

VILLAGE OF PLAINFIELD

ORDINANCE NO. 3169

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE V
OF THE CODE OF ORDINANCES OF THE VILLAGE OF PLAINFIELD

An Ordinance Amending the Chapter and Articles
Regulating Cigarette and Tobacco Dealers

ADOPTED BY THE
PRESIDENT AND BOARD
OF TRUSTEES OF THE
VILLAGE OF PLAINFIELD
THIS 21ST DAY OF JULY, 2014.

Published in pamphlet form by
the authority of the President
and Board of Trustees of the
Village of Plainfield, Will and
Kendall Counties, Illinois
this 22nd day of July, 2014.

ORDINANCE NO. 3169

AN ORDINANCE AMENDING CHAPTER 4, ARTICLE V
OF THE CODE OF ORDINANCES OF THE VILLAGE OF PLAINFIELD

An Ordinance Amending the Chapter and Articles
Regulating Cigarette and Tobacco Dealers

WHEREAS, the Village of Plainfield ("Village"), Will and Kendall Counties, Illinois, as a home rule municipality in accordance with Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970, is enacting this Ordinance pursuant to its home rule authority; and

WHEREAS, pursuant to the laws of the State of Illinois, the Village has the authority to regulate cigarette and tobacco dealers within the Village; and

WHEREAS, the Village President and the Village Board of Trustees ("Village Board") have determined that, in the interest of promoting the health, safety and welfare of the Village, it is necessary and desirable to amend the Village's Code of Ordinances to further comprehensively regulate cigarette and tobacco dealers in the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF PLAINFIELD, WILL AND KENDALL COUNTIES, ILLINOIS, as follows:

SECTION ONE. That the Preamble to this Ordinance and Exhibits are adopted by this reference as if fully set forth herein.

SECTION TWO. That Chapter 4, Article V, entitled "Cigarette and Tobacco Dealers" be and hereby is amended as set forth below. The amended text with document markings is attached hereto as Exhibit "A". Deletions from the Code are ~~overstruck~~ and additions to the Code are double underlined.

SECTION THREE.

Sec. 4-191. Definitions.

The following definitions shall apply to this article:

Bidi cigarette means a product that contains tobacco that is wrapped in temburni or tendu leaf or that is wrapped in any other material identified by rules of the department of public health that is similar in appearance or characteristics to the temburni or tendu leaf.

Electronic cigarette or E-cigarette means any electronic device usually composed of a mouthpiece, a heating element or atomizer, a battery and electronic circuits that provide a gas derived from liquid nicotine and/or other substances which is inhaled by a user simulating smoking. The term includes such devices, regardless of the details of the product appearance or marketed name, generally manufactured to resemble a cigarette, cigar, pipe or other smoking device.

Hookah shall mean a tobacco pipe with a tube that draws the smoke through water contained in a bowl.

License shall mean a Tobacco Dealers license issued by the Village.

Person shall mean any natural person, corporation, partnership, limited liability company, association or other legal entity.

Smoking herbs shall mean 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 shall mean 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 under this article. For purposes of this article, "cigarette paper" shall not include any paper that is incorporated into a product to which a tax stamp must be affixed under the Cigarette Tax Act or the Cigarette Use Tax Act.

Tobacco Dealer shall mean any owner of a tobacco store, stand, booth, concession or other place at which sale or delivery of tobacco products and/or tobacco accessories are made to consumers. A person selling or delivering tobacco products for sale at wholesale shall not be included within the meaning of the term "Tobacco Dealer".

Tobacco products shall mean any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

Vending machine shall mean any mechanical, electric or electronic self-service device operated by insertion of money, tokens or other form of consideration and dispenses tobacco products and/or tobacco accessories.

(Ord. No. 2067, § II, 10-15-01; Ord. No. 3063, § 3, 7-16-12; Ord. No. ____; eff ____)

Sec. 4-192. License required.

