

ORDINANCE NO. 24-10

AN ORDINANCE AMENDING TITLE 3, BUSINESS REGULATIONS, BY ADDING CHAPTER 24, TOBACCO DEALERS, OF THE MANTENO MUNICIPAL CODE

BE IT ORDAINED by the President and Board of Trustees of the Village of Manteno, as follows:

Section 1

That Title 3, Business Regulations, of the Manteno Municipal Code, be amended by adding Chapter 24, Tobacco Dealers, to read as follows:

CHAPTER 24

TOBACCO DEALERS

SECTION:

- 3-24-1: Definitions**
- 3-24-2: Tobacco License**
- 3-24-3: Application; Investigation; Decision**
- 3-24-4: Sanitary and Health Requirements**
- 3-24-5: Prohibited Acts**
- 3-24-6: Vending Machines**
- 3-24-7: Penalty**
- 3-24-8: License Suspension and Revocation**
- 3-24-9: Basis for Suspension and Revocation**
- 3-24-10: Appeals**

3-24-1: DEFINITIONS: For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them herein:

Adult-only facility means a facility or restricted area (whether open-air or enclosed) where the operator ensures or has a reasonable basis to believe (such as by checking identification as required under State law, or by checking the identification of any person appearing to be under the age of 30) that no person under legal age is present. A facility or restricted area need not be permanently restricted to persons under 21 years of age to constitute an adult-only facility, provided that the operator ensures or has a reasonable basis to believe that no person under 21 years of age is present during the event or time period in question.

Age restricted area means a signed designated area in a retail establishment to which persons under 21 years of age are not permitted access unless accompanied by a parent or legal guardian.

Alternative nicotine product means 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 product" does not include: cigarettes as defined in Section 1 of the Cigarette Tax Act and tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995; tobacco product and electronic cigarette as defined in this Section; or 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.

Electronic cigarette means: (a) any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation; (b) any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or (c) any solution or substance, whether or not it contains nicotine intended for use in the device. "Electronic cigarette" includes, but is not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, 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; any device that meets the definition of cannabis paraphernalia under Section 1-10 of the Cannabis Regulation and Tax Act; or any cannabis product sold by a dispensing organization pursuant to the Cannabis Regulation and Tax Act or the Compassionate Use of Medical Cannabis Program Act.

Line of sight means visible to a cashier or other employee.

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

Operator means any person, firm, corporation, partnership, or association who establishes for operation by another, or leases or distributes for the purpose of operation for another, any device or machine for the vending of tobacco products, electronic cigarettes, alternative nicotine products, tobacco accessories or smoking herbs whether or not such establishment for operation, leasing or distribution be for a fixed charge or rental, or on the basis of the division of the income obtained from said machine.

Owner means an operator who acquired possession and control of a vending machine purchase, lease or otherwise.

Smokeless tobacco means any tobacco products that are suitable for dipping or chewing.

Smoking herbs means 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 Datur genus, passion flower and wild lettuce, which are processed or sold primarily for use as smoking materials.

Tobacco accessories means 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 whole sale, gift, barter, or exchange is made unlawful hereunder.

Tobacco dealer means any person, at wholesale or retail, selling, offering for sale, furnishing or offering to furnish, tobacco products, electronic cigarettes, alternative nicotine products, tobacco accessories or smoking herbs. Tobacco Dealers include operators of vending machines.

Tobacco specialty dealer means any person, at wholesale or retail, selling, offering for sale, furnishing or offering to furnish, tobacco products, electronic cigarettes, or smoking herbs where such business is the main business being conducted at a specific premises. For example, a gasoline services station, convenience store, or grocery store would not be included within this definition.

Tobacco product means 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 product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" 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.

3-24-2: TOBACCO LICENSE:

(a) No person shall engage in the business of tobacco dealer in the village without first having obtained a tobacco license. The annual fee for a tobacco license shall be \$200. A tobacco dealer license shall be valid from May 1 through April 30.

(b) No person shall engage in the business of or tobacco specialty dealer in the village without first having obtained a license therefore. The annual fee for a tobacco specialty dealer license shall be \$250. The maximum number of tobacco specialty dealer

licenses that the Village is allowed to issue for tobacco specialty dealers is four (4). The number of tobacco specialty dealer licenses authorized shall remain at the number set forth above; provided, however, that any license revoked, or not used because of the termination of tobacco specialty dealer business on the premises for which the license has been issued, shall automatically reduce the number of authorized licenses by the total number of revoked or not used licenses and shall reduce the total number of licenses available. A tobacco specialty dealer license shall be valid from May 1 through April 30.

(c) Tobacco licenses shall be specific to the licensee at the licensed premises, only. No license may be assigned, sold, loaned, transferred, used as collateral, or otherwise encumbered.

(d) The village president is authorized to promulgate rules and regulations requiring mandatory education of all persons holding a tobacco license.

3-24-3: APPLICATION; INVESTIGATION; DECISION:

(a) The application for a tobacco license shall be filed by the applicant with the village clerk stating the name and address of the applicant, the name and address of any member, officer, director or manager of such firm, corporation, partnership or association, or any stockholder owning or having more than five percent (5%) interest therein, the name and address of the proposed location or business or the locations in which the vending machine will be located, the name of the maker of such vending machine and factory number thereof (as applicable), and proof of legal right to possess, or place the vending machine in, the business premises.

(b) The application shall be referred to the Police Department for an investigation and verification of the facts stated therein and the business methods of the applicant. The application shall also be referred to the Building and Zoning Department for an investigation and verification that the licensed premises complies with all building, zoning, and property maintenance requirements. The village clerk shall issue available licenses unless there are grounds for denial, in which case the application shall be denied. Reasons for denying an available license shall be: (a) failure to supply required information or documentation in or as a part of its application; (b) falsification of information on the application; (c) the applicant is not in good standing with the State of Illinois; (d) the applicant is in arrears of the payment of any debt or tax due and owing to the village, Kankakee County, or the State of Illinois; (e) applicant has not paid the applicable license fee; (f) the applicant's denial or revocation of a license issued under this chapter, or similar license in another unit of local government, within the immediate past year, unless the applicant can and does show that the basis for the previous denial or revocation no longer exists; and/or (g) the licensed premises is in violation of building, zoning, or property maintenance requirements imposed by law, or is otherwise sited in violation of any locational restriction imposed by this chapter. If the owner is a firm, corporation, partnership or association, the application shall be approved unless the village clerk finds that a member, officer, director or manager of such firm, corporation, partnership or

association, or any stockholder owning more than five percent (5%) interest therein would be ineligible if he were the sole owner.

(c) The village clerk shall make a good-faith effort to complete an application review and advise an applicant of his/her decision within five (5) business days. If, upon the expiration of the five (5) business day review period, the village clerk has not advised an applicant of his/her decision to grant or deny a license, an applicant may request, and the village clerk shall be obligated to issue, a temporary license.

(d) If a temporary license is issued, and further review identifies a basis for which a license should be denied, an applicant shall be immediately notified by telephone that the temporary license is revoked, and his/her application has been denied. In no event shall an application review take longer than ten (10) business days during the license year in which the application is intended. At the expiration of ten (10) business days and provided no oral decision has been made concerning the issuance of the license, the applicant may request, and the village clerk shall be obligated to issue a license to the applicant. Once issued, the license shall only be subject to suspension or revocation as provided by §3-24-8 and §3-24-9 of this chapter.

(e) The village clerk shall notify the applicant of his/her decision to grant or deny a license by the telephone number listed on the application. The village clerk shall advise the applicant of the basis for the denial.

(f) If an application is incomplete, the village clerk shall allow the applicant an opportunity to provide the information necessary for his/her review.

(g) In the case of a denial, the village clerk shall issue a written decision advising the applicant why the license was denied. The written decision shall be mailed to the applicant via U.S. Mail at the address contained on the application. The written decision shall be postmarked no later than three (3) business days subsequent to the expiration of the five (5) business day review period or the oral advisement of a denial of a license, whichever is later.

(h) A denial of a license may be appealed in the manner provided in §3-24-10 of this chapter.

(i) A record of all licenses issued and denied pursuant to this chapter shall be maintained by the village clerk for a period of two (2) years.

3-24-4: SANITARY AND HEALTH REQUIREMENTS: It shall be the duty of all persons licensed hereunder, upon the demand of the village, to furnish for inspection samples of all tobacco products, electronic cigarettes, alternative nicotine products, tobacco accessories and smoking herbs in any form sold or offered for sale by them, and it shall be the duty of such persons to keep their premises and buildings in a clean and sanitary condition. The village shall inspect and examine, or cause to be inspected and examined, as often as is deemed necessary, all places where tobacco products, electronic cigarettes,

alternative nicotine products, tobacco accessories and smoking herbs in any form are licensed to be sold at retail with the village, and to determine whether all applicable laws of the state and provisions of the Municipal Code of the Village of Manteno are being complied with.

3-24-5: PROHIBITED ACTS:

(a) No person shall sell, offer for sale, give away, deliver or to keep with the intention of selling, giving away or delivering tobacco products, electronic cigarettes, alternative nicotine products, tobacco accessories or smoking herbs within the village without having first obtained a tobacco license.

(b) No person shall sell, offer for sale, give away or deliver any tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb to any person under the age of 21 years.

(c) No person, including any officer, associate, member, representative, agent or employee of a licensee under 16 years of age may sell any tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb in a licensed premises. This subsection does not apply to a sale's clerk in a family-owned business which can prove that the sale's clerk is in fact a son or daughter of the owner.

(d) Before selling, offering for sale, giving, or furnishing a tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb to another person, the person selling, offering for sale, giving, or furnishing the tobacco product, electronic cigarette, alternative nicotine product, smoking accessory or smoking herb shall verify that the person is at least 21 years of age by examining from any person that appears to be under 30 years of age a government-issued photographic identification that establishes the person to be 21 years of age or older.

(e) The sale or distribution by any person of a tobacco product, including but not limited to a single or loose cigarette, that is not contained within a sealed container, pack, or package as provided by the manufacturer, which container, pack, or package bears the health warning required by federal law, is prohibited.

(f) All single packs of tobacco products, electronic cigarettes, alternative nicotine products, tobacco accessories and smoking herbs must be sold from behind the counter or in an age restricted area or in a sealed display case. Any other tobacco products must be sold in line of sight. The restrictions described in this subsection do not apply to a retail tobacco store that (i) derives at least ninety percent (90%) of its revenue from tobacco and tobacco related products; (ii) does not permit persons under the age of 21 to enter the premises unless accompanied by a parent or legal guardian; and (iii) posts a sign on the main entrance way stating that persons under the legal age of 21 are prohibited from entering unless accompanied by a parent or legal guardian. This subsection does not prohibit the sale of tobacco products, electronic cigarettes, alternative nicotine products,

tobacco accessories and smoking herbs from vending machines if the location of the vending machines are otherwise in compliance with the provision of this article.

(g) No person shall sell, offer for sale, give away or deliver any tobacco product or alternative nicotine product within 100 feet of any school, child care facility or other building used for education or recreational programs for persons under 18 years of age.

(h) No person shall distribute without charge samples of any tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herbs to any other person, regardless of age. This subsection does not apply to the distribution of a tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb sample in any adult-only facility.

(i) No person, including shall sell, offer for sale, give away or deliver any tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb without posting at or near every display of such products, or upon every vending machine which offers those products for sale, a sign stating the following:

THE SALE OF TOBACCO PRODUCTS, ELECTRONIC CIGARETTES, ALTERNATIVE NICOTINE PRODUCTS, TOBACCO ACCESSORIES, AND SMOKING HERBS TO PERSONS UNDER 21 YEARS OF AGE OR THE MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS PROHIBITED BY LAW.

The text of such signs shall be in red letters on a white background; the letters to be at least one inch high. Such signs shall be posted in a conspicuous place on the premises or the vending machine, as the case may be.

(j) No person shall honor or accept any discount, coupon, or other benefit or reduction in price that is inconsistent with 21 CFR 1140, subsequent United States Food and Drug Administration industry guidance, or any rules adopted under 21 CFR 1140.

(k) No person shall use or display any licensed that has been improperly acquired.

(l) No person shall alter, deface, forge, or counterfeit any licensed issued by the village.

3-24-6: VENDING MACHINES: No tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb may be sold through a vending machine unless such tobacco product, electronic cigarette, alternative nicotine product, tobacco accessory or smoking herb are not placed together with any non-tobacco product, other than matches, and only if the vending machine is in any of the following locations: (a) places to which persons under 21 years of age are not permitted access to at any time; or (b) places where alcoholic beverages are sold and consumed on the premises and vending machine operation is under the direct supervision of the owner or manager

3-24-7: PENALTY:

(a) Any person found in violation of any of the provisions of this chapter shall be fined no less than \$100 and no more than \$750 for each offense. Each day that a violation occurs or is permitted to continue shall constitute a separate and distinct offense.

(b) Any licensee found in violation of the provisions of this chapter shall, in addition to any fine that may be imposed, be subject to license suspension and/or revocation proceedings.

(c) Violations of this chapter may be administered as a part of license proceedings or separately in accordance with the provisions of Title 1, Administrative, Chapter 17, Administrative Adjudication, of the Manteno Municipal Code.

3-24-8: LICENSE SUSPENSION AND REVOCATION:

(a) Any license issued under this chapter may be suspended or revoked by the village president after notice and a hearing for any basis identified in §3-24-9 of this chapter. Notice and a hearing prior to a suspension or revocation shall not be given if village president determines that an immediate suspension or revocation is necessary. In such cases, a post-deprivation hearing will be provided.

(b) The village clerk shall provide notice to the licensee via U.S. Mail setting forth the time and place of the hearing. The notice shall consist of the charges for which the license's suspension or revocation is being considered. The notice shall contain the date(s) on which any charge is alleged to have occurred along with the name(s) of any witness(es) that will testify at the hearing. Any written or tangible evidence of the occurrence shall be identified in the notice.

(c) A hearing pursuant to this section shall occur no earlier than seven (7) days nor later than fourteen (14) days from the date the notice of hearing is postmarked.

(d) The licensee shall be responsible for obtaining a court reporter in order to preserve the record for appeal.

(e) After the hearing, the village president shall orally advise the licensee of his/her decision to impose any fine and/or suspend or revoke a license under this chapter. After the decision has been orally related to the licensee, the village president shall issue a written decision setting forth his/her decision and the basis for the ruling. The written decision shall be mailed to the licensee via U.S. Mail at the address contained in the application. The written decision shall be postmarked no later than five (5) business days subsequent to the hearing.

3-24-9: BASIS FOR SUSPENSION OR REVOCATION: Any license may be suspended or revoked for:

(a) any reason for which a license could be or could have been denied under §3-24-3;

(b) engaging in any activities prohibited by this chapter, or violations of federal, State, or other local law, rule, or regulation, including the Manteno Municipal Code; or,

(c) violations of building, zoning, and property maintenance laws imposed by the Manteno Municipal Code.

3-24-10: APPEALS:

(a) Any person aggrieved by the action or decision of the village clerk or village president to deny, suspend or revoke a license shall have the right to appeal such action to the Corporate Authorities within fourteen (14) days from the date on which the decision has been mailed to the applicant/licensee. This date shall be determined by the date on which the written decision was postmarked. In the event the village clerk or village president fails to issue a written decision, the appellant shall have seventeen days (17) from the date on which he/she was orally informed of the decision to deny, suspend or revoke a license to appeal that decision.

(b) An appeal shall be perfected by filing a written statement with the village clerk or village president setting forth the grounds for the appeal. If a written decision was provided to the appellant from the village clerk or village president, a copy of that decision shall be attached to the appellant's written statement. After the receipt of said appeal, the village clerk or village president shall schedule the appeal for the next regularly scheduled meeting of the Corporate Authorities. Provided, however, if said appeal is received within ninety-six (96) hours of a regularly scheduled meeting, said appeal shall be heard at the following regularly scheduled meeting.

(c) A hearing shall be set no later than thirty (30) days from the date on which an appeal is received.

(d) Notice of the time and place of the appeal hearing shall be given to the appellant via U.S. Mail at the address provided on the person's application.

(e) An appellant shall be given notice of the hearing at least seventy-two (72) hours before the hearing.

(f) A decision to affirm or reverse the decision of the village president concerning the suspension or revocation of a license shall be limited to the record generated at the hearing in front of the village president.

(g) The decision of the corporate authorities of the Village shall be final and binding on all parties concerned.

(h) A decision to affirm or reverse a decision of the village clerk or village president shall be made by a majority vote of the Corporate Authorities present at the meeting.

Section 2

If any section, paragraph, clause, or provision of this ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this ordinance.

Section 3

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed insofar as they conflict herewith.

Section 4

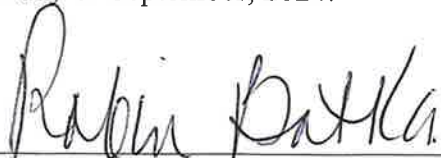
This ordinance shall be immediately in full force and effect after the passage, approval, and publication. This ordinance is authorized to be published in pamphlet form.

Section 5

For the 2024/2025 license year, tobacco dealers and tobacco specialty dealers shall obtain their tobacco licenses no later than September 1, 2024. License fees shall be prorated September of 2024 through April 2025 for all licensees obtaining a tobacco license in a timely manner for the 2024/2025 license year.

PASSED by the Board of Trustees of the Village of Manteno, Illinois and deposited in the office of the Village Clerk this 3rd day of September, 2024.

DEPOSITED with the Village Clerk this
3rd day of September, 2024.



ROBIN BATKA, Village Clerk

APPROVED by me this 3rd
day of September, 2024.



TIMOTHY O. NUGENT, Village President

I DO HEREBY CERTIFY that this Ordinance was, after its passage and approval, published in pamphlet form by authority of the Village of Manteno, in accordance with law, this 3rd day of September, 2024.



ROBIN BATKA, Village Clerk