

VILLAGE OF DOWNERS GROVE
Report for the Village
10/16/2018

SUBJECT:	SUBMITTED BY:
Tobacco 21 Ordinance	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance has been prepared raising the age to purchase and possess tobacco and related products to twenty-one and older.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 include *Steward of Financial, Environmental and Neighborhood Sustainability*.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the November 13, 2018 active agenda.

BACKGROUND

Per Village Council direction, a proposed Tobacco 21 ordinance has been prepared for consideration. The draft ordinance prohibits the sale, purchase and possession of tobacco, alternative nicotine products, smoking materials and drug paraphernalia to any person under the age of 21. The citation amount for a possession or purchase violation is proposed at \$75 and \$300 for a sale violation.

A review of Tobacco 21 ordinances adopted by other municipalities found that a majority of the municipalities have opted to keep the possession restriction at 18 years of age. From a consistency and ease of administration standpoint, staff is recommending increasing the age to 21. It should also be noted that Senate Bill 2332, the State legislation on this topic that was ultimately vetoed by the Governor, would have kept possession age at 18.

ATTACHMENTS

Ordinance

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ORDINANCE NO. _____

**AN ORDINANCE REGULATING
TOBACCO PURCHASES**

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 1.16 is hereby amended to read as follows:**1.16 Citation and settlement in lieu of prosecution for certain offenses.**

(a) Whenever a person is observed violating certain provisions of this code as specified in this section, or there is reasonable suspicion to believe that such a violation has occurred and that a particular person is responsible, the Village may, in lieu of filing a complaint in court, issue to the alleged violator a citation which shall:

- (1) Advise said person that the same has violated a specified ordinance;
- (2) Direct said person to make payment in an amount applicable to said alleged violation as set forth in this section as settlement of said claim;
- (3) Advise said person, where applicable, to cease and/or abate said violation forthwith and to refrain from like violations in the future;
- (4) Inform said person that, upon failure to so settle the claim and to cease and/or abate said violations, a complaint will be filed in the Circuit Court of DuPage County.

(b) Except as provided below, citations as provided herein shall be personally served upon the person responsible for the violation, his agent, representative, independent contractor or employee. In the event the owner, occupant, contractor or other person responsible for the violation cannot be located the citation may be served by posting a copy at the property, structure or vehicle where the violation has occurred and sending a copy by United States mail to the last known address of such person.

(c) Any person served with a citation for violations of the following provisions of the Downers Grove Municipal Code and the Comprehensive Zoning Ordinance of the Village of Downers Grove may settle and compromise the matter in respect of such ordinance violation by ceasing and/or abating said violation and paying the sum of seventy-five dollars (\$75.00) if paid within ten (10) days of service of the citation, or one hundred fifty dollars (\$150.00) if paid after such ten (10) day period but before filing of a complaint in the Circuit Court of DuPage County.

1. DOWNERS GROVE MUNICIPAL CODE

- (i) Section 5.501; Animals; Running at Large.
- (ii) Section 5.202; Removal of Dog Excrement.
- (iii) Section 5.203; Removal of Cat Excrement.
- (iv) Section 8.2014(d); Requirements for Display of Massage Establishment License.
- (v) Section 13.43; Storage of Refuse.
- (vi) Section 13.49.1; Placing Garbage on the Parkway for Scavenger Removal.
- (vii) Section 13.49.2; Discarding Refuse and Compostable Materials in Streets, etc., prohibited.
- (viii) Section 15.5.1; Noise Regulations.
- (ix) Section 15.8; Drinking in Public.
- (x) Section 5.23.1; Possession of Tobacco Products by ~~Minors~~, Alternative

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Nicotine Products, Smoking Materials or Drug Paraphernalia by any person under the age of twenty-one.

(xi) Section 5.23.2; Purchase of Tobacco Products, Alternative Nicotine

Products, Smoking Materials or Drug Paraphernalia by any person under the age of twenty-one.

(xii) Section 19.15.1; Skateboarding, Roller Skating or In-Line Skating in a Business District.

(xiii) Section 19.21.1; Depositing Snow on Paved Streets.

(~~xiii~~xiv) Section 25.11; Use of Public Hydrants.

(~~xiv~~xv) Any provision of Chapter 6, Bicycles.