- (a) It shall be unlawful for any person to sell or deliver or offer for sale or delivery cigarettes, electronic cigarettes, cigars, or other tobacco products or tobacco accessories, in any form without first having obtained a license issued by the Village. Applications for such license shall be made to the Village Clerk in writing. Such license shall not be required to sell or deliver, or offer to sell or deliver, tobacco products at wholesale.
- (b) The license issued by the Village pursuant to this article authorizes the licensee to display for sale, sell or offer for sale, and deliver tobacco products and accessories at the premises designated on the license, subject to the provisions of this article.
- (c) A license shall not be issued or renewed to the following:
 - (1) A person who is not a citizen or legal resident of the United States.
 - (2) A person who is not of good character and reputation in the community in which he/she resides. Not of good character and reputation shall include, but not be limited to, the situations described in subparagraphs (4) and (5) below.
 - (3) A person who is indebted to the Village and is more than thirty (30) days delinquent in the payment of the indebtedness at the time of filing the original license application or at the time of seeking renewal of the license.
 - (4) A person who has been convicted of a felony under federal or state law, unless the Village President determines such person has been sufficiently rehabilitated to public trust after considering matters set forth in such person's application and further investigation by the Village's police department. The burden of proof of sufficient rehabilitation shall be on the applicant.
 - (5) A person who has been convicted or placed on court supervision for a violation of any federal, state or municipal law concerning the possession or sale of tobacco products, tobacco accessories and/or

smoking herbs, or has forfeited a bond to appear in court to answer to charges for any such violation.

- (6) A person who does not own the premises for which a license is sought or does not have a lease thereon for the full period for which the term of the license is issued.
- (7) An applicant who seeks a license for a location within one hundred (100) feet of any public or private school typically attended by persons under the age of eighteen (18) years. This distance shall be measured by a straight line from nearest point of the licensed premises to the nearest lot line of the school property and shall include the public right-of-way.

(Ord. No. 979, § 12-1, 6-16-80; Ord. No. 2067, § I, 10-15-01; Ord. No. 3063, § 3, 7-16-12; Ord. No. ____; eff _____)

Sec. 4-193. Annual fee.

The annual fee for a license under this article shall be two hundred and fifty dollars (\$250.00). Each application shall be accompanied by payment of the annual fee. (Ord. No. 979, § 12-2, 6-16-80; Ord. No. 2067, § 1, 10-15-01; Ord. No. 3063, § 3, 7-16-12)

Sec. 4-194. Prohibited acts.

- (a) *Sale to minors.* It shall be unlawful for any person to sell, barter, exchange, deliver or give away or cause or permit or procure to be sold, bartered, exchanged, delivered or given away, tobacco accessories, tobacco products, electronic cigarettes, or smoking herbs to any person under eighteen (18) years of age. It shall be the responsibility of the licensee to ascertain age by examining state issued identification establishing that the individual seeking to obtain tobacco accessories, tobacco products and/or smoking herbs is at least eighteen (18) years of age.
- (b) *Sale of bidi cigarettes.* It shall be unlawful for any person to sell, barter, exchange, deliver or give away a bidi cigarette to another person, or cause, permit or procure a bidi cigarette to be sold, bartered, exchanged, delivered or given away to another person.
- (c) *Sale of cigarette paper.* It shall be unlawful for any person to offer, sell, barter, exchange, deliver or give away cigarette paper, or cause, permit or procure cigarette paper to be sold, offered, bartered, exchanged, delivered or given away except from premises or an establishment where other tobacco products are sold.

- (d) *Sale of tobacco products and tobacco accessories from vending machines.* It shall be unlawful for any person to offer, sell, barter, exchange, deliver or give away tobacco products or tobacco accessories or cause, permit or procure tobacco products or tobacco accessories to be sold, offered, bartered, exchanged, delivered or given away by use of a vending machine.
- (e) *Sale of hookah(s).* It shall be unlawful for any person to offer, sell, barter, exchange, deliver or give away a hookah to another person, or cause, permit or procure a hookah to be sold, offered, bartered, exchanged, delivered or given away to another person.
- (f) *Self-Service Sales.* It shall be unlawful to sell, offer for sale, give away or display tobacco products, electronic cigarettes or tobacco accessories for sale at any location where the consumer can acquire those items through self-service. All tobacco products, electronic cigarettes and tobacco accessories shall be displayed from behind a sales/service counter so no consumer can access such items without assistance by an employee of the licensee.
- (g) *Violation of state law.* It shall be unlawful for any person to violate:
- (1) The Prevention of Tobacco Use By Minors and Sale and Distribution of Tobacco Products Act (720 ILCS 675/1 *et seq.*), as amended;
 - (2) The Display of Tobacco Products Act (720 ILCS 677/1 *et seq.*), as amended;
 - (3) The Prevention of Cigarette Sales to Minors Act (720 ILCS 678/1 *et seq.*), as amended;
 - (4) The Smokeless Tobacco Limitation Act (720 ILCS 680/1 *et seq.*) as amended;
 - (5) The Tobacco Accessories and Smoking Herbs Control Act (720 ILCS 685.1 *et seq.*), as amended; and
 - (6) The Cigarette Health Warning Act (410 ILCS 85/1 *et seq.*), as amended.
- (Ord. No. 1534, § 1, 11-15-93; Ord. No. 2067, § III, 10-15-01; Ord. No. 3063, § 3, 7-16-12; Ord. No. _____, eff. _____)

