

ORDINANCE NO. 19-\_\_\_\_\_

**AN ORDINANCE AMENDING TITLE 3 (BUSINESS AND LICENSE REGULATIONS),  
CHAPTER 3 (LIQUOR AND TOBACCO CONTROL), SECTION 3 (DEFINITIONS),  
SECTION 5 (APPLICATION FOR LIQUOR LICENSE), SECTION 14 (PROHIBITED ACTS)  
AND SECTION 15 (TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS – LICENSE,  
APPLICATIONS AND FEES)  
OF THE NAPERVILLE MUNICIPAL CODE**

**WHEREAS**, the Mayor and the City Council of the City of Naperville, Illinois, have the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety and welfare of its citizens; and

**WHEREAS**, kratom is a substance that affects the same opioid brain receptors as morphine and appears to have properties that expose users to the risks of addiction, abuse, and dependence; and

**WHEREAS**, kratom that has no FDA-approved uses, is listed by the DEA as a “drug of concern,” and the FDA warns consumers not to use any products labeled as containing the botanical substance kratom or its psychoactive compounds, mitragynine and 7-hydroxymitragynine; and

**WHEREAS**, Illinois Public Act 101-0002 became effective on July 1, 2019, prohibiting the sale of tobacco and alternative nicotine products to, and the purchase of tobacco and alternative nicotine products by, persons under the age of 21; and

**WHEREAS**, the City of Naperville desires to enact an ordinance to update its codes to ban the retail sale of kratom and make it unlawful for anyone under the age of 21 to possess tobacco products or alternative nicotine products; and

**WHEREAS**, in exercise of its home-rule authority, the City, through its Mayor and City Council, has found and determined that amending the City Code to make all regulations regarding tobacco and minors apply to individuals under twenty-one years of age and ban the sale of kratom within the City is in the best interest of the City's citizens;

**BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers that:**

**SECTION 1:** Title 3 (Business and License Regulations), Chapter 3 (Liquor and Tobacco Control), Section 3 (Definitions) of the Naperville Municipal Code is hereby amended by adding the underlined language as follows:

**3-3-3: - DEFINITIONS:** For the purposes of this Chapter, the following words and phrases shall have the following meanings:

ALCOHOLIC LIQUOR through KNOWINGLY \* \* \*

KRATOM:	<u>Any parts of the plant <i>Mitragyna speciosa</i>, whether growing or not, and any compound, manufacture, salt, derivative, mixture, or preparation of that plant, including but not limited to mitragynine and 7-hydroxymitragynine.</u>
---------	---

LEGAL GUARDIAN through WINE OR VINOUS BEVERAGE \* \* \*

**SECTION 2:** Title 3 (Business and License Regulations), Chapter 3 (Liquor and Tobacco Control), Section 5 (Application for Liquor License) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

**3-3-5: - APPLICATION FOR LIQUOR LICENSES:**

1. Liquor License:

1.1 \* \* \*

~~1.2:~~ \* \* \*

~~1.3:~~ \* \* \*

~~4. Applications for liquor or tobacco licenses which are incomplete or inaccurate shall be rejected by the local Liquor and Tobacco Control Commissioner in in writing and set forth the deficiencies within sixty (60) days of its receipt. Prior to rejection, the applicant may submit the information required to complete the application. Any expenses incurred in reviewing incomplete or inaccurate license applications, advising the applicant of such deficiencies, and rejecting such applications shall be paid by the applicant.~~

~~5. Any sale, transfer, or assignment of more than fifty percent (50%) of the shares of a corporation shall terminate said liquor license.~~

~~6. Any bankruptcy, insolvency of a liquor licensee, any sale, transfer or assignment of any copartner or copartnership interest in a license shall terminate said license.~~

2. Cigarette and Tobacco Dealer's License:

2.1 Applications for a license for the retail sale of tobacco products and/or alternative nicotine products shall be made with the City Clerk's office and shall provide such information as required by the City on said application, as may be amended from time to time.

2.2. The annual fee license for the retail sale of tobacco product and/or alternative nicotine products shall be \$200.00 per establishment.

2.3 A license for the retail sale of tobacco product and/or alternative nicotine products granted herein, is nontransferable and is valid only for the person(s) or business entity and location specified in the license application.

