
**THE VILLAGE OF HOMER GLEN
WILL COUNTY, ILLINOIS**

**ORDINANCE
NUMBER 24-029**

**AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 83
SALE OF TOBACCO AND TOBACCO PRODUCTS WITHIN THE
VILLAGE OF HOMER GLEN, WILL COUNTY, ILLINOIS**

**CHRISTINA NEITZKE-TROIKE, Village President
CANDICE BIELSKI, Village Clerk**

**Village Trustees
JENNIFER CONSOLINO
DAN FIALKO
CURT MASON
CJ MCNAUGHTON
ROSE REYNDERS
SUSANNA E. STEILEN**

AN ORDINANCE AMENDING ARTICLE VI OF CHAPTER 83 LICENSING AND REGULATING VIDEO GAMING WITHIN THE VILLAGE OF HOMER GLEN, WILL COUNTY, ILLINOIS

WHEREAS, the Village of Homer Glen, Will County, Illinois (the “Village”) is a home rule municipality pursuant to Section 6(a), Article VII of the 1970 Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs (the “Home Rule Powers”); and

WHEREAS, the Corporate Authorities of the Village of Homer Glen at their December 20, 2005 meeting duly adopted an ordinance providing for the licensing and regulating video gaming within the corporate limits of the Village (hereinafter sometimes referred to as the “Tobacco Ordinance”); and

WHEREAS, upon further review of the aforesaid ordinance, the staff and Corporate Authorities of the Village have determined that it is in the best interests of the Village to amend the Tobacco Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the Village President and Village Board of Trustees of the Village of Homer Glen, Will County, Illinois, by and through its Home Rule Powers, as follows:

Section 1: Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Ordinance as if fully set forth herein.

Section 2: Amendments. Article III (Sale of Tobacco and Tobacco Products) of Chapter 83 of the Code of the Village of Homer Glen is hereby amended as outlined in Exhibit A (additions are indicated by **blue underlining**; deletions are indicated by **red strikeouts**).

Section 3: Severability. The various portions of this Ordinance are hereby expressly declared to be severable, and the invalidity of any such portion of this Ordinance shall not affect the validity of any other portions of this Ordinance, which shall be enforced to the fullest extent possible.

Section 4: Repealer. All Ordinances or portions of Ordinances previously passed or adopted by the Village of Homer Glen that conflict with or are inconsistent with the provisions of this Ordinance are hereby repealed.

Section 5: Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval.

[Intentionally left blank]

Adopted this 12th day of June 2024 pursuant to a roll call vote as follows:

	<u>YES</u>	NO	ABSENT	PRESENT
Consolino	X			
Fialko	X			
Mason	X			
McNaughton			X	
Reynders (Mayor Pro-Tem)				
Steilen	X			
Neitzke-Troiike (Village President)			X	
TOTAL	4		2	

APPROVED by the Village President on June 12, 2024



Christina Neitzke-Troiike
Village President

ATTEST:


Candice Bielski
Village Clerk



“Exhibit A”

Article III (Sale of Tobacco and Tobacco Products) of Chapter 83 of the Code of the Village of Homer Glen

Article III
Sale of Tobacco, Tobacco Products, Alternative Nicotine or Electronic Cigarettes

§ 83-15 Definitions.

As used in this article, the following terms shall have the meanings indicated:

ACCESSORY TOBACCO SALES

A business establishment in which less than fifty percent (50%) of the revenues of the establishment are generated from the sale of tobacco, alternative nicotine products, e-cigarettes or vaping devices and smoking devices.

ALTERNATIVE NICOTINE PRODUCT

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 products exclude cigarettes, smokeless tobacco, or other tobacco products as these terms are defined herein and any product approved by the United States Food and Drug Administration as a non-tobacco product 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.

E-CIGARETTE OR VAPING DEVICE

- (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.

"E-cigarette or vaping device" includes, but is not limited to, any electronic smoking device, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah pipe, vape pen, product vaporizer, atomizer or similar product or device, any components or parts that can be used to build the product or device, and any component, part, or accessory of a device used during the operation of the device, even if the part or accessory was sold separately. "Electronic cigarette" does not include: cigarettes as defined in Section 1 of the Cigarette Tax Act; 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.

NICOTINE

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

TOBACCO

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 includes any component, part, or accessory of a tobacco product, whether or not sold separately. Tobacco does not include: an 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.

