

CHAPTER 37
TOBACCO CONTROL AND TOBACCO LICENSING

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37.01 DEFINITIONS

In addition to the following definitions, terms used in this Chapter 37 ("Chapter" shall mean this Chapter 37) are defined in Appendix A of this Code.

Tobacco Commissioner: The Local Tobacco Control Commissioner shall be the Village President.

37.02 LICENSE REQUIRED

It shall be unlawful to sell or offer for sale at retail in the Village any tobacco or tobacco product without having a retail tobacco dealer's license, or in violation of the terms of such license. A separate tobacco license shall be required for each location from which tobacco or tobacco products are sold.

37.03 APPLICATION REQUIREMENTS

A. **APPLICATION CONTENTS:** Application for a tobacco license shall be filed with the Commissioner, in writing and

verified by oath or affidavit, as follows:

1. INDIVIDUAL: The application shall be signed by the applicant or by a duly authorized agent and contain the name, birth date, social security number and address of the applicant; the character of the applicant's business; and the length of time the applicant has been in business.
2. PARTNERSHIP: The application shall be signed by each partner (including silent partners if any) and contain the name, birth date and social security number of each partner and silent partner; and state the type of partnership, the character of the business and the date the partnership was formed.
3. CLUB, CORPORATION: The application shall be signed by the president and secretary; list the names, birth dates, social security numbers and addresses of the officers and directors; if a majority interest of the stock of such corporation is owned by one person or his or her nominee, the name, address, birth date and social security number of such person shall be listed; and list the date the Articles of Incorporation were issued; and list the objects for which the club or corporation was organized.
4. LIMITED LIABILITY CORPORATION (LLC): The application shall be signed by each member, managing member and manager; list the names, birth dates, social security numbers and addresses of the members, managing member(s) and manager(s); and list the date the Articles of Organization were issued and the purpose or purposes for which the LLC was organized.

B. ADDITIONAL REQUIREMENTS: Applications shall also contain the following information:

1. The full and complete responses to the requested statements and information, which shall be immediately updated if any of the statements or information changes during the term of any

license.

2. Each applicant must submit a copy of a fully-executed lease of premises whenever the applicant is not the property owner of the premises for which he or she is seeking a license and such lease must have coverage period equal to, or longer than, the duration of the applicant's tobacco license. Said lease must name the applicant as lessee.
3. The applicant(s)' place of birth, and if a naturalized citizen, the time and place of his or her naturalization.
4. The location and legal description of the premises or place of business which is to be operated under such license.
6. A statement whether applicant has made application for a similar or other license on premises other than described in this application, and the disposition of such application.
7. A statement that 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 Section 37.03, laws of this State or the ordinances, rules or resolutions of the Village.
8. Whether a previous license by any state or subdivision thereof, or by the federal government has been revoked, and the reasons thereof.
9. A statement that the applicant will not violate any of the laws of the state, or of the United States, or any ordinance, rule or resolution of the Village in the conduct of his or her place of business.

C. INVESTIGATION: No license shall be issued hereunder until the applicant shall have been investigated by the Tobacco Commission and a report filed in the records of said Tobacco Commission approving the issuance of such license.

37.04 DISPOSITION OF FEES; SALARY OF THE LOCAL TOBACCO CONTROL COMMISSIONER

All license fees shall be paid to the Local Tobacco Control Commissioner at the time the application is made, and shall be forthwith turned over to the Collector.

If the license applied for is denied, the license fee shall be returned to the applicant. If the license is granted, the fee shall be deposited in the General Corporate Fund or in such other fund as designated by the Board of Trustees.

The Local Tobacco Control Commissioner who is in office after the election in April, 2009 shall receive an annual salary of \$1,200.00 payable in monthly installments.

37.05 RESTRICTION OF LICENSES

No such license shall be issued to:

1. A person who is not a resident of the Village;
2. A person who is not of good character and reputation in the Village;
3. A person who is not a citizen of the United States;
4. A person who has been convicted of a felony under any Federal or State law, if the Local Tobacco Control Commissioner determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust. The burden of proof of sufficient rehabilitation shall be on the applicant;
5. A person who has been convicted of being the keeper or is keeping a house of ill fame;
6. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality;
7. A person whose license issued under this Chapter has been revoked for cause;

8. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;
9. A co-partnership, if any general partnership thereof, or any limited partnership thereof, owning more than five percent of the aggregate limited partner interest in such copartnership would not be eligible to receive a license hereunder;
10. 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 and residence in the Village;
11. A corporation unless it is incorporated in Illinois, or unless it is a foreign corporation which is qualified under the "Business Corporation Act of 1983 (805 ILCS 5/1.01 et seq.) to transact business in Illinois;
12. A person whose place of business is conducted by a manager or agent unless the manager or agent possesses the same qualifications required by the licensee, except those required in paragraph 14 hereof;
13. A person who has been convicted of a violation of any Federal or State law concerning the manufacture, possession or sale of tobacco or tobacco products or has forfeited his bond to appear in court to answer charges for any such violation;
14. 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 for which the license is to be issued.
15. Any law enforcing public official, including members of the Local Tobacco Control Commission, the Village President, any member of the Board of Trustees or any president or member of a county board; and no such official shall be interested directly in the manufacture, sale or distribution of tobacco or tobacco products, except that license may be granted

to such official in relation to premises which are not located within the territory subject to the jurisdiction of that official if the issuance of such license is approved by the Local Tobacco Control Commission;

16. A person who is not a beneficial owner of the business to be operated by the licensee;
17. A person who has been convicted of a gambling offense as prescribed by any of subsections (a)(3) through (a)(10) of Section 5/28-1 of, or as proscribed by Section 5/28-3 of the "Criminal Code of 1961" approved July 28, 1961, as amended (720 ILCS 5/28-1 and 5/28-3), or as proscribed by a statute replaced by any of the aforesaid statutory provisions;
18. Any person, firm or corporation whose application for a tobacco license has not been reviewed and approved by the Tobacco Commissioner.

If a licensee shall, during the term of said license, fall into any of the above listed categories, said licensee shall no longer be eligible to hold a license and said license shall be subject to revocation.

37.06 TERM, PRORATING FEES

A. TERM: A license is a purely personal privilege that shall be effective for a term not to exceed one year from the date of issuance. Tobacco licenses shall be operative and valid, unless terminated, revoked, or suspended, for a term of one year commencing May 1 of each year and terminating on April 30 of the following year. Tobacco licenses issued after May 1 of any year shall be operative and valid, unless terminated, revoked, or suspended, for a term commencing on the date of issuance and terminating on April 30 of the following year. Licenses are valid to the specific applicant and are transferable.

B. PRORATING FEES: The fee to be paid for a license issued under the provisions of this Chapter 37 after May 1 shall be reduced in proportion to the number of full calendar months that have expired between May 1 and the date of issuance of the license. All licenses, regardless of the date of issuance, shall terminate on April 30 of each year.

37.07 FEES

- A. The fee for a tobacco license is \$250.00 for each license.

37.08 RECORDS

The Local Tobacco Control Commissioner shall keep a complete record of all licenses issued, and shall furnish the Clerk, Treasurer and Director of Police/Public Safety each with a copy thereof. Upon the issuance of any new license, or the suspension or revocation of any old license, the Local Tobacco Control Commissioner shall give written notice of such action to each of these officers.

37.09 DEATH OR BANKRUPTCY OF LICENSEE

A license shall be a purely personal privilege, not to exceed one year after issuance unless revoked sooner, 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 and shall not descend by the laws of testate or intestate devolution, provided that the executors or administrators of the estate of any deceased licensee, and the trustee of any insolvent or bankrupt licensee, when such estate consists in part of tobacco and tobacco products, may continue the business of the sale or manufacture of tobacco and tobacco products under order of the appropriate court, and may exercise the privileges of the deceased or insolvent or bankruptcy, until the expiration of such license, but not longer than six months after the death, bankruptcy or insolvency of such licensee.

A refund shall be made of that portion of the license fee paid for any period in which the licensee shall be prevented from operating under the license in accordance with the provisions of this Section 37.10.

37.10 CHANGE OF LOCATION, DISCONTINUANCE OF OPERATIONS

- A. CHANGE OF LOCATION: A tobacco license shall permit the sale of tobacco and tobacco products only in the premises

described in the application and license. Such location may be changed only upon the receipt of written permission from the Local Tobacco Control Commissioner. No change of location shall be permitted unless the proposed new location is in compliance with provisions and regulations of this Chapter.

B. DISCONTINUANCE OF OPERATIONS: If a licensee discontinues operations at the licensed premises for 90 consecutive days, or whenever there is evidence of a clear intent of the licensee to abandon the premises, said license shall be subject to revocation.

37.11 ABANDONMENT

If the licensee to which a license has been issued discontinues operations at the premises described in the application and license for 90 consecutive days, or whenever there is evidence of a clear intent of the licensee to abandon the premises, said license shall be subject to revocation.

37.12 RENEWAL OF LICENSE

Any licensee may renew his tobacco license at the expiration thereof, provided that he is then qualified to receive a license and the premises for which such renewal license is sought are suitable for such purpose; provided further, that the renewal privilege herein shall not be construed as a vested right which shall in any case prevent the reduction of the number of licenses to be issued within the Village.

37.13 DISPLAYING LICENSE

Every licensee shall cause his license or licenses to be framed and hung in plain view in a conspicuous place on the licensed premises.

37.14 STORES SELLING SCHOOL SUPPLIES, LUNCHES, ETC.

No license shall be issued to any person for the sale at retail of any tobacco or tobacco products at any store or other place of business where the majority of customers are persons under the age of 21 or where the principal business transacted consists of school books, school supplies, food, lunches or drinks for such persons.

37.15 RESTRICTIONS

A. No licensee nor any officer, associate, member, representative, agent or employee shall sell, give, or deliver tobacco or tobacco products to any person under the age of eighteen (18) years.

B. No licensee nor any officer, associate, member, representative, agent or employee of such licensee shall sell or permit to be sold tobacco or tobacco products to any person without requesting and examining identification establishing the purchaser's age is not less than eighteen (18) years unless licensee has some other conclusive basis determining the purchaser's age.

C. No licensee nor any officer, associate, member, representative, agent or employee of such licensee shall knowingly distribute or furnish tobacco or tobacco products without charge to any person under the age of eighteen (18) years in any public place or at any event open to the public.

D. All tobacco and tobacco products shall be stored and offered for sale only from behind counters or in locked cases which shall not be readily accessible to persons under eighteen (18) years of age.

37.16 REVOCATION, SUSPENSION, FINES

A. REVOCATION: Licenses granted hereunder may be revoked by the Tobacco Commissioner for the violation of any part or portion of this Chapter or of any valid resolution or ordinance enacted by the Village, or of any applicable rule or regulation established by the Tobacco Commissioner or any violation of the Criminal Code which occurs on the licensed premises or any violation of the Criminal Code which occurs off the licensed premises where said violation involves or relates to the sale or use of tobacco or tobacco products on the licensed premises. Licenses granted hereunder may be revoked upon the conviction of the licensee under the Criminal Code. Should any applicant for a license make a false or fraudulent statement in such application, the same shall be cause for revocation by the Tobacco Commissioner of such license.

No person holding a Village license shall, in the conduct of the licenses business or upon the licensed premises, either

directly or through the agents or employees of the licensee:

1. Violate or permit a violation of any federal law or state statute related to the control of tobacco.
2. Violate or permit a violation of any Village ordinance or resolution regulating the sale of tobacco or relating to the eligibility of the licensee to hold a tobacco license.
3. Submit to the Village a tobacco license application containing a false or misleading statement.

B. Proof before the Local Tobacco Control Commissioner of the facts which establish a violation of any federal law, state statute, Village ordinance or resolution shall be sufficient cause for revocation, suspension and fine of any tobacco licensee, irrespective of whether or not a conviction has been obtained in any court.

C. **SUSPENSION:** Licenses granted hereunder may be suspended by the Tobacco Commissioner for a period of not exceeding 30 days for the violation of any part or portion of this Chapter, or of any valid resolution or ordinance enacted by the Village, or any violation of the Criminal Code which occurs on the licensed premises. During such period of suspension, no tobacco or tobacco products shall be sold on said licensed premises.

D. **FINES:** In addition to revocation or suspension of the tobacco license by the Tobacco Commissioner, the Tobacco Commissioner may fine any licensee up to \$1,000.00, plus the Village's cost of prosecution including reasonable attorney fees, for each violation of any part or portion of this Chapter, or of any valid resolution or ordinance enacted by the Village, any violation of the Criminal Code which occurs on the licensed premises.

37.17 HEARINGS BEFORE THE TOBACCO COMMISSIONER

A. **NOTICE OF HEARING:** Whenever this Chapter requires a hearing before the Tobacco Commissioner or the Tobacco Commissioner acts affirmatively concerning a license or

licensee, the licensee shall be afforded reasonable notice of such hearing. Such notice shall be sent by certified mail return receipt requested or personal delivery to the address of the licensee contained on the tobacco license application and shall state:

1. The time, place, and nature of the hearing.
2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
3. A reference to the particular sections of the ordinances or statute(s) involved.
4. A statement informing the licensee of his or her ability to respond by presenting evidence and argument.