Sec. 4-195. Possession by minors prohibited.

It shall be unlawful for any person under the age of eighteen (18) years to possess any tobacco products or electronic cigarettes; provided, that the possession by a person under the age of eighteen (18) 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.

(Ord. No. 1595, § 1, 11-21-94; Ord No. _____, eff. _____)

Sec. 4-196. Proximity to certain institutions.

It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco products or electronic cigarettes within one hundred (100) feet of any school, freestanding child care facility, or other building used for education or recreational programs for persons under the age of eighteen (18) years.

(Ord. No. 1595, § 1, 11-21-94; Ord. No. 3063, § 3, 7-16-12; Ord No. _____, eff. _____)

Sec. 4-197. Use of identification cards.

No person in the furtherance or facilitation of obtaining smoking accessories and smoking herbs shall display or use a false or forged identification card or transfer, alter or deface an identification card.

(Ord. No. 2067, § IV, 10-15-01)

Sec. 4-198. Warning to minors.

Any person operating a place of business where tobacco accessories and smoking herbs are sold or offered for sale shall post in a conspicuous place upon the premises a sign upon which there shall be imprinted the following statement, "SALE OF TOBACCO ACCESSORIES AND SMOKING HERBS TO PERSONS UNDER EIGHTEEN YEARS OF AGE OR THE MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS PROHIBITED BY LAW." The sign shall be printed on a white card in red letters at least one-half (½) inch in height.

(Ord. No. 2067, § IV, 10-15-01; Ord. No. 3063, § 3, 7-16-12)

Sec. 4-199. Licensee Reporting.

Any licensee who has been convicted of or placed on court supervision for a violation of any federal, state or municipal law concerning the possession or sale of tobacco products, tobacco accessories and/or smoking herbs, shall notify the Village President in writing of such with thirty (30) days after sentencing.

Ord. No. 3063, § 3, 7-16-12)

Sec. 4-200. Responsibility for agents and employees.

Every act or omission of whatsoever 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.

(Ord. No. 3063, § 3, 7-16-12)

SECTION FOUR. That any Village Ordinance or Resolution, or part thereof, in conflict with the provisions of this Ordinance is, to the extent of such conflict, expressly repealed.

SECTION FIVE. If any provision of this Ordinance is held invalid by a court of competent jurisdiction, such provision shall be stricken and shall not affect any other provision of this Ordinance.

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

SECTION SEVEN. This Ordinance shall be numbered as Ordinance No. 3169.

PASSED the 21st day of July, 2014.

AYES: Fay, Lamb, Peck, Racich, Rippy, Bonuchi

NAYS: None

ABSENT: None

APPROVED this 21st day of July, 2014.

MICHAEL P. COLLINS
Michael P. Collins
Village President

ATTESTED AND FILED IN MY OFFICE:

MICHELLE GIBAS
Michelle Gibas
Village Clerk

EXHIBIT A

Sec. 4-191. Definitions.

The following definitions shall apply to this article:

Bidi cigarette means a product that contains tobacco that is wrapped in temburni or tendu leaf or that is wrapped in any other material identified by rules of the department of public health that is similar in appearance or characteristics to the temburni or tendu leaf.

Electronic cigarette or E-cigarette means any electronic device usually composed of a mouthpiece, a heating element or atomizer, a battery and electronic circuits that provide a gas derived from liquid nicotine and/or other substances which is inhaled by a user simulating smoking. The term includes such devices, regardless of the details of the product appearance or marketed name, generally manufactured to resemble a cigarette, cigar, pipe or other smoking device.

