

ORDINANCE 2015 – _____

**AN ORDINANCE ADDING A NEW CHAPTER 14 TO TITLE 4
OF THE ANTIOCH MUNICIPAL CODE
REGULATING AND LICENSING TOBACCO DEALERS**

WHEREAS, the Village of Antioch, Illinois (“Village”) has adopted a Village Code of Ordinances (“Code”); and

WHEREAS, the Illinois Municipal Code provides for the regulation and inspection of tobacco by municipalities pursuant to 65 ILCS 5/11-20-3; and

WHEREAS, the Illinois Municipal Code allows municipalities to do all acts and make all regulations necessary or expedient for the promotion of health or the suppression of diseases pursuant to 65 ILCS 5/11-20-5; and

WHEREAS, the Illinois Municipal Code allows municipalities to regulate and prohibit those businesses of which create nuisances within the Village pursuant to 65 ILCS 5/11-42-9 and 10; and

WHEREAS, the Illinois Municipal Code allows municipalities to adopt and enforce all necessary police ordinances pursuant to 65 ILCS 5/11-1-1; and

WHEREAS, the United States Supreme Court has also long recognized the inherent power of Illinois municipalities to regulate the sale of tobacco, through the case of *Guntling v. Chicago*, 177 U.S. 1263; and

WHEREAS, the Village of Antioch does not currently regulate or license tobacco dealers; and

WHEREAS, the Village Board finds that the health hazards of smoking and other uses of tobacco products are well-documented, including many years’ worth of opinions of the United States Surgeon General, and that there are a multitude of laws intended to assist in curbing underage smoking and to deter adults from engaging in the consumption of tobacco products, and

WHEREAS, the Village Board finds that the proliferation of stores specializing in the sale of tobacco and tobacco-related products has become a nuisance and a blight upon this Village, particularly because of the difference in sales tax rates causing cigarettes sold in Lake County, Illinois to be less expensive than those sold in the neighboring areas of Kenosha County, Wisconsin, and that the same is likely to become an even bigger nuisance in the future; and

WHEREAS, the Village Board finds that some of the smoking apparatus sold in tobacco shops within the Village is of a type that often is used to ingest illegal drugs, including, but not limited to crack cocaine and marijuana, that the sales of such items encourages illicit drug use particularly among susceptible teenagers, and that the sale of such goods should be deterred and regulated as much as possible, within the bounds of federal and state laws; and

WHEREAS, the Village Board finds that it is necessary and desirable for local units of government, including this Village, to adopt the strictest measures legally permissible to protect the youth of this Village from the dangers of underage smoking, and to deter adults from engaging in the consumption of tobacco products, and also to protect the populace from nuisances and the proliferation of unhealthy businesses; and

WHEREAS, the Village Board has determined it is in the best interest of the Village and its citizens to amend the ordinance providing for the foregoing:

NOW THEREFORE, be it ordained by the Mayor and Trustees of the Village of Antioch, Illinois as follows:

1. The above recitals are incorporated herein and made a part hereof.
2. That a new Chapter 14 to be incorporated into Title 4 of the Village Code is hereby adopted, and it shall hereafter provide as follows:

CHAPTER 14. TOBACCO DEALERS

4-14-1. Definitions.

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

“Compliance check” means an inspection conducted with the intention of assessing retail sales of tobacco products to minors and enforcing age-of-sales laws. Compliance checks are conducted by having designated persons under the age of eighteen years of age attempt to purchase tobacco products from vendors.

“Drug paraphernalia” means all equipment, products and materials of any kind which are peculiar to and marketed for use and planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, re-packaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body cannabis or a controlled substance in violation of the “Cannabis Control Act” or the “Illinois Control Substances Act.” It includes, but is not limited to:

1. Kits peculiar to and marketed for use in manufacturing, compounding, converting, producing, processing or preparing cannabis or a controlled substance;
2. Isomerization devices peculiar to and marketed for use in increasing the potency of any species of plant which is cannabis or a controlled substance;
3. Testing equipment peculiar to and marketed for private home use in identifying or in analyzing the strength, effectiveness or purity of cannabis or controlled substances;
4. Diluents and adulterants peculiar to and marketed for cutting cannabis or a controlled substance by private persons;

5. Objects peculiar to and marketed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, or hashish oil into the human body, including, where applicable, the following items:

- a. Water pipes,
- b. Carburetion tubes and devices,
- c. Smoking and carburetion masks,
- d. Miniature cocaine spoons and cocaine vials,
- e. Carburetor pipes,
- f. Electric pipes,
- g. Air-driven pipes,
- h. Chillums,
- i. Bongs; and
- j. Ice pipes or chillers.

6. Any item whose purpose, as announced or described by the seller, is for use in violation of the “Cannabis Control Act” or the “Illinois Controlled Substances Act.”

“License” means a license issued by the Village of Antioch for the retail sale of tobacco products.

“Licensee” means the holder of a valid license for the retail sale of tobacco products.

“Minor” means any person under the age of eighteen years of age.

“Public place” means an area to which the public is invited or in which the public is permitted, including, but not limited to, any right-of-way, mall or shopping center, park, playground, and any other property owned by the Village, any school district, or any park district.

“Self-service displays” means open displays of tobacco products that the public has access to without intervention of a store employee.

“Tobacco products” means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.

“Tobacco accessories” means any cigarette papers, pipes, holder 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 ordinance or statute.

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

4-14-2. License Required.

It is unlawful to sell, barter, transport, deliver, furnish, possess, keep or offer for sale at retail tobacco products or accessories, or engage in or conduct a retail tobacco business, or conduct any place for the sale of tobacco products or accessories within the corporate limits of

the Village, without having a retail tobacco dealer's license, or in violation of the terms of such licenses.

4-14-3. License Application.

Application for such license shall be made to the Village of Antioch in writing upon blanks prepared and furnished by the Village, signed by the applicant, if any individual; or by at least two members of a partnership, if the applicant is a partnership, or if the applicant is a corporation, then by the president and secretary thereof, verified by oath or affidavit of the signers, and shall contain the following information and statement:

- A. The name, age and address of the applicant in the case of an individual; in the case of a partnership, the persons entitled to share in five percent (5%) or more of the profits thereof; and in the case of a corporation the date of the incorporation, the state of incorporation, the objects for which it was organized, the names and addresses of the officers and directors, and the name and address of all persons owning more than five percent (5%) of the stock, along with a copy of the corporate charter currently on file with the Illinois Secretary of State;
- B. The citizenship of the applicant, their place of birth and if a naturalized citizen, the time and place of their naturalization;
- C. The character of business of the applicant;
- D. The length of time that the applicant has been in business of that character;
- E. In the case of a partnership, the date of the formation of the partnership;
- F. The applicant's current state tobacco license number from the Department of Revenue (unless already bonded under the Cigarette Tax Act of the Cigarette Use Tax Act);
- G. The location and description of the premises or place of business which is to be operated under such license;
- H. A statement whether the applicant has made a similar application for a similar or other license on premises other than described in the application, and the disposition of such application;
- I. A statement that the applicant has never been convicted of a felony and is not disqualified to receive a license by reason of any matter or thing contained in this chapter or any ordinance or statute;
- J. Whether a previous license by any state or subdivision thereof, or by the federal government has been revoked, and the reasons therefore;
- K. A statement that the applicant will not violate any of the laws of the state or of the United States or any ordinance of the Village in the conduct of business.

4-14-4. License—Restrictions on Applicants.

No license shall be granted to:

- A. A person who is not of good character and reputation;
- B. A person who is not a citizen or lawful permanent resident of the United States;
- C. A person who has been convicted of a felony under any federal or state law, unless the Village Board determines that such person has been sufficiently rehabilitated to warrant the public trust after considering matters set forth in such person's application and the

Village Board's investigation. The burden of proof of sufficient rehabilitation shall be on the applicant;

D. A person who has been convicted of pandering or any other crime or misdemeanor opposed to decency and morality;

E. A person who at the time of application for renewal of any license issued would not be eligible for a license upon a first application;

F. A partnership, if any general partner thereof, or any limited partner thereof, owning more than five percent of the aggregate limited partner interest in such partnership would not be eligible to receive a license hereunder for any reason;

G. A corporation, if any officer, manager or director thereof, or any stockholder or stockholders owning in the aggregate more than five percent of the stock of such corporation, would not be eligible to receive a license hereunder for any reason other than citizenship;

H. A corporation unless it is incorporated in Illinois, or is qualified under the "Business Corporation Act of 1983" (850 ILCS 5/1.01 et seq.) to transact business in Illinois;

I. A person whose place of business is conducted by a manager or agent unless the manager or agent possess the same qualifications required for the licensee;

J. A person who does not beneficially own the premises for which a license is sought, or does not have a lease thereon for the full period of the license is to be issued.

4-14-5. Ownership Changes.

Any change in the names, addresses, or identity of any owner or holder of five percent or more of any stock, shares, equity, or other instrument of ownership of a licensee licensed under this chapter, shall be reported to the Village Clerk within ten days of any such change.

4-14-6. License Fee – Background Checks.

A. Each such license shall terminate on the 30th day of April next following the date of issuance. The fee to be paid shall be reduced in proportion to the full calendar months that have expired in the year prior to the issuance of the license. All fees for licenses pursuant to this chapter shall be paid at the time the application is made.

B. The Chief of Police shall conduct a criminal background check of all applicants at the time of their initial application, and at any time a change in ownership results in a new owner being added to the reported list of owners or holders of 5% equity or stock. By applying for a license, the applicant agrees to submit to fingerprinting and to this background check. Applicants may be required to sign such consent forms as the Chief may reasonably require. The Chief shall report to the Village Board whether the application is demonstrably false in any material respect or if the applicant is ineligible to hold a license.

C. In the event that a license is denied, the license fee shall be refunded to the applicant, less a fifty dollar (\$50.00) processing fee.

4-14-7. License—Class A—General Tobacco Sales Retailer.

A. Businesses whose primary activity is other than the sale of tobacco products, shall obtain a Class A license before engaging in sales. "Primary sales" means sales that constitute fifty percent (50%) or more of the total sales of the business.

B. The annual fee for such license is two hundred fifty dollars (\$250.00) for each tobacco retail location.

C. There shall be no more than X class A licenses in the Village of Antioch at any point in time. Licenses will be issued in the order that applications are received. Licenses will cease to be issued at the time that X licenses have been issued and will not be issued again until the number of licensed vendors is below X due to revocation of a vendor's license or failure of a vendor to renew a license.

D. A Class A license is nontransferable, except a new license will be issued to a tobacco retailer who changes location.

E. A list of Class A licensees shall be kept by the Village Clerk of the Village of Antioch.

4-14-8. License—Class B—Primary Tobacco Sales Retailer.

A. Businesses whose primary activity is the sale of tobacco products shall obtain a Class B license before engaging in sales. "Primary sales" means sales that constitute fifty percent (50%) or more of the total sales of the business.

B. The annual fee for such license is three thousand dollars (\$3,000.00) for each tobacco retail location.

C. There shall be no more than 5 class B licenses in the Village of Antioch at any point in time. Licenses will be issued in the order that applications are received. Licenses will cease to be issued at the time that 5 licenses have been issued and will not be issued again until the number of licensed vendors is below 5 due to revocation of a vendor's license or failure of a vendor to renew a license.

D. A Class B license is nontransferable, except a new license will be issued to a tobacco retailer who changes location.

E. Those subject to this section, who sell tobacco products or accessories to minors, shall be subject to immediate revocation of their license and special use permit.

F. A list of Class B licensees shall be kept by the Village Clerk of the Village of Antioch.

4-14-9. License—Posting.

Every licensee shall cause the license or licenses to be framed and hung in a conspicuous place on the licensee's premises.

4-14-10. License—Proximity to Certain Institutions.

It is unlawful for any person or licensee to sell, offer for sale, give away or deliver tobacco products within one hundred feet of any school, child care facility or other building used for educational or recreational purposes by persons under eighteen years of age. For the purpose of this Section, measurement shall be made in a straight line, without regard to intervening structures or objects, from nearest portion of the building or structure used as a part of the premises where a tobacco establishment is located, to the nearest property line of a school, child

care facility or other building used for educational or recreational purposes by persons under eighteen years of age.

4-14-11. License—Issuance.

Upon the approval by the Village Board of the Village of Antioch of the application as provided in this chapter and the payment of the required license fee, the Village Clerk shall issue to the person or persons applying therefore a license to retail tobacco products or accessories under the provisions of this chapter, indicating the classification under which the license is issued, and the term for which such license is issued. The license shall be signed by the Mayor.

4-14-12. License—Revocation or Suspension.

A. The Antioch Village Board may revoke or suspend any license if it is determined that the licensee has violated any state statute or any of the provisions of any ordinance or resolution of the Village or any applicable rule or regulation established by the Village Board. However, no such license shall be revoked or suspended until after a public hearing by the Village Board with a written notice to the licensee affording the licensee a minimum of three business days in which to appear and defend. In all such hearings, the Village Attorney shall reduce, or cause to be reduced, all evidence to writing and shall maintain an official record of the proceedings. The Village Board shall within five days after such hearing, state the reasons for such determination in a written order of revocation or suspension and shall serve a copy of such order upon the licensee. The decision of the Village Board on any license suspension or revocation proceeding shall constitute a final administrative action and is subject to review in the courts under the Illinois Administrative Review Act, 735 ILCS 5/3-101, et. seq.

B. A license shall be suspended or revoked for any violation of this chapter after notice and opportunity to be heard as follows:

1. In the case of a first violation, the licensee shall be fined not less than twenty-five dollars (\$25.00) and no more than seven hundred fifty dollars (\$750.00) and shall be notified in writing of penalties levied for further violations. Each day that a violation continues shall constitute a separate violation.

2. In the case of a second violation, the licensee shall be fined not less than twenty-five dollars (\$25.00) and no more than seven hundred fifty dollars (\$750.00) and the tobacco license shall be suspended for not less than thirty consecutive business days nor more than ninety consecutive days. Tobacco retailers must remove all tobacco products and accessories from public view while the license is suspended and all tobacco sales shall be suspended. Notice of the suspension shall be posted in plain view of the public at the licensee's premises.

3. In the case of a third violation, the licensee shall be fined not less than twenty-five dollars (\$25.00) and no more than seven hundred fifty dollars (\$750.00) and the tobacco license shall be suspended for not less than six months nor more than eighteen months from the date of suspension and all tobacco sales shall be suspended. Tobacco retailers must remove all tobacco products and accessories from public view while the license is suspended.

4. In the case of a fourth violation, the licensee shall be fined not less than twenty-five dollars (\$25.00) and no more than seven hundred fifty dollars (\$750.00) and the license shall be revoked. All tobacco products and accessories must be removed from all areas.

C Any licensee determined by the Village Board to have violated any of the provisions of this chapter shall pay to the Village costs of the hearing on such violation. The Village shall determine the costs of the hearing, including, but not limited to: court reporter's fees, attorney's fees incurred by the Village, the cost of preparing and mailing notices and orders and all other miscellaneous expenses incurred by the Village or such lesser sum as the Village Board may allow, and such costs assessed shall be in addition to the fine imposed. Notice of the suspension shall be posted in plain view of the public at the licensee's premises.

D. The licensee shall pay said costs to the Village within thirty days of notification of the costs. Failure to pay said costs within thirty days of notification is a violation of this chapter and may cause the levy of an additional fine or revocation of license.

E. When any license shall have been revoked for any cause, no license shall be granted to such licensee for the period of six months thereafter for the conduct of the business of selling any of the products or items listed in Section 126.2 in the premises described in such revoked license.

4-14-13. Sales—Minors—Prohibited.

A. It is unlawful for any person to sell, offer for sale, give away or deliver tobacco products or tobacco accessories to any person under the age of eighteen years.

B. No licensee or his agent or employees shall permit and no person shall bring any person under the age of eighteen years in or about any premises operating under a Class B tobacco license.

4-14-14. Warning Signs.

A. It is unlawful for any person to sell, offer for sale, give away or deliver tobacco products or tobacco accessories in any place that does not post signs informing the public of the age-of-sale restrictions and surgeon general warning in a conspicuous place at or near every display of tobacco products. Each sign shall be plainly visible and shall state:

1. "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."

2. "SURGEON GENERAL'S WARNING: SMOKING BY PREGNANT WOMEN MAY RESULT IN FETAL INJURY, PREMATURE BIRTH, AND LOW BIRTH WEIGHT."

B. The text of such signs must be in red letters on a white background, and said letters must be at least one-half inch high.

4-14-15. Identification required.

No licensee shall sell or permit to be sold cigarettes or other tobacco products or accessories to an individual appearing younger than the age of twenty-seven without requesting and examining photographic identification establishing the purchaser's age as eighteen years of age or greater.

4-14-16. Vending Machines Prohibited.

Tobacco vending machines or any other devices for the sale or distribution of tobacco products are prohibited.

4-14-17. Sale or Delivery of Drug Paraphernalia Prohibited.

A. No person shall keep for sale, offer for sale, sell, or deliver for any commercial consideration any item of drug paraphernalia.

B. Any store, place, or premises from which or in which any item of drug paraphernalia is kept for sale, offered for sale, sold or delivered for any commercial consideration is declared to be a public nuisance.

C. Items marked for use in the preparation, compounding, packaging, labeling, or other use of cannabis or a controlled substance as an incident to lawful research, teaching, or chemical analysis and not for sale shall be exempt from this section.

D. Any person, firm or corporation violating this section, or any part thereof, shall be fined not less than two hundred fifty dollars (\$250.00) nor more than seven hundred fifty dollars (\$750.00) for each violation.

E. The Village shall further have the discretion to seek a suspension or revocation of any licensee's license under Section 126.12 in the event of any violation of this Section.

4-14-18. Minimum Age to Purchase or Possess Tobacco Products and Accessories.

A. It is unlawful for any person under the age of eighteen years to purchase or possess tobacco products or tobacco accessories or misrepresent their age or use any false or altered identification with the intention of purchasing tobacco products or accessories.

B. It is not unlawful for any person under the age of eighteen years to be in violation of this section if such tobacco product or accessory is in an unopened container or package and was in the person's possession pursuant to the performance of specified duties at a lawful place of employment.

4-14-19. Minimum Age to Sell Tobacco Products and Accessories.

It is unlawful for any licensee, officer, associate, member, representative, agent or employee of such licensee to engage, employ or permit any person under eighteen years of age to sell tobacco products or accessories on any vendor's premises.

4-14-20. Out-of-Package Sales Prohibited.

It is unlawful to sell cigarettes out of the manufacturer's package with required health warnings. It is unlawful to sell cigarettes individually or in any form other than in the manufacturer's original packaging.

4-14-21. Vendor-Assisted Sales Required.

It is unlawful to sell, offer for sale, give away, or display tobacco products for sale at any location where the consumer can acquire those products through self-service. All tobacco

products must be displayed from behind a sales/service counter so that no consumer can access tobacco products or accessories without the assistance of an employee of the licensee.

4-14-22. Responsibility for Agents and Employees.

Every act or omission of any nature constituting a violation of any 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.

4-14-23. Inspection.

It shall be the duty of the Chief of Police or his designee to conduct random, unannounced inspections of all places wherein such tobacco products are licensed to be sold, for the purpose of ascertaining whether the laws of the state and of the Village in relation to the same, are being complied with at such place.

4-14-24. Parental Responsibility.

No parent, guardian or custodian of a person under the age of eighteen years of age shall permit, facilitate, condone or allow such minor to purchase, possess or consume in any manner or form cigarettes or any other tobacco product or tobacco accessory.

4-14-25. Penalty.

Any person, firm or corporation violating any provisions of this chapter (other than the specific fines and suspension provisions set forth in §126.12) shall be fined not less than twenty-five dollars (\$25.00) nor more than seven hundred fifty dollars (\$750.00) for each offense.

3. Except as amended in this Ordinance, all other provisions and terms of Village Code of Ordinances shall remain in full force and effect as previously enacted except that those ordinances, or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.
4. This Ordinance shall be in full force and effect after its approval, passage and publication in pamphlet form as required by law.

PASSED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF ANTIOCH, ILLINOIS,
ON THIS ____ DAY OF _____, 2015.

ATTEST:

LAWRENCE M. HANSON, MAYOR

LORI K. FOLBRICK, VILLAGE CLERK