

## Chapter 275

### TOBACCO PRODUCTS

**[HISTORY: Adopted by the Board of Trustees of the Village of Port Byron 12-9-1996 by Ord. No. 96-9-12D (Title 2, Ch. 2, Art. 17, of the 1993 Code). Amendments noted where applicable.]**

#### GENERAL REFERENCES

Minors — See Ch. 201.

#### § 275-1. Definitions.

For the purpose of this article, the following terms shall have the meanings ascribed to them in this section:

**BUSINESS** — Includes all businesses, firms, partnerships, companies, corporations, distributors engaged in the delivery or sale of tobacco products, smoking herb and/or tobacco accessories.

**PERSON** — Includes any individual, business owner, officer, employee, salesperson, associate, member, representative, agent, operator or employee of the operator, or other person, whether acting as a mere helper of the operator, employee or operator, or acting as a participant or worker in any way.

**SMOKELESS TOBACCO** — Any tobacco products that are suitable for dipping or chewing; any finely cut, ground, powdered or leaf tobacco that is intended to be placed in the oral cavity.

**SMOKING HERB** — 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 Datura genus, passion flower and wild lettuce, which are processed or sold primarily for use as smoking materials.

**TOBACCO ACCESSORIES** — 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 statute or ordinance, or of substances whose sale, gift, barter or exchange is made unlawful under this chapter, the Illinois Compiled Statutes, or federal law.

**TOBACCO PRODUCT** — Includes any cigar, cigarette, smokeless tobacco, and/or tobacco in any of its forms.

**VENDING MACHINE** — A mechanically or electrically operated machine which provides self-service sales or transfer of tobacco products, smoking herb and/or tobacco accessories to a customer or any person. A machine from which a product is offered for sale or is sold or delivered to a person, and that product is either given away, bartered,

exchanged or sold, where the person either inserts something of value and product is delivered, or that person or another operates a lever or button and the product is delivered.

**§ 275-2. Purpose.**

- A. In that the sale and possession of marijuana, hashish, cocaine, opium and their derivatives is not only prohibited by Illinois law, but the use of these substances has been deemed injurious to the health of the user; and it has further been determined by the Surgeon General of the United States that the use of tobacco is hazardous to human health; and the ready availability of tobacco products, smoking herbs and tobacco accessories to minors could lead to the use of tobacco and illegal drugs. Therefore, it is in the best interest of the citizens of the Village of Port Byron to seek to prohibit the spread of illegal drugs, tobacco products, smoking herbs or smoking materials and accessories to minors.
- B. This chapter provides protection for the public health and safety of minors and attempts to curb the usage of illegal drugs and tobacco products among our youth by:
  - (1) Prohibiting the sale of tobacco products, smoking herbs, and tobacco accessories to minors;
  - (2) Prohibiting the possession and use of tobacco products, smoking herbs, and tobacco accessories by minors; and
  - (3) Establishing penalties for violations of said ordinance.

**§ 275-3. Tobacco vendor prohibitions; requirements; illegal sales.**

- A. Prohibited sales and delivery. It shall be unlawful for any business or person to sell, offer for sale, give away, furnish or deliver any tobacco product, smoking herb, or tobacco accessory to any person under the age of 18 years of age.
- B. Required underage signage. Signs informing the public of age restrictions provided for shall be posted by every business at or near every display of tobacco products and on or upon every vending machine which offers tobacco products for sale. Each sign shall be plainly visible and shall state: THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. Sign size shall be at least eight inches by 11 inches. Signs shall have a white background with red letters at least one inch high. Signs provided by the Illinois Liquor Control Commission shall be deemed sufficient to satisfy the requirements of this chapter.
- C. Warning to minors. Any business operating a place where smoking herbs and/or tobacco accessories are sold or offered for sale shall post in a conspicuous place upon the premises, and on or upon each vending machine which offers smoking herbs and/or tobacco accessories, a sign upon which there shall be imprinted the following statement: SALE OF TOBACCO ACCESSORIES AND SMOKING HERBS TO PERSONS UNDER 18 YEARS OF AGE OR THE

MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS PROHIBITED BY LAW. Sign size shall be at least eight inches by 11 inches. Signs shall have a white background with red letters at least one inch high. Signs provided by the Illinois Liquor Control Commission shall be deemed sufficient to satisfy the requirements of this chapter.

- D. Minimum-age to sell tobacco products, smoking herbs, tobacco accessories. It shall be unlawful for any business or person to engage, employ or permit any person under 16 years of age to sell any tobacco product, smoking herb or tobacco accessories, unless the person is a sales clerk in a family-owned business which can prove that the sales clerk is in fact a son or daughter of the owner.<sup>1</sup>
- E. Proximity to certain institutions. It shall be unlawful for any business or person to sell, offer for sale, give away, furnish or deliver tobacco products, smoking herb or tobacco accessories within 100 feet of any school, child-care facility or other building used for education or recreational programs for persons under the age of 18 years.
- F. Certain free distributions prohibited. It shall be unlawful for any business or any person in the business of selling or otherwise distributing, promoting or advertising tobacco products, smoking herb or tobacco accessories or any employee or agent of such business or person, in the course of such business's or person's business, to distribute, give away, furnish or deliver tobacco products or tobacco accessories free of charge to any person on any right-of-way, park, playground or other property owned by the Village, any school district, any park district or any public library.
- G. Vending machines.
  - (1) Location restrictions prohibit any person to locate a tobacco products, smoking herb, or tobacco accessories vending machine in a public place except in a legally licensed tavern. The vending machine must be placed at a distance of a minimum of 25 feet from any entrance to the premises and be directly visible by the owner of the premises or his or her employee or agent during the operation of such vending machine.
  - (2) Locking devices.
    - (a) It shall be unlawful for any business to sell or offer for sale, give away, deliver or to keep with the intention of selling, giving away or delivering tobacco products or tobacco accessories by use of a vending machine, unless such vending machine is equipped with a manual, electric or electronic locking device controlled by the business so as to prevent its operation by persons under the age of 18 years.
    - (b) Any premises where access by persons under the age of 18 years is prohibited by law, or premises where the public is generally not permitted and where vending machines are strictly for the use of

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<sup>1</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

employees of businesses located at such premises, shall be exempt from the requirements of Subsection G(2)(a) above.

- (3) It shall be unlawful to commingle tobacco products with other products in a vending machine.
- H. Freestanding displays. No business or person shall display or offer tobacco products, smoking herb or tobacco accessories for sale except in a highly visible area or from within an enclosure which physically precludes the removal of tobacco products, smoking herb or tobacco accessories without assistance.
- I. Out-of-package sales. The sale or distribution of tobacco products and smoking herb in any form other than in the originally factory-wrapped package is prohibited.
- J. Promotions.
  - (1) No business or person shall, in or upon any part of streets, parks, public ground, public buildings or other places within the Village of Port Byron, distribute any tobacco products, smoking herb or tobacco accessories for any promotional or other commercial purpose.
  - (2) The redemption of coupons or promotions involving the sale of tobacco products, smoking herb, or tobacco accessories at less than full retail price shall be conducted only at a checkout counter or at a location directly controlled by a business employee.

**§ 275-4. Furnishing products to minors prohibited.**

No person shall sell, give away, barter, exchange or otherwise furnish any tobacco products, smoking herb or tobacco accessories:

- A. To any individual who is under 18 years of age.
- B. To any individual who the person knows is under 18 years of age.
- C. To any individual (other than an individual who appears without reasonable doubt to be over 18 years of age) who does not present a driver's license (or other generally accepted means of identification) that describes the individual as 18 years of age or older, contains a likeness of the individual, and appears on its face to be valid.
- D. In any form other than the original factory-wrapped package.

**§ 275-5. Possession of products by minors prohibited.**

- A. It shall be unlawful:
  - (1) For any individual under the age of 18 years to possess any tobacco product, smoking herb or tobacco accessories, provided that the possession by a person under the age of 18 years who is under the direct supervision of the parent or legal guardian of such person in the privacy of the parent's or guardian's home shall not be prohibited.

- (2) For any individual under the age of 18 years to use any tobacco product, smoking herb or tobacco accessories, provided that the use by a person under the age of 18 years who is under the direct supervision of the parent or legal guardian of such person in the privacy of the parent's or guardian's home shall not be prohibited.
  - (3) For any individual under the age of 18 years to purchase any tobacco product, smoking herb or tobacco accessories.
  - (4) For any individual under the age of 18 years to accept delivery of any tobacco product, smoking herb or tobacco accessories.
- B. For the purpose of purchasing tobacco products, smoking herb or tobacco accessories, it shall be unlawful:
- (1) For any person to give any individual under the age of 18 years of age any identification card not duly issued to such individual.
  - (2) To misrepresent the individual's identity or age.
  - (3) To use any false or altered identification.
  - (4) To be in possession of any false or altered identification.

**§ 275-6. Unannounced inspections.**

- A. The enforcement component used by the Village of Port Byron to reduce sales of tobacco products, smoking herb and tobacco accessories to persons under the age of 18 years includes unannounced inspections of all tobacco product, smoking herb and tobacco accessories outlets. The inspections include the attempted purchase of these products by underage juveniles and the observation of the inspection by parents or other adult volunteer "observers."
- B. The time of day an inspection is conducted as well as the location of the outlet contribute to the effectiveness of enforcement activities. Consideration should be given to scheduling inspections during hours when youths are most likely to attempt to purchase tobacco products, smoking herb or tobacco accessories, such as before school, during school lunchtime, immediately after school ends, on times when students are not in school, and on weekends.

**§ 275-7. Violations and penalties.**

- A. Any person who violates any provision of this chapter is guilty of a petty offense and, for the first offense, shall be fined \$100; \$200 for the second offense in a twelve-month period, and a maximum of \$750 for the third or subsequent offense in a twelve-month period.<sup>2</sup>

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<sup>2</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. VI).

- B. The parent or legal guardian of any person under the age of 18 years who in any way violates any provision of this chapter shall be responsible for the payment of any fine which the person under the age of 18 years is subject to.
- C. Any person under the age of 18 at the time of the violation who violates this chapter shall be fined a minimum \$50 for the first offense, \$75 for the second offense, and \$100 for the third or subsequent offense. [Added 11-1-1999 by Ord. No. 99-1-11B]

**§ 275-8. Charging violation, prosecution.**

- A. By notice of violation. A law enforcement officer, upon establishing probable cause, may elect to charge a business or person with a violation of any provision of this chapter by delivering to that business or person a notice of violation charging that person with the violation.
  - (1) The business or person so such charged has five working days to satisfy the violation by making payment of the appropriate fine established by this chapter to the Port Byron Village Clerk. If the fine is not paid to the Village Clerk within five business days after receipt of the notice of violation, law enforcement may:
    - (a) Forward copies of the notice of violation and all reports to the Village Attorney, who shall then file a local ordinance complaint with the Rock Island County Circuit Court charging that person with the violation and establishing a court date for trial; or
    - (b) Forward copies of the notice of violation and all reports to the Rock Island County State's Attorney's Office and request a complaint be filed charging that business or person with violation of the Illinois Sale of Tobacco to Minors Act, 720 ILCS Acts 675 to 685.
- B. Charging under state statutes. A law enforcement officer, upon establishing probable cause, may elect to charge a business or person with a violation of the Illinois Sale of Tobacco to Minors Act or subsequent appropriate acts, 720 ILCS Acts 675 through 685. The officer shall forward copies of the notice of violation and all reports to the Rock Island County State's Attorney's Office and request a complaint be filed charging that business or person with violation of the Act.