B. CONDUCT OF HEARINGS:

1. A hearing required under this Chapter shall be held in accordance with the following rules:
 - a. A hearing shall be held at a reasonable time, date and place.
 - b. No cause shall be heard earlier than three days after receipt by a licensee of the notice required under this Chapter.
 - c. A licensee may present evidence and argument.
 - d. The Tobacco Commissioner may limit, but not prohibit, the presentation of evidence and argument. Evidence not admissible under the rules of evidence and privilege as applied in civil cases in the circuit courts of this state may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.
2. Where a licensee has received the requisite

notice under this Chapter and fails to appear at a hearing, the Tobacco Commission or Tobacco Commissioner may act ex parte. The Tobacco Commissioner may also have an informal hearing where the tobacco license will not be affirmatively acted on at such hearing.

C. DECISIONS OF THE TOBACCO COMMISSIONER: Any decision, order or determination rendered by the Tobacco Commissioner which affects the rights, duties or privileges of a licensee, shall be in writing and shall notify the licensee personally or by certified mail of the decision. Any such decision, order or determination may include an assessment of all costs, fees and expenses as determined by the Tobacco Commissioner and the reimbursement to the Village for all fees incurred, including attorney's fees, as a result of the prosecution of the offending licensee.

D. WAIVER: Compliance with any or all of the provisions of this Chapter concerning procedure may be waived by written stipulation of all parties.

E. CONTINUANCES FOR HEARINGS:

1. A request for a continuance of any hearing in any matter before the Tobacco Commissioner will not be allowed by the Tobacco Commissioner unless for a good and valid reason in writing and unless made at least two days prior to the date set for hearing.
2. The Tobacco Commissioner may, in his or her discretion, grant a continuance if extenuating and unusual circumstances are presented in support of the request for continuance.
3. Any continuances requested by the licensee shall be contingent upon payment by the licensee of all costs, fees and expenses as determined by the Tobacco Commissioner.

F. APPEAL ON THE RECORD: Any appeal taken from a decision of the Tobacco Commissioner shall be reviewed on the record taken by and prepared by a certified court reporter or

certified shorthand reporter.

37.18 INSPECTIONS AND ENFORCEMENT

A. A licensee or his or her agent or employee may sell, give or deliver tobacco to a person under the age of 21 years or authorize the sale, gift or delivery of tobacco to a person under the age of 18 years pursuant to a plan or action to investigate, patrol or otherwise conduct a "sting operation" or enforcement action against a person employed by the licensee or on any licensed premises if the licensee, agent or employee of the licensee provides written notice, at least 14 days before the "sting operation" or enforcement action. Notice provided under this Section 37.18 shall be valid for a "sting operation" or enforcement action conducted within 60 days of the provision of that notice.

B. The Tobacco Commission, through the Police Department that conducts alcohol and tobacco compliance operations, shall establish a policy and standards for alcohol and tobacco compliance operations to investigate whether a licensee is furnishing (1) alcoholic liquor to persons under 21 years of age in violation of this Chapter or (2) tobacco to persons in violation of the Sale of Tobacco to Minors Act (720 ILCS 675/0.01 et seq.).

C. Any Village law enforcement officer may at any time enter upon any licensed premises to determine whether any of the provisions of this Chapter or whether any of the rules or regulations adopted by the Village Board or by the State of Illinois have been or are being violated and at such time may examine the licensed premises in connection therewith.

D. Any Village law enforcement officer may receive a complaint from any citizen that any of the provisions of this Chapter or any rules or regulations adopted by the Village Board or by the State have been or are being violated, and may act upon such complaints in the manner provided.

E. The Tobacco Commissioner shall have the authority to make and establish rules and regulations of procedure concerning notice of hearings and all such other matters as may from time to time be necessary, and to appoint deputy commissioners to the Tobacco Commission.

F. It shall be a violation of this Chapter to refuse to grant admittance to a licensed premises at any time upon the verbal request of any police officer or any other legally authorized person.

37.19 LICENSE FORFEITURE

Whenever any licensee shall have been convicted by any court of a willful violation of any provision of this Chapter 37 or of the State law, he shall, in addition to the penalties for such offense, incur a forfeiture of his local license and monies that have been paid therefore. The Local Tobacco Control Commissioner shall thereupon revoke his license.

37.20 PENALTY

Any person, firm or corporation who violates any provision of this Chapter shall, upon conviction, be subject to a fine of not less than \$500.00 nor more than \$2,000.00 for each offense, and be responsible for the Village's cost of prosecution including reasonable attorney fees, and/or the revocation of his or her tobacco license. Each day that a violation continues shall be considered a separate offense.

Established August 24, 2006