2. COMPREHENSIVE ZONING ORDINANCE

(i) Section 28.9.030.H; Real Estate Signs

(ii) Section 28.9.030.J; Garage/Rummage Sale Signs.

3. INTERNATIONAL CODE COUNCIL 2006 INTERNATIONAL FIRE CODE (As adopted in Section 17.43)

(i) Section 605.4; Multi-Plug Adaptors.

(ii) Section 605.5; Extension Cords.

(iii) Section 906; Portable Fire Extinguishers.

(d) Any person served with a citation for violations of the following provisions of the Downers Grove Municipal Code, and such other Codes adopted therein, may settle and compromise the matter in respect of such ordinance violation by ceasing and/or abating said violation and paying the sum of one hundred dollars (\$100.00) if paid within ten (10) days of service of the citation, or two hundred dollars (\$200.00) if paid after such ten (10) day period but before filing of a complaint in the Circuit Court of DuPage County.

1. DOWNERS GROVE MUNICIPAL CODE

(i) Section 13.35; Open Burning Prohibited.

(ii) Section 13.38; A person who smokes in an area where smoking is prohibited under the Smoke Free Illinois Act.

(iii) Section 15.2; Curfew.

(iv) Section 15.3; Littering.

(v) Section 15.4.(a), (b), (c), (d), & (f); Malicious mischief.

(vi) Section 15.5 (a), (d), (e) & (h); Disorderly conduct.

(vii) Section 15.6; Damage to Property.

(viii) Section 15.12; Fireworks-Possession.

(~~viii~~ix) Section 15.23; Truancy.

(ix) Section 15.25(d)(1); Possession of drug paraphernalia in connection with 10 or less grams of cannabis.

(~~xi~~) Section 15.25(e)(1); Possession of cannabis prohibited (10 or less grams).

(~~xii~~) Section 15.27; Theft (less than \$150)

(~~xiii~~) Section 15.28; Retail Theft - Less than \$150.

(~~xiv~~xiv) Section 15.29; Commercial Solicitation.

(~~xv~~xv) Section 15.39 Noncommercial Solicitation.

(~~xiv~~xvi) Section 17.45; Parking in Fire Lane.

(~~xvii~~) Section 25.5; Regulations for Water Conservation.

2. DOWNERS GROVE PARK DISTRICT GENERAL USE ORDINANCE (pursuant to an intergovernmental agreement with the Downers Grove Park District)

3. 2003 NATIONAL FIRE PROTECTION ASSOCIATION LIFE SAFETY CODE (As adopted in Section 7.1301)

(i) Section 4.5.3.2 Unobstructed Egress.

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(ii) Section 4.6.13.1 through 4.6.13.4 Maintenance and Testing [Equipment, Systems and Life Safety Features Maintained in Proper Operating Condition].

(iii) Section 7.2.1.5 Locks.

(iv) Section 7.2.1.6 Locking Arrangements.

(e) Any person served with a citation for violations of the following provisions of the Downers Grove Municipal Code, may settle and compromise the matter in respect of such ordinance violation by ceasing and/or abating said violation and paying the sum of three hundred dollars (\$300.00) if paid within ten (10) days of service of the citation, or six hundred dollars (\$600.00) if paid after such ten (10) day period but before filing of a complaint in the Circuit Court of DuPage County.

1. DOWNERS GROVE MUNICIPAL CODE

(i) Section 7.1801; (a), (d), (e), (f), (g), (i), (k), (n), (o), (p);
Demolition/Construction Site Management.

(ii) Section 15.20(ba); Sale of Tobacco Products, Alternative Nicotine Products, Smoking Materials or Drug Paraphernalia to a Minor any person under twenty-one (21).

(f) Any person served with a citation for violations of the following provisions of the Downers Grove Municipal Code, may settle and compromise the matter in respect of such ordinance violation by ceasing and/or abating said violation and paying the sum of five hundred dollars (\$500.00) if paid within ten (10) days of service of the citation, or one thousand dollars (\$1,000.00) if paid after such ten (10) day period but before filing of a complaint in the Circuit Court of DuPage County.

1. DOWNERS GROVE MUNICIPAL CODE

(i) Section 3.25; Sale of Liquor to Certain Persons Prohibited.

(ii) Section 15.20.1; Rental of Hotel Room to Minors.

(g) Any person served with a citation for violations of the following provisions of the Downers Grove Municipal Code, may settle and compromise the matter in respect of such ordinance violation by ceasing and/or abating said violation and paying double the permit fee if work is started without a permit.

1. DOWNERS GROVE MUNICIPAL CODE

(i) Section 7.301; Permit Required. (Buildings)

(ii) Section 10.401; Work to be stopped. (Electrical)

(iii) Section 16.303(b) Permit issuance. (Plumbing)

(h) Payment of the citation shall be made at the window at Village Hall, or by depositing payment in the Village drop box or United States mail.

(i) In the event that payment is not made within the time prescribed and a complaint has been filed in the Circuit Court of DuPage County, any person convicted of violating any of the provisions of this code shall be punished by a fine as determined under Section 1.15(a).

(j) The issuance of a citation under this section shall not be deemed a waiver of the power of the Village of Downers Grove to suspend, revoke or refuse to renew any license or permit for cause.

(k) The following Village personnel shall have the authority to issue citations under this section: police officers, fire department inspectors, community development officers, and such other persons as designated by the Village Manager; provided that fire department inspectors shall only write citations for violations of the Life Safety or ICC Fire Prevention Code, and that the Village Manager, by administrative regulation, may limit the jurisdictional powers of other persons he designates as authorized to issue citations. (Ord. No. 2261, § 4; Ord. No. 3464, 5/18/92; Ord. No. 3554, 4/19/93; Ord. No. 3612, 11/29/93; Ord. No. 3671, 8/23/94; Ord. No. 3680, 9/6/94; Ord. No. 3747, 5/22/95; Ord. No. 3758,

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7/10/95; Ord. No. 3762, 7/24/95; Ord. No. 3765, 7/31/95; Ord. No. 3812, 12/11/95; Ord. No. 3831, 1/22/96; Ord. No. 3884, 9/23/96; Ord. No. 3938, 5/27/97; Ord. No. 3976, 10/6/97; Ord. No. 4052, 7/27/98; Ord. No. 4056, 8/3/98; Ord. No. 4101, 2/8/99; Ord. No. 4176, 1/4/00; Ord. No. 4182, 3/7/00; Ord. No. 4246, 2/6/01; Ord. No. 4274, 3/20/01; Ord. No. 4454, 10/15/02; Ord. No. 4526, 7/15/03; Ord. No. 4533, 9/16/03; Ord. No. 4573, 3/2/04; Ord. No. 4621, 10/5/04; Ord. No. 4638, 1/18/05; Ord. No. 4668, 5/3/05; Ord. No. 4768, 5/2/06; Ord. No. 4801, 8/1/06; Ord. No. 4812, 9/19/06; Ord. No. 4895, 8/7/07; Ord. No. 4927, 11/20/07; Ord. No. 5001, 9/16/08; Ord. No. 5056, 5/5/09; Ord. No. 5089, 11/3/09; Ord. No. 5077, 11/6/09; Ord. No. 5156, 10/12/10; Ord. No. 5384, 5/6/14; Ord. No. 5392, 6/15/14)

Section 2. That Section 15.20. is hereby amended to read as follows:

15.20. Limitation on sale or display of certain materials with respect to minors.

(a) It shall be unlawful for any person to sell, barter, give, exchange, rent, lease or otherwise deliver to any ~~minor person under the age of twenty-one (21)~~ any of the following materials as defined in Section 15-21:

- (1) Smoking materials;
- (2) Drug paraphernalia;
- (3) ~~Books, magazines, periodicals, films and other reading or viewing materials which are harmful to minors.~~ Tobacco products;
- (4) ~~Alternative nicotine products.~~

(b) It shall be unlawful for any person to sell, barter, give, exchange, rent, lease or otherwise deliver to any minor ~~tobacco products~~ books, magazines, periodicals, films and other reading or viewing materials which are harmful to minors as defined in Section 15-21.

(c) It shall be unlawful for any person to publicly display or cause to be displayed any of the materials enumerated in subparagraphs (a)(2) and ~~(3b)~~ of this section in any business establishment within the Village of Downers Grove which permits or allows any minor to enter into and upon its place of business.

(d) It shall be unlawful for any person to permit any employee under the age of eighteen years of age or for any such employee under the age of eighteen years to register the sale or rental, to any person whatsoever, by mechanical or electronic means, of any materials listed in paragraph (a) hereof. (R.O. 1925 § 434; Ord. No. 2455, § 1; Ord. No. 2877, § 1; Ord. No. 2885, § 1; Ord. No. 3292, § 1.)

Section 3. 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 and any device that can be used to deliver aerosolized or vaporized nicotine, cannabinoids, or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, e-cigar, vape pen or hookah.

(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

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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;
- (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) Bongs;
 - (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;

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- (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.

(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

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for that purpose. (Ord. No. 2455, § 1; Ord. No. 2877, § 1; Ord. No. 2885, 2; Ord. No. 3292, § 2; Ord. No. 3346, § 8.)

Section 4. That Section 15.22. is hereby amended to read as follows:

15.22. Same--Demand for identification; warning signs.

(a) Any person contemplating the sale or furnishing of any materials described in Section 15-20 of this Code who believes or has reason to believe that a sale or delivery of such materials is prohibited because of the age of the prospective recipient, shall before making such sale or delivery, demand presentation of some form of positive identification, containing proof of age, issued by a public officer in the performance of his/her official duties.

Mere exhibiting of a rental club card for film rental or similar document shall not constitute evidence of age sufficient to grant permission to rent films harmful to minors.

(b) Every person engaged in the business of selling any materials described in Section 15-20 of this Code shall display at all times in a prominent place in his/her place of business either or both of the following printed cards, as applicable, ~~which shall be issued by the village clerk and~~ which shall read substantially as follows:

SALE TO MINORS ANY PERSON UNDER THE AGE OF TWENTY-ONE (21) OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, SMOKING MATERIALS OR DRUG PARAPHERNALIA IS PROHIBITED. YOU MUST BE 18 TWENTY-ONE (21) AND HAVE PROOF OF AGE.

SALE TO MINORS OF BOOKS, MAGAZINES, PAMPHLETS, FILMS OR OTHER READING OR VISUAL MATERIALS HARMFUL TO MINORS IS PROHIBITED. YOU MUST BE 18 AND HAVE PROOF OF AGE.*

**as defined by applicable law.*

(c) Every person engaged in the business of selling tobacco products as described in Section 15-20 of this Code through the use of vending machines or self-service dispensing devices, shall cause to be affixed, in a prominent place, on each such vending machine or device, a sticker, ~~which shall be issued by the village clerk and~~ which shall read substantially as follows:

SALE TO MINORS ANY PERSON UNDER THE AGE OF TWENTY-ONE (21) OF TOBACCO PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS IS PROHIBITED. YOU MUST BE 18 TWENTY-ONE (21) AND HAVE PROOF OF AGE.

(d) Failure to display the printed card or cards required under paragraph (b) of this section, or to affix the sticker(s) required under paragraph (c) shall constitute a separate offense for each day such violation continues. (Ord. No. 2455, § 1; Ord. No. 2877, § 1; Ord. No. 2885, § 3; Ord. No. 3292, § 3.)

Section 5. That Section 15.23.1. is hereby amended to read as follows:

15.23.1. Possession of Tobacco Products, Alternative Nicotine Products, Smoking Materials or Drug Paraphernalia by any Person Under the Age of Twenty-One Prohibited.

It shall be unlawful for any person under the age of ~~eighteen (18)~~ twenty-one (21) years to possess any tobacco products, alternative nicotine products, smoking materials or drug paraphernalia"; provided that the possession by a person under the age of ~~eighteen (18)~~ twenty-one (21) 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

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be prohibited. The definition of "tobacco products" and "alternative nicotine products", smoking materials and drug paraphernalia for purposes of this section shall be as defined in Section 15-21(a)(d)(j)(k).

Section 6. That Section 15.23.2. is hereby added to read as follows:

15.23.2. Purchase of Tobacco Products, Alternative Nicotine Products, Smoking Materials or Drug Paraphernalia by any Person Under the Age of Twenty-One Prohibited.

It shall be unlawful for any person under the age of twenty-one (21) years to purchase any "tobacco products", "alternative nicotine products", "smoking materials" or "drug paraphernalia" within the corporate limits of the Village of Downers Grove. The definition of "tobacco products", "alternative nicotine products", "smoking materials" or "drug paraphernalia" for the purposes of this section shall be as defined in Section 15-21(a)(d)(j)(k).

Section 7. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 8. 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