PRIMARY TOBACCO SALES

A business in which fifty percent (50%) or more of the revenues of the establishment are generated from the sale of tobacco, tobacco products, alternative nicotine products, e-cigarettes or tobacco accessories. The sale of other products is incidental to the sale of tobacco, alternative nicotine products, e-cigarettes or tobacco accessories.

SMOKING DEVICE

Pipes, hookahs or other devices that can be used to smoke tobacco or cannabis. Smoking devices do not include cigarettes or cigars.

VENDING MACHINE

Any mechanical, electric or electronic self-service device operated by insertion of money, tokens or other form of consideration and dispenses electronic cigarettes, tobacco products and/or tobacco accessories.

§ 83-16 License Type and Requirements.

- A. No person shall sell, solicit, receive an order for, keep or offer for sale, or keep with the intention of selling any tobacco, alternative nicotine product, e-cigarette, vaping device or smoking device without first obtaining a tobacco license from the Village. A separate tobacco license shall be required for each location where tobacco, tobacco products, alternative nicotine products, electronic cigarettes, vaping devices or smoking devices are sold.
- B. Tobacco License Classification: Tobacco licenses shall have two (2) classifications. It shall be at the sole discretion of the Village Manager to determine the classification licenses to issue based on the operation of the business.
 1. Class A Tobacco license: Authorizes on-premises Accessory Tobacco Sales.
 2. Class B Tobacco license: Authorizes on-premise Primary Tobacco Sales.
- C. It shall be the responsibility of each licensee to be informed regarding all laws, federal, state or local, applicable to tobacco, tobacco products, alternative nicotine products, vapor products or e-cigarettes, vaping devices or smoking device retailing.
 1. A license issued contrary to this article, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to the applicable provisions of this article.
 2. Nothing in this article shall be construed to grant any person obtaining and maintaining a(n) tobacco license any status or right other than a limited, conditional privilege to act as a tobacco, alternative nicotine product, e-cigarette, vapor device or smoking device retailer at the location identified on the face of the license. Nothing in this article shall be construed to vest in any person obtaining and maintaining a tobacco license any status or right to act as a tobacco, alternative nicotine product, e-cigarette, vapor device or smoking device retailer in contravention of any applicable law.
- D. Any licensee who has been convicted of a felony under any federal or state law, any misdemeanor in which tobacco, alternative nicotine products, vapor products or electronic smoking devices were involved or any violation listed in subsections 83-19(F) below shall notify the mayor of such conviction. Such notification shall be made within thirty (30) days after the sentencing for the conviction.
- E. It shall be unlawful for any licensee or any employee or agent of any such licensee to sell, deliver, or distribute any product which contains Tetrahydrocannabinol (THC) or any synthetic cannabinoid.

§ 83-17 Limitation on Number of Licenses.

A maximum of five (5) Class B Tobacco licenses shall be issued and in force at any one time. Any establishment already in possession of a Village Tobacco license at the time of the adoption of this ordinance shall be grandfathered with the ability to renew their existing licenses. This limitation shall only prohibit the issuance of new licenses until there are fewer than four Class B licenses.

§ 83-18 Application for license.

Applications for a tobacco license shall be made to the Village Manager and shall be on a form prescribed by the Village. The application shall be signed by the applicant if an individual or by a duly authorized agent of the applicant if the applicant is not a natural person. All information and statements made in the application shall be made and verified by affidavit. The Village President and Village Manager shall review all applications, and shall exercise their sole, exclusive discretion in considering whether to approve all licenses defined in this Article. All applications shall require the approval of both the Village President and Village Manager. If the application is not approved by either the Village Manager or the Village President, the application for a license shall be denied. The application shall contain the following information:

- A. The name, address, date of birth, telephone number, and social security number of the applicant if the applicant is an individual; or the name, address, date of birth, telephone number, and social security number of:
 - (1) Each partner if the applicant is a partnership; or
 - (2) Each manager of the applicant, if the applicant is an entity or other organization.
- B. The location and description of the premises or place of business for which the license is being applied for.
- C. A statement whether applicant has made a similar application for a license on any premises other than the premises described in the application.
- D. A statement that the applicant or any manager has never been convicted of a felony or otherwise disqualified to receive a license by reason of any matter or thing contained in the laws of Illinois or the ordinances of the Village.
- E. A statement as to whether any previous license issued to applicant by any state or other governmental unit or agency has been suspended or revoked and the reasons therefor.
- F. A statement that the applicant will not violate any of the laws of the state of Illinois or the provisions of this article in the conduct of business at the location for which the license is proposed.
- G. A background check is required for all new tobacco licenses. This is done through fingerprinting. The following individuals are required to be fingerprinted:
 - (1) All officers, managers, directors, partners, or persons holding directly, beneficially or through any form or indirect or concealed ownership or control, more than five percent (5%) of the stock or ownership interest. The Village Manager may, in his or her discretion, require any applicant for a renewal of a tobacco license to be fingerprinted.
 - (2) All such fingerprinting shall be done by the Village's designated vendor. Said fingerprints shall be submitted to the appropriate state and/or federal agencies for processing. The cost of fingerprinting shall be paid by the applicant to the designated vendor.

§ 83-19 Ineligible applicants.

No license shall be issued or renewed to an applicant:

- A. Who is indebted to the Village or other governmental entity for payment of any fees, charges, bills or taxes which he is obligated to pay but has remained unpaid for more than forty-five (45) days.
- B. Who has been convicted of a felony under any federal or state law, or any misdemeanor involving theft or dishonesty.
- C. Whose license under this article, or any similar regulatory ordinance or statute, has been revoked for cause.
- D. Who provided false or misleading information as part of their license application.
- E. Who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.
- F. Who within one (1) year of application for a tobacco license has been convicted of, plead guilty to, or been placed on supervision for any tobacco license related offense.
- G. Whose place of business is conducted by a manager or assistant manager or agent, unless said manager, assistant manager or agent possesses the same qualifications required by the licensee.
- H. 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 license is issued.

§ 83-20 Term of license.

- A. All tobacco licenses shall be for a term of one year and shall terminate on the 30th day of April following the issuance of the license, except that any license issued for a portion of the year shall have a term of less than one year and the term thereof shall terminate on the 30th day of April following the issuance of the license.
- B. No licensee may assign, sell or transfer their license to any other person, or entity, even if such other person intends to conduct the same business, occupation or activity as the licensee at the location used by the licensee. The sale of a business by a license holder will immediately terminate the tobacco license.
- C. Change of ownership: Any changes in partnerships, officers, directors, persons holding directly, beneficially or through any form of indirect or concealed ownership or control, more than five percent (5%) of the stock or ownership interest of establishments licensed under this Chapter, shall be reported in writing to Village Clerk within ten (10) days of the change.

§ 83-21 Non-transferability of license.

- (1) No license issued pursuant to this article shall be assignable or transferable by the licensee or by operation of law or otherwise.
- (2) A license under this Article is effective for a period not to exceed one year after issuance unless sooner suspended or revoked as provided for in §83-28 of this Article, and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. Such license shall cease upon the death of the licensee or, in the case of a corporation, limited-liability company or partnership, its dissolution or bankruptcy, and shall not descend by the laws of testate or intestate devolution; provided that executors or administrators of the estate may continue to operate under the existing tobacco license as set forth in this Article, under the order of the appropriate court, and may

exercise the privileges of the deceased or insolvent or bankrupt licensee after the death of such decedent, or such insolvency or bankruptcy, until the expiration of such license, but not longer than six months after the death, bankruptcy or insolvency of such licensee.

- (3) Any sale, transfer, or assignment of more than 10% of the shares of a corporation or more than 10% of an interest in a partnership or other business entity, shall terminate the existing tobacco license, and require the business to submit an application and satisfy all of the requirements for new applicants.

§ 83-22 Proximity to Certain Institutions

- A. No Class B tobacco license shall be issued within 1,000 feet of any school, childcare facility, public park or other building used exclusively for educational or recreational programs for persons under the age of twenty-one (21) years. For purposes of this section, required separation distance shall be measured from the property line to nearest property line.
- B. No Class B tobacco license shall issue for any business on the same property or within the same contiguous commercial center, as any business that provides any type of educational or recreational programs or services for persons under the age of twenty-one (21).
- C. No Class B tobacco license shall issue for any location within 1,000 feet of any existing Class B tobacco license. Separation is required to prevent overconcentration, which is defined as three or more of these uses existing within 1,000 foot radius of the business. For purposes of this section, required separation distance shall be measured from property line to property line.

Establishments in possession of a Village tobacco license at the time of adoption of this ordinance who do not meet the minimum separation requirements shall be grandfathered in as legal non-conforming; any changes such as ownership, location, or business type will require an application for a new license.

§ 83-23 License fee.

The fee for a tobacco license is set forth in Chapter 114-11, Article II, of the Village Code.

- A. There is a \$250.00 non-refundable application fee for a tobacco license.

§ 83-24 Responsibility for Agents and Employees

Every act or omission of whatsoever nature, constituting a violation of any of the provisions of this chapter 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.

§ 83-25 Sales to and by minors.

- A. No person shall sell or furnish tobacco, alternative nicotine products, electronic cigarettes, vaping devices or smoking devices in any of its forms to any person under twenty-one (21) years of age.
- B. It shall be unlawful for any licensee, officer, agent, associate, member, representative, or employee of such licensee to engage, employ, or permit any person under twenty-one (21) years of age to sell or furnish any tobacco, alternative nicotine products, electronic cigarettes, vaping devices or smoking devices in any form.

§ 83-26 Possession of tobacco or tobacco products by minors.

- A. No person under the age of twenty-one (21) years shall possess or use tobacco, alternative nicotine products, e-cigarettes, vaping devices, or smoking devices in any form, in any public place or business. No person under the age of twenty-one (21) years shall misrepresent his or her identity or age, or use false

or altered identification, for the purpose purchasing tobacco, alternative nicotine products, e-cigarettes, vaping devices, or smoking devices in any form.

B. Violations. Whenever a Village inspector or sheriff's deputy observes a violation of this section, he or she may confiscate the tobacco product for disposal and issue a violation notice to the person committing the violation. The violation notice shall be signed by the inspector or sheriff's deputy and shall include the following:

- (1) The name of the person violating this section and his or her address, if known.
- (2) The nature of the offense.
- (3) The amount of the penalty.

§ 83-27 Vending Machines.

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, alternative nicotine product, vapor products or electronic smoking devices by use of a vending machine.

§ 83-28 Penalty.

A. Complaints alleging any violation of this Article by a licensee for which the Village may suspend or revoke a license or impose a fine upon a licensee shall be brought in the name of the Village and adjudicated before an administrative hearing officer in the manner set forth in Article III of Chapter 1 of this code. The administrative hearing officer may impose a fine and suspend a license for any period up to thirty (30) days or revoke for cause any license issued under this chapter if he determines that the licensee has violated any of the following provisions:

1. The licensee has violated any law of the state, any ordinance of the county, or any ordinance of the Village, which affected the public health, welfare and safety and which violation occurred as part of the operation of the licensee's business or upon the licensed premises or adjacent premises.
2. The licensee has violated any of the provisions of this chapter or any federal or state law pertaining to the sale of tobacco, tobacco products, alternative nicotine product, electronic cigarette.
3. The licensee is more than forty-five (45) days delinquent in the payment of any debt to the Village.

B. Complaints alleging a violation of section 27 (possession by a minor) shall be adjudicated before an administrative hearing officer in the manner set forth in Article III of Chapter 1 of this code.

C. Each day on which a violation continues shall constitute a separate violation. A fine for a violation of this Article shall be not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000.00) plus costs.

§ 83-29 Denial of License or Renewal.

If the Village Manager or President should deny a Tobacco license to an applicant, the Village Manager or President shall notify the applicant in writing with the following information included in the basis for the denial:

1. A statement about the decision to deny the license.
2. A list of convictions (if applicable) which are a basis for the denial of the applicant's tobacco license.
3. The relevant sections of this Article for which are a basis for the denial of applicant's tobacco license.
4. Instructions on how to appeal the denial.

§ 83-30 Review.

An applicant may request review by the Village Board of Trustees of the denial of any license under this Article, provided the applicant timely files a request for review with the Village Clerk, within 14-days from the date of any such denial. The review shall take place in an open session, and the Village Board shall adopt such rules that it deems necessary. A 2/3 vote by the Board of Trustees shall be required to reverse the denial of any license under this Article.

§83-31 Renewal of License.

Every year on or before April 15, each tobacco licensee shall submit an application for license renewal. Along with the application, the owner shall submit an affidavit verifying the following:

- A. The licensee does not have any outstanding violations or financial obligations to the village.
- B. The licensee is eligible for a tobacco license and is in compliance with all of Article III of Chapter 83;
and
- C. The licensee has not changed business names, location, or ownership; and
- D. The licensee's owners and managers have not been charged with or found guilty of a tobacco related offense; and
- E. The licensee owns the business location or has a lease through April of the following year.