby amended as follows:

It shall be unlawful for any licensee or any person in the business of selling or otherwise distributing, promoting or advertising tobacco products, electronic cigarettes or alternative nicotine products, 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, electronic cigarettes or alternative nicotine products free of charge to any person on any public right of way, park, playground or other property owned by the village, any school district or any park district.

Section 10. Section 7.96.090, entitled “Vending machines” of Chapter 7.96, entitled “Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales,” of the Westchester Municipal Code is hereby amended as follows:

It shall be unlawful for any person, business, officer, director, manager or other agent or employee of 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, electronic cigarettes or alternative nicotine products by use of a vending machine within the corporate limits of the village.

Section 11. Section 7.96.095, entitled “Counter sales - Restrictions” of Chapter 7.96, entitled “Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales,” of the Westchester Municipal Code is hereby amended as follows:

It shall be unlawful to sell, offer for sale, give away or display tobacco products, electronic cigarettes or alternative nicotine products for sale at any location where the customer can acquire those

products through self-service. All tobacco products, electronic cigarettes or alternative nicotine products must be displayed from behind a sales/service counter so that no consumer can access tobacco products, electronic cigarettes or alternative nicotine products without the assistance of an employee of the licensee.

Section 12. Section 7.96.130, entitled "Violation - Penalty" of Chapter 7.96, entitled "Tobacco Products, Electronic Cigarettes and Alternative Nicotine Products – Regulations of Sales," of the Westchester Municipal Code is hereby amended as follows:

Any person under the age of twenty-one (21) years who violates Section 7.96.050 of this Chapter shall be fined not less than twenty-five dollars nor more than two hundred dollars for each offense. Any person who violates any other provision of this Chapter shall be fined not less than one hundred dollars for the first offense in a twenty-four (24) month period. For the second offense in a twenty-four (24) month period, the person shall be fined two hundred fifty dollars, and for the third and any subsequent offense within a twenty-four (24) month period, the person shall be fined not less than five hundred dollars nor more than seven hundred fifty dollars. In addition to the penalties set forth herein, any licensee who violates the provisions of this Chapter shall be subject to the penalties set forth in Section 7.96.100 of this Chapter. Each day such violation shall continue shall constitute a separate offense.

Section 13. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of the conflict.

Section 14. This Ordinance shall be in full force and effect from and after its passage, approval and publication, as provided by law.

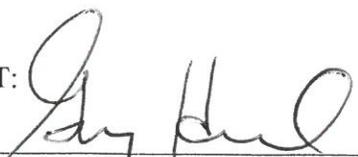
ADOPTED this 23rd day of July, 2019, pursuant to a roll call vote as follows:

Angelo A. Calcagno	<u>AYE</u>	Sherby J. Miller	<u>Absent</u>
Cathy Kuratko	<u>AYE</u>	Frank Perry	<u>AYE</u>
Tracy Hart Markey	<u>AYE</u>	Nick Steker	<u>AYE</u>
		President Gattuso	<u>Absent</u>

APPROVED this 23rd day of July, 2019.



Paul Gattuso, Village President

ATTEST: 

Stanley V. Kolodziej, Village Clerk
Deputy Clerk Greg Aribal

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PASSED AND APPROVED BY
THE PRESIDENT AND BOARD OF TRUSTEES
THE 23rd DAY OF JULY, 2019

Published in Pamphlet form by
Authority of the Corporate
Authorities of Westchester, Illinois
the ____ day of July, 2019.