3. Incomplete or inaccurate applications shall be rejected by the local Liquor and Tobacco Control Commissioner in writing and set forth the deficiencies within sixty (60) days of its receipt. Prior to rejection, the applicant may submit the information required to complete the application. Any expenses incurred in reviewing incomplete or inaccurate license applications, advising the applicant of such deficiencies and rejecting such applications shall be paid by the applicant.

4.7. Sale, transfer, or assignment of more than fifty percent (50%) of the shares of a corporation shall terminate a license.

5. Bankruptcy or insolvency of a licensee, or dissolution, assignment or sale of any partnership interest in a license shall terminate a license.

6. Licenses terminate each April 30th, any licensee may renew its license if it is qualified to receive a license; renewals are a privilege and not a vested right.

**SECTION 3:** Title 3 (Business and License Regulations), Chapter 3 (Liquor and Tobacco Control), Section 14 (Prohibited Acts and Conditions) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

**3-3-14: - PROHIBITED ACTS AND CONDITIONS:**

~~The following shall be unlawful in the City, including but not limited to: peddling of tobacco or alcoholic liquor; gambling, on a liquor or tobacco licensed premises; to permit upon any licensed premises any nudity, or semi-nudity, sexual conduct, indecency, obscene performance, or continued use of obscenities; by any agent, employee, patron or other person; sale of synthetic alternative drugs, palcohol, and smoking alcohol; and the allowance of amateur or professional full-contact martial arts on any premises licensed to sell alcoholic~~

liquor. In addition to all fines and penalties, the Local Liquor and Tobacco Control Commissioner may suspend or revoke the liquor license for any violation of this Section.

1. It shall be unlawful for a ~~No~~ licensee or officer, associate, member, representative, agent or employee of a liquor licensee shall to sell, give or deliver alcoholic liquor to any person under the age of twenty-one (21) years or to any intoxicated person.

2.-3. \* \* \*

4. It shall be unlawful to peddle alcoholic liquor or tobacco.

~~In every place in the City where alcoholic liquor is sold, there shall be displayed at all times in a prominent place a printed card supplied by the City Clerk and which reads as follows:~~

~~WARNING TO PERSONS UNDER THE AGE OF 21 YEARS~~

~~*You are subject to a fine up to five hundred dollars (\$500.00) under the ordinances of the City of Naperville if you purchase or attempt to purchase alcoholic liquor, or misrepresent your age for the purpose of purchasing or obtaining alcoholic liquor.*~~

5.-9. \* \* \*

9.1 It shall be unlawful to ~~No person shall~~ transfer, alter or deface such an identification card, use the identification card of another, carry or use a false or forged identification card, or obtain an identification card by means of false information. ~~No person shall~~ It shall be unlawful to purchase, accept delivery or have possession of alcoholic liquor in violation of this Section.

9.2 A printed card supplied by the City Clerk shall be displayed by a licensee where alcoholic liquor is offered for sale, which reads as follows:

WARNING TO PERSONS UNDER THE AGE OF 21 YEARS

*You are subject to a fine up to five hundred dollars (\$500.00) under the ordinances of the City of Naperville if you purchase or attempt to purchase alcoholic liquor, or misrepresent your age for the purpose of purchasing or obtaining alcoholic liquor.*

10. Consumption: ~~The consumption of alcoholic liquor by~~ It shall be unlawful for any person under the age of twenty-one (21) years is prohibited to consume alcoholic liquor.

10.1 \* \* \*

10.2 ~~Consumption By Minors: No person shall~~ It shall be unlawful to intentionally, knowingly, recklessly or negligently give, deliver, invite or permit the consumption of alcoholic liquor by any person of nonage on or about any premises owned, leased or controlled by such person except as allowed in Subsection 3-3-14:10.1.

11. \* \* \*

12. Possession By Minors: ~~No person shall~~ It shall be unlawful to intentionally, knowingly, recklessly or negligently give or deliver alcoholic liquor to, or permit possession of alcoholic liquor by any other person under the age of twenty-one (21).

12.1 The possession of alcoholic liquor by a person under the age of twenty-one (21) is prohibited, except as allowed in Subsection 3-3-14:~~75~~ or Subsection 3-3-14:10.1.

13. Hotel and Motel Rooms: ~~No parent or other shall~~ It shall be unlawful to rent or permit the use of any hotel or motel sleeping rooms or suites, when such person knows, or in the exercise of ordinary care should know of a substantial probability that such space will be used by persons of nonage for the consumption or possession, either actual or constructive, of alcoholic liquor.

14. ~~Penalty: Any person convicted of any violation of this Section shall be fined between two hundred dollars (\$200.00) and one thousand dollars (\$1,000.00) per offense. It shall be unlawful to permit nudity, semi-nudity, sexual conduct, indecency, obscene performance, or continued use of obscenities on an alcoholic liquor or tobacco licensed premise.~~

15. It shall be unlawful to sell kratom, synthetic alternative drugs, palcohol, and smoking alcohol.

16. It shall be unlawful to allow amateur or professional full-contact martial arts on any premises licensed to sell alcoholic liquor.

17. Any person convicted of any violation of this Section shall be fined between two hundred dollars (\$200.00) and one thousand dollars (\$1,000.00) per offense. In addition to all fines and penalties, the Local Liquor and Tobacco Control Commissioner may suspend or revoke a liquor or tobacco license for any violation of this Section.

**SECTION 4:** Title 3 (Business and License Regulations), Chapter 3 (Liquor and Tobacco Control), Section 15 (Tobacco and Alternative Nicotine Products – License, Applications and Fees) of the Naperville Municipal Code is hereby amended by adding the underlined language and deleting the stricken language as follows:

**3-3-15: - ADDITIONAL TOBACCO AND ALTERNATIVE NICOTINE PRODUCTS RESTRICTIONS—LICENSE, APPLICATIONS AND FEES:**

1. ~~Required License:—It shall be unlawful to sell or offer for sale at retail in the City any tobacco products and/or alternative nicotine products without having a cigarette and tobacco dealer's license., or in violation of the terms of such license. All cigarette and~~

~~tobacco dealer's licenses shall be valid for a period of one year after issuance unless sooner revoked by this Subsection.~~

~~2. Application: Any person seeking a cigarette and tobacco dealer's license shall file an annual application at the office of the City Clerk and shall provide all such information as required by the City on said application, as may be amended from time to time.~~

~~3. Fee: The annual fee for a cigarette and tobacco dealer's license shall be two hundred dollars (\$200.00) per establishment where tobacco products and/or alternative nicotine products are sold in any form.~~

~~4.2. Restrictions: It shall be unlawful to sell, offer for sale, give away or deliver any tobacco product and/or alternative nicotine product from a vending machine.~~

~~4.2.1. Effective January 1, 2017, It shall be unlawful for any person, including any licensee, to sell, offer for sale, give away or deliver tobacco products or alternative nicotine products by any means to any person under the age of twenty-one (21) years. Effective January 1, 2018, it shall be unlawful for any person, including any licensee, to sell, offer for sale, give away or deliver alternative nicotine products by any means to any person under the age of twenty-one (21) years.~~

~~4.2.1.1. Signs informing the public of said age restrictions shall be posted by each licensee at every display of tobacco products and/or alternative nicotine products offered for sale, as provided by the City.~~

~~4.2.2. It shall be unlawful for any person under eighteen (18) years of age to sell tobacco products and/or alternative nicotine products in any licensed premises. In the event an agent or employee of a licensee younger than eighteen (18) years of age sells tobacco products and/or alternative nicotine products in any licensed premises, an officer, agent or employee of the licensee who is at least twenty-one (21) years of age shall also be on the licensed premises at the time of such sale.~~

~~4.2.3. It shall be unlawful for any licensee to sell or 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 City's corporate limits.~~

~~5. Fines: Any person who violates this Section shall be punished by a fine between one hundred dollars (\$100.00) and five hundred dollars (\$500.00). A separate offense shall be deemed committed on each day on which a violation occurs or continues.~~

~~6.3. Tobacco Purchase By Minors:~~

~~6.3.1. It shall be unlawful for any person under the age of ~~eighteen~~ twenty-one (1821) to purchase, possess, or use any tobