

**LIQUOR COMMISSION MEETING
VILLAGE OF MACHESNEY PARK
Frank G. Bauer Municipal Hall ~ 300 Roosevelt Road
Monday, October 4, 2021 @ 5:15 p.m.**

Members of the public are welcome to attend Village Board and Committee meetings in person. The State of Illinois is requiring face coverings for all public indoor settings, regardless of vaccination status. All meetings are recorded and broadcast live on the Village's YouTube channel. Public comment may be given in-person and written submissions received by 4:00 pm on the day of the meeting will be read on your behalf during Public Comments.

A G E N D A

- I. Call to Order
- II. Approve Minutes from the September 7, 2021
- III. Ordinance 54-21, Regulating and Licensing Tobacco and Alternative Nicotine Products Sellers
- VI. Reports
- VII. Public Comment
- VIII. Adjourn



LIQUOR COMMISSION
HELD AT THE FRANK G. BAUER MUNICIPAL HALL,
300 ROOSEVELT ROAD, MACHESNEY PARK, ILLINOIS
Tuesday, September 7, 2021 @ 5:15 p.m.

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Present: Liquor Commissioners Steve Johnson, Cm. Ike Trickie, Cm. Schmidt, Cm. Seipts and Cm. Aaron Wilson

Also Present: Village Clerk Robbin Snodgrass
Village Attorney Tom Green
Treasurer Deb Alms
Village Administrator James Richter II
Finance and Human Resources Manager Michelle Johannsen
Administrative Assistant/Deputy Clerk Penny Miller
Management Analyst, Dylan Moffitt
Trustees Terri Bailey and Erick Beck

The meeting was called to order at 5:15 p.m. by Liquor Commissioner Mayor Steve Johnson.

- I. Roll call and declaration of quorum
- II. Cm. Johnson called for a motion to approve the minutes from the June 21, 2020 meeting. Motion was made by Cm. Wilson and seconded by Cm. Seipts. Motion approved by voice vote.
- III. Cm. Johnson called for a motion to recommend approval of Ordinance 45-21, Decreasing the Number of Class A Liquor Licenses and Decreasing the Number of Class B Liquor Licenses. Motion was made by Cm. Wilson and seconded by Cm. Schmidt. Staff Report was given by Administrative Assistant/Deputy Clerk Penny Miller. Motion approved by voice vote.
- IV. Ms. Gunnell Steward spoke in opposition of Ordinance 46 – 21. Cm. Johnson called for a motion to recommend approval of Ordinance 46-21, Increasing the Number of Class B Liquor Licenses and Class BB Liquor Licenses and Approving a Class B Liquor License and a Class BB Liquor License for 7918 Scott Lane. Motion was made by Cm. Wilson and seconded by Cm. Seipts. Attorney Green advised Commission that Cm. Trickie would not be voting or participating in discussion on this Ordinance due to a conflict of interest. Staff Report was given by Administrative Assistant/Deputy Clerk Penny Miller which included 7 conditions. Discussion followed. Motion approved by voice vote, noting Cm. Trickie did not vote.
- V. Cm. Johnson called for a motion to recommend approval of Resolution 54-R-21, Approving an Application for a Class B Liquor License for 8320 N. 2nd Street. Motion was made by Cm. Schmidt and seconded by Cm. Wilson. Staff Report was given by Administrative Assistant/Deputy Clerk Penny Miller which included 3 conditions. Motion approved by voice vote.

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VI. Reports: None

VII. Public Comment: None

VIII. Cm. Wilson moved to adjourn; seconded by Cm. Trickie. Motion carried by Voice Vote.

Meeting adjourned at 5:29 p.m.

Robbin Snodgrass, Village Clerk
Secretary for Liquor Commission

UNOFFICIAL MINUTES



AGENDA SUPPLEMENT

Agenda item: Ordinance # 54-21, Regulating and Licensing Tobacco and Alternative Nicotine Product Sellers

Staff contact: Dylan Moffitt, Management Analyst
James Richter II, Village Administrator

Date: October 4, 2021

Background:

Chapter 9, Article VI of the Municipal Code is currently noncompliant with State statute regarding the minimum age for purchasing and possessing tobacco and alternative nicotine products. In addition, the ability to enforce current local tobacco regulations is very limited due to the absence of a Village tobacco retailer's license.

