

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
1/16/2018

SUBJECT:	SUBMITTED BY:
An Ordinance prohibiting the purchase and possession of alternative nicotine products by minors	Enza Petrarca Village Attorney

SYNOPSIS

Adoption of this ordinance shall prohibit the purchase and possession of alternative nicotine products by minors.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 include *Exceptional Municipal Services*.

FISCAL IMPACT

N/A

UPDATE & RECOMMENDATION

This item was discussed at the January 9, 2018 Village Council meeting. Staff recommends approval on the January 16, 2018 active agenda.

BACKGROUND

Staff has amended Sections 15.21 and 15.23 of the Village of Downers Grove Municipal Code to prohibit the purchase and possession of alternative nicotine products by minors.

Section 15.21 (k) has been amended as follows:

(k) Alternative Nicotine Product. As defined under 720 ILCS 675/1.5(a): a product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing or otherwise. "Alternative nicotine product" excludes cigarettes, smokeless tobacco or other tobacco products, as these terms are defined in Section 1 of this Act and any product approved by the U.S. FDA as a non-tobacco product for sale as a tobacco cessation or dependence product or for other medical purposes and is marketed and sold solely for that purpose.

Section 15.23.1. has been amended as follows:

Possession of Tobacco and Alternative Nicotine Products by Minors Prohibited

It shall be unlawful for any person under the age of eighteen (18) years to possess any tobacco products or "alternative nicotine products"; 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. The definition of "tobacco products" and "alternative nicotine products" for purposes of this section shall be as defined in Section 15.21.

ATTACHMENTS

Ordinance

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: January 16, 2018
(Name)

RECOMMENDATION FROM: _____ FILE REF: _____
(Board or Department)

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "AN ORDINANCE PROHIBITING THE PURCHASE AND POSSESSION OF ALTERNATIVE NICOTINE PRODUCTS BY MINORS", as presented.



SUMMARY OF ITEM:

Adoption of this ordinance shall prohibit the purchase and possession of alternative nicotine products by minors.

RECORD OF ACTION TAKEN:

Alt Nicotine

ORDINANCE NO. _____

**AN ORDINANCE PROHIBITING THE PURCHASE AND POSSESSION OF
ALTERNATIVE NICOTINE PRODUCTS BY MINORS**

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by shading/underline; deletions by ~~strikeout~~):

Section 1. That Section 15.21. is hereby amended to read as follows:

15.21. Same--Definitions.

The following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) Smoking materials are articles or equipment commonly used in the consumption or ingestion of tobacco, cannabis or any smokable herb and shall include, but not be limited to, the following articles: marijuana pipes, hashish pipes, water pipes, chamber pipes, electric pipes, air driven pipes, bongs, ice pipes and cigarette papers.

(b) *Cannabis* is marijuana, hashish and other substances included in the definition of cannabis as set forth in the "Illinois Cannabis Control Act" (720 ILCS 550/1, et seq.)

(c) A *controlled substance* is any drug or substance included in the definition of a controlled substance as set forth in the "Illinois Controlled Substance Act" (720 ILCS 570/100, et seq.).

(d) *Drug paraphernalia* is all equipment, products, and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body cannabis or a controlled substance in violation of any village, state or federal law. It includes but is not limited to:

(1) Kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is cannabis or a controlled substance or from which cannabis or a controlled substance can be derived;

(2) Kits used, intended for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing cannabis or controlled substances;

(3) Isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant which is cannabis or a controlled substance;

(4) Testing equipment used, intended for use or designed for use in identifying, or in analyzing the strength, effectiveness or purity of cannabis or controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring cannabis or controlled substances;

(6) Dilutants and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining cannabis;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or combining cannabis with any controlled substance;

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(9) Capsules, balloons, envelopes and other containers used, intended for use or designed for use in packaging small quantities of cannabis or controlled substances;

(10) Containers and other objects used, intended for use or designed for use in storing or concealing cannabis or controlled substances;

(11) Hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances into the human body;

(12) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing cannabis or cocaine into the human body such as:

(a) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bonges;

(m) Ice pipes or chillers.

In determining whether an object is "drug paraphernalia", a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or anyone in control of the object, under any village, state or federal law relating to cannabis or controlled substances;

(3) The proximity of the object, in time and space, to a direct violation of any village, state or federal law relating to cannabis or controlled substances;

(4) The proximity of the object to cannabis or a controlled substance;

(5) The existence of any residue of cannabis or controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of any village, state or federal law relating to cannabis or controlled substances; the innocence of an owner or of anyone in control of the object as to a direct violation of any such laws shall not prevent a finding that the object is intended for use, or designed for use as "drug paraphernalia";

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National or local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community;

(14) Expert testimony concerning its use.

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(e) *A cocaine spoon* is a spoon with a bowl so small that the primary use for which it is reasonably adapted or designed is to hold or administer cocaine, and which is so small as to be unsuited for the typical, lawful use of a spoon. A cocaine spoon may or may not be merchandised on a chain and may or may not be labeled as a "cocaine" spoon or "coke" spoon.

(f) *A minor* is any male or female person who has not yet attained eighteen years of age.

(g) The term *publicly displayed* when used with reference to drug paraphernalia, or books, magazines, periodicals, films and other reading or viewing materials which are harmful to minors shall mean display where such materials are openly available for viewing in store windows, on open racks designed for such display or on counters.

(h) *A film* is any motion picture or video tape for sale or rent or for viewing on premises by use of motion picture devices or other coin-operated means.

(i) The term *harmful to minors* when applied to any book, magazine, periodical, film or other reading or viewing material shall mean that any such material, if read or viewed by the average person applying contemporary standards in the community, would be found to have the following characteristics:

(1) Its predominant appeal is to prurient interests judged with reference to average minors of the same general age as the minor to whom the material is sold or in whose presence the material is displayed, the prurient interest being a shameful or morbid interest in nudity, sex or excretion;

(2) It goes substantially beyond the customary limits of candor in description of nudity, sex or excretion; and

(3) It is utterly without redeeming social value.

It is the intent of this definition to include materials depicting any type of conduct which has been from time to time held by the Illinois Supreme Court in its construction of state obscenity statutes to be harmful to minors.

It shall be presumed that a film is harmful to minors if that film is rated "X" or "NC17" by the Motion Picture Association of America and explicitly depicts nudity, sex or excretion.

(j) *Tobacco products* are any substances containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff or smokeless tobaccos including chewing tobacco and dipping tobacco.

(k) *Alternative Nicotine Product*. As defined under 720 ILCS 675/1.5(a): a product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing or otherwise. "Alternative nicotine product" excludes cigarettes, smokeless tobacco or other tobacco products, as these terms are defined in Section 1 of this Act and any product approved by the U.S. FDA as a non-tobacco product for sale as a tobacco cessation or dependence product or for other medical purposes and is marketed and sold solely for that purpose. (Ord. No. 2455, § 1; Ord. No. 2877, § 1; Ord. No. 2885, 2; Ord. No. 3292, § 2; Ord. No. 3346, § 8.)

Section 2. That Section 15.23.1. is hereby amended to read as follows:

15.23.1. Possession of Tobacco and Alternative Nicotine Products by Minors Prohibited.

It shall be unlawful for any person under the age of eighteen (18) years to possess any tobacco products or alternative nicotine products"; 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. The definition of "tobacco products" and "alternative nicotine products" for purposes of this section shall be as defined in Section 15-21(j)(k).

Section 3. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are

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hereby repealed.

Section 4. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:
Published:
Attest: _____
Village Clerk

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