Hookah shall mean a tobacco pipe with a tube that draws the smoke through water contained in a bowl.

License shall mean a Tobacco Dealers license issued by the Village.

Person shall mean any natural person, corporation, partnership, limited liability company, association or other legal entity.

Smoking herbs shall mean 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 shall mean 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 under this article. For purposes of this article, "cigarette paper" shall not include any paper that is incorporated into a product to which a tax stamp must be affixed under the Cigarette Tax Act or the Cigarette Use Tax Act.

Tobacco Dealer shall mean any owner of a tobacco store, stand, booth, concession or other place at which sale or delivery of tobacco products and/or tobacco accessories are made to consumers. A person selling or delivering tobacco products for sale at wholesale shall not be included within the meaning of the term "Tobacco Dealer".

Tobacco products shall mean any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhalation or other manner of ingestion.

Vending machine shall mean any mechanical, electric or electronic self-service device operated by insertion of money, tokens or other form of consideration and dispenses tobacco products and/or tobacco accessories.

(Ord. No. 2067, § II, 10-15-01; Ord. No. 3063, § 3, 7-16-12; Ord. No. _____ ; eff _____)

Sec. 4-192. License required.

- (a) It shall be unlawful for any person to sell or deliver or offer for sale or delivery cigarettes, electronic cigarettes, cigars, or other tobacco products or tobacco accessories, in any form without first having obtained a license issued by the Village. Applications for such license shall be made to the Village Clerk in writing. Such license shall not be required to sell or deliver, or offer to sell or deliver, tobacco products at wholesale.
- (b) The license issued by the Village pursuant to this article authorizes the licensee to display for sale, sell or offer for sale, and deliver tobacco products and accessories at the premises designated on the license, subject to the provisions of this article.
- (c) A license shall not be issued or renewed to the following:
 - (1) A person who is not a citizen or legal resident of the United States.
 - (2) A person who is not of good character and reputation in the community in which he/she resides. Not of good character and reputation shall include, but not be limited to, the situations described in subparagraphs (4) and (5) below.
 - (3) A person who is indebted to the Village and is more than thirty (30) days delinquent in the payment of the indebtedness at the time of filing the original license application or at the time of seeking renewal of the license.
 - (4) A person who has been convicted of a felony under federal or state law, unless the Village President determines such person has been sufficiently rehabilitated to public trust after considering matters set forth in such person's application and further investigation by the Village's police department. The burden of proof of sufficient rehabilitation shall be on the applicant.
 - (5) A person who has been convicted or placed on court supervision for a violation of any federal, state or municipal law concerning the possession or sale of tobacco products, tobacco accessories and/or

smoking herbs, or has forfeited a bond to appear in court to answer to charges for any such violation.

- (6) A person who does not own the premises for which a license is sought or does not have a lease thereon for the full period for which the term of the license is issued.
- (7) An applicant who seeks a license for a location within one hundred (100) feet of any public or private school typically attended by persons under the age of eighteen (18) years. This distance shall be measured by a straight line from nearest point of the licensed premises to the nearest lot line of the school property and shall include the public right-of-way.

(Ord. No. 979, § 12-1, 6-16-80; Ord. No. 2067, § I, 10-15-01; Ord. No. 3063, § 3, 7-16-12; Ord. No. _____ ; eff _____)

Sec. 4-193. Annual fee.

The annual fee for a license under this article shall be two hundred and fifty dollars (\$250.00). Each application shall be accompanied by payment of the annual fee. (Ord. No. 979, § 12-2, 6-16-80; Ord. No. 2067, § 1, 10-15-01; Ord. No. 3063, § 3, 7-16-12)

Sec. 4-194. Prohibited acts.

- (a) *Sale to minors.* It shall be unlawful for any person to sell, barter, exchange, deliver or give away or cause or permit or procure to be sold, bartered, exchanged, delivered or given away, tobacco accessories, tobacco products, electronic cigarettes, or smoking herbs to any person under eighteen (18) years of age. It shall be the responsibility of the licensee to ascertain age by examining state issued identification establishing that the individual seeking to obtain tobacco accessories, tobacco products and/or smoking herbs is at least eighteen (18) years of age.
- (b) *Sale of bidi cigarettes.* It shall be unlawful for any person to sell, barter, exchange, deliver or give away a bidi cigarette to another person, or cause, permit or procure a bidi cigarette to be sold, bartered, exchanged, delivered or given away to another person.
- (c) *Sale of cigarette paper.* It shall be unlawful for any person to offer, sell, barter, exchange, deliver or give away cigarette paper, or cause, permit or procure cigarette paper to be sold, offered, bartered, exchanged, delivered or given away except from premises or an establishment where other tobacco products are sold.

- (d) *Sale of tobacco products and tobacco accessories from vending machines.* It shall be unlawful for any person to offer, sell, barter, exchange, deliver or give away tobacco products or tobacco accessories or cause, permit or procure tobacco products or tobacco accessories to be sold, offered, bartered, exchanged, delivered or given away by use of a vending machine.
- (e) *Sale of hookah(s).* It shall be unlawful for any person to offer, sell, barter, exchange, deliver or give away a hookah to another person, or cause, permit or procure a hookah to be sold, offered, bartered, exchanged, delivered or given away to another person.
- (f) Self-Service Sales. It shall be unlawful to sell, offer for sale, give away or display tobacco products, electronic cigarettes or tobacco accessories for sale at any location where the consumer can acquire those items through self-service. All tobacco products, electronic cigarettes and tobacco accessories shall be displayed from behind a sales/service counter so no consumer can access such items without assistance by an employee of the licensee.

(fg) *Violation of state law.* It shall be unlawful for any person to violate:

(7) The Prevention of Tobacco Use By Minors and Sale and Distribution of Tobacco Products Act (720 ILCS 675/1 *et. seq.*), as amended;

(8) The Display of Tobacco Products Act (720 ILCS 677/1 *et seq.*), as amended;

(9) The Prevention of Cigarette Sales to Minors Act (720 ILCS 678/1 *et seq.*), as amended;

(10) The Smokeless Tobacco Limitation Act (720 ILCS 680/1 *et. seq.*) as amended;

(11) The Tobacco Accessories and Smoking Herbs Control Act (720 ILCS 685.1 *et seq.*), as amended; and

(12) The Cigarette Health Warning Act (410 ILCS 85/1 *et seq.*), as amended.

(Ord. No. 1534, § 1, 11-15-93; Ord. No. 2067, § III,10-15-01; Ord. No. 3063, § 3, 7-16-12; Ord. No. _____, eff. _____)

Sec. 4-195. Possession by minors prohibited.

It shall be unlawful for any person under the age of eighteen (18) years to possess any tobacco products or electronic cigarettes; provided, that the possession by a person under the age of eighteen (18) 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.

(Ord. No. 1595, § 1, 11-21-94; Ord No. _____, eff. _____)

Sec. 4-196. Proximity to certain institutions.

It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco products or electronic cigarettes within one hundred (100) feet of any school, freestanding child care facility, or other building used for education or recreational programs for persons under the age of eighteen (18) years.

(Ord. No. 1595, § 1, 11-21-94; Ord. No. 3063, § 3, 7-16-12; Ord No. _____, eff. _____)

Sec. 4-197. Use of identification cards.

No person in the furtherance or facilitation of obtaining smoking accessories and smoking herbs shall display or use a false or forged identification card or transfer, alter or deface an identification card.

(Ord. No. 2067, § IV, 10-15-01)

Sec. 4-198. Warning to minors.

Any person operating a place of business where tobacco accessories and smoking herbs are sold or offered for sale shall post in a conspicuous place upon the premises a sign upon which there shall be imprinted the following statement, "SALE OF TOBACCO ACCESSORIES AND SMOKING HERBS TO PERSONS UNDER EIGHTEEN YEARS OF AGE OR THE MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS PROHIBITED BY LAW." The sign shall be printed on a white card in red letters at least one-half (½) inch in height.

(Ord. No. 2067, § IV, 10-15-01; Ord. No. 3063, § 3, 7-16-12)

Sec. 4-199. Licensee Reporting.

Any licensee who has been convicted of or placed on court supervision for a violation of any federal, state or municipal law concerning the possession or sale of tobacco products, tobacco accessories and/or smoking herbs, shall notify the Village President in writing of such with thirty (30) days after sentencing.

Ord. No. 3063, § 3, 7-16-12)

Sec. 4-200. Responsibility for agents and employees.

Every act or omission of whatsoever 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.

(Ord. No. 3063, § 3, 7-16-12)