A number of surrounding communities have adopted similar tobacco ordinances and license requirements, including Rockford, South Beloit, Rockton, and Popular Groove. The passage of this ordinance would require all tobacco and alternative nicotine product retailers to obtain and annually renew a tobacco retailer license for each building in which tobacco products and/or alternative nicotine products are sold. The proposed annual fee associated with this license is \$150 and is collected at the time of application. Licenses are valid for the duration of the Village's fiscal year, May 1 through April 30.

Ordinance 54-21 also sets forth updated restrictions regarding the minimum age for those selling and purchasing tobacco and alternative nicotine products, a required posting notifying the public of prohibited sales, and the prohibition of out-of-package sales and sales on public land.

Enforcement of this ordinance will be carried out by the Machesney Park Division of the Winnebago County Sheriff's Department through random, unannounced inspections of places where tobacco products, alternative nicotine products, and/or electronic cigarettes are licensed to be sold. The Sheriff's Department will report violations to Administration who will forward them to the Liquor Commission upon the license holder's request to provide an avenue for due process.

The penalties structure for violating this ordinance, summarized below, was crafted following 720 ILCS 675 Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act, as well as, with consultation from the Village Attorney.

Individuals who knowingly violate this ordinance are guilty of a petty offense and are subject to the following fees, the 1st offense within a 24-month period incurs a \$200 fee, 2nd offense within a 24-month period incurs a \$400 fee, 3rd offense within a 24-month period incurs a \$600 fee, and 4th offense within a 24-month period incurs an \$800 fee. The 24-month period begins with the person's first violation.

Retailers/sellers may have their license suspended or revoked, or be levied a fine by the Liquor Commission if found to have violated this ordinance or any provisions of the State law regulating tobacco distribution and control, or make any false statement in obtaining a license. A suspension may not exceed thirty (30) days in any instance and fines imposed may not exceed \$2,500 for each violation and no more than \$5,000 in fines for the period of the license.

Recommendation:

Attached is Ordinance # 54-21, and Staff and Deputy Chief Miceli are recommending approval of this agenda item.

ORDINANCE 54-21

AN ORDINANCE REGULATING TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS AND ESTABLISHING A TOBACCO AND ALTERNATIVE NICOTINE RETAILER'S LICENSE

WHEREAS, the State of Illinois has enacted 720 ILCS 675 Prevention of Tobacco Use by Persons under 21 Years of Age and Sale and Distribution of Tobacco Products Act; and

WHEREAS, the Village code currently prohibits the sale and use of tobacco products by persons under 18 years of age; and

WHEREAS, the Village recognizes the importance of preventing underage consumption of tobacco/vaping products and is committed to promoting public health; and

WHEREAS, the Village is implementing a new retail tobacco retailer's or seller's license for all tobacco and alternative nicotine retail operators within municipal boundaries; and

WHEREAS, this article provides a process for enforcing the new requirement; and

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES FOR THE VILLAGE OF MACHESNEY PARK, ILLINOIS AS FOLLOWS:

Section 1. Chapter 9, Alcoholic Beverages, of the Code of Ordinances is hereby amended to strike ARTICLE VI and introduce a new ARTICLE VI as follows:

ARTICLE VI. REGULATION OF TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS

9.601. LEGISLATIVE FINDINGS, DECLARATION, AND PURPOSE.

The Surgeon General finds cigarette smoking and other tobacco use by minors a grave public health problem. Therefore, the purpose of this article is to implement a strict and enforceable system to prevent the illegal sale of tobacco products, alternative nicotine products, and electronic cigarettes to minors.

The enactment of this article intends to further the health, welfare and safety of the residents of the Village of Machesney Park, Winnebago County, Illinois, particularly those residents under 21 years of age.

9.602. DEFINITIONS. As used in this article the following words and phrases shall have the meaning ascribed thereto:

“Alternative nicotine products” shall mean any 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.

“Electronic cigarette (E-cigarette)” shall mean any device that can be used to deliver aerosolized or vaporized nicotine to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of such a device, whether or not sold separately, and includes any substance intended to be aerosolized or vaporized during the use of the device. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

“Tobacco products” shall mean any substance containing tobacco leaf intended for human use, including, but not limited to cigarettes, cigars, loose tobacco, snuff, chewing tobacco or dipping tobacco.

9.603. LICENSE REQUIRED. It is unlawful to sell, offer for sale at retail, vend through machines or give away tobacco products, alternative nicotine products, vapor products or electronic cigarettes in any form in the Village without first being licensed as a retail tobacco retailer/seller by the Village. A retail tobacco retailer’s/seller’s license must be obtained for each location in which tobacco products, alternative nicotine products and/or electronic cigarettes are sold. Each license issued under this article terminates on April 30 following the date of issuance unless sooner revoked by the Village.

9.604. LICENSE APPLICATION. The application for a tobacco retailer license required by this article is made annually in writing to the Administration Department. Such application must provide all such information as required by the Village on said application as amended from time to time and must be filed with the Administration Department together with the tobacco retailer license fee required by this article.

9.605. LICENSE FEE. The fee for a tobacco retailer license required by this article is \$150 per annum for each building location in which tobacco products and/or alternative nicotine products are sold.

9.606. SUNRISE CLAUSE. Any retail tobacco or alternative nicotine products retailer/seller in existence in the Village as of November 1, 2021 shall be permitted to continue its operations in its current location by successfully obtaining a tobacco retailer license by May 1, 2022.

9.607. MINIMUM AGE TO PURCHASE TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS. It is unlawful for any person under the age of 21 years to purchase tobacco products, alternative nicotine products, electronic cigarettes or tobacco accessories or misrepresent their age or use any false or altered identification with the intention of purchasing tobacco products or accessories, alternative nicotine products and/or electronic cigarettes.

9.608. SALES TO MINORS PROHIBITED. No person shall sell or furnish any tobacco products, alternative nicotine products, vapor products or electronic cigarettes in any form to any person under 21 years of age.

9.609. WARNING SIGNS. Signs informing the public of said age restrictions must be posted by each licensee at every display of tobacco products, alternative nicotine products, vapor products and electronic cigarettes where such items are offered for sale. Each such sign must be plainly visible and shall state:

THE SALE OF TOBACCO, ALTERNATIVE NICOTINE PRODUCTS, VAPOR PRODUCTS OR ELECTRONIC CIGARETTES TO PERSONS UNDER 21 YEARS OF AGE IS PROHIBITED BY LAW.

9.610. IDENTIFICATION REQUIRED. Before selling, offering for sale, or furnishing a tobacco product, electronic cigarette, or alternative nicotine product to another person, the person selling, offering for sale, giving, or furnishing the tobacco product, electronic cigarette, or alternative nicotine product 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.

9.611. OUT-OF-PACKAGE SALES PROHIBITED. No tobacco retailer establishment licensed or unlicensed under this article or person shall expose for sale, sell or offer for sale to any person, directly or indirectly, within the Village, any tobacco product as defined in this article, not sealed in the original packaging unless properly marked and packaged for individual sale by the manufacturer or licensed tobacco products distributor.

9.612. MINIMUM AGE TO SELL TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS. It shall be unlawful for any person, associate, member, representative, agent or employee of such licensee under 18 years of age to sell tobacco products and/or alternative nicotine products in any licensed premises.

9.613. SALE ON PUBLIC LAND PROHIBITED. It shall be unlawful for any licensee to sell, distribute, promote, or advertise tobacco products and/or alternative nicotine products to any person free of charge or to any person on any public land or building within the Village's corporate limits.

9.614. INSPECTION. The Machesney Park Division of the Winnebago County Sheriff's Department shall conduct random, unannounced inspections of all places wherein such tobacco products, alternative nicotine products and/or electronic cigarettes 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.

9.615. SALES/DISTRIBUTION VIOLATION. The Machesney Park Division of the Winnebago County Sheriff's Department shall initiate enforcement against any person who violates any provision of this article, and shall report violations to the Liquor Commission upon the license-holder's request.

Any person who shall knowingly violate, or shall knowingly cause the violation of any provision of this article other than the purchasing sections, is guilty of a petty offense for which the offender may be fined an amount as follows:

- A. For the first offense in a 24-month period, the person shall be fined \$200.00.
- B. For the second offense in a 24-month period, the person shall be fined \$400.00.
- C. For the third offense in a 24-month period, the person shall be fined \$600.00.
- D. For the fourth or subsequent offense in a 24-month period, the person shall be fined \$800.00.

For the purposes of this subsection, the 24-month period shall begin with the person's first violation of the ordinance. The penalties in this subsection are in addition to any other penalties prescribed under the Cigarette Tax Act (35 ILCS 130/1 et seq.) and the Tobacco Products Tax Act of 1995 (5 ILCS 143/3-5 et seq.).

Any licensee employing a person found to have violated any of the provisions of this article shall pay to the Village costs of the hearing on such violation. Costs may include, but not be limited to: court reporter's fees, 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 Attorney may allow.

The licensee shall pay said costs to the Village within 30 days of notification of the costs. Failure to pay said costs within 30 days of notification is a violation of this article and may cause the levy of an additional fine.

9.616. SUSPENSION AND REVOCATION OF LICENSE. If any licensee, retailer/seller shall violate any of the provisions of this article, or any provision of the State law regulating tobacco distribution and control, or shall make any false statement in obtaining a license, such license may be revoked by the Village Liquor Control Commission and all fees paid thereon shall be forfeited.

The Village Liquor Control Commission is further empowered to suspend the retailer's/seller's license for a period not to exceed thirty (30) days in any instance, when the members of the Commission find that any licensee, or his agent or employees have violated any of the provisions of this article, or State law relating to tobacco and alternative nicotine products.

In lieu of suspension or revocation, the Liquor Control Commission may instead levy a fine on the licensee for violations of the provisions in the Statutes of the State of Illinois, any valid Ordinance or Resolution of the Village or any applicable Rule or Regulation established by the Liquor Control Commission which is not inconsistent with the Law. The fine imposed shall not exceed \$2,500.00 for each violation; each day on which a violation continues shall constitute a separate offense. Not more than \$5,000.00 in fines under this section may be imposed against the licensee for the period of the license. Proceeds from such fines shall be paid into the general corporate fund of the Village.

Any licensee who violates any of said provisions shall also be liable for the costs of the Liquor Control Commission hearing, including but not limited to costs of a court reporter,

attorney, costs of having subpoena served, costs of any newspaper publication notices, and the costs of U.S. Mail incurred.

No such licensee shall be revoked or suspended, and no licensee shall be fined except after a public hearing by the Liquor Control Commission with a three (3) day written notice to the licensee, affording the licensee the opportunity to appear and defend. The Liquor Control Commission shall, within five (5) days after such hearing, if it is determined after such hearing that the license should be revoked or suspend, or that the licensee should be fined, state the reason, or reasons for such determination in written order, and either the amount of the fine, the period of the suspension, or that the license has been revoked, and shall serve a copy of the order within five (5) days upon the licensee.

Section 2. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in pamphlet form as provided by law. This Ordinance shall be published in pamphlet form.

PASSED by the Village Board this ____ day of _____, 2021.

APPROVED by the President of the Village Board this ____ day of _____, 2021.

Effective Date: This ____ day of _____, 2021.

ATTEST:

President of the Board of Trustees of the Village
of Machesney Park

Village Clerk

Ayes: ____

Nays: ____

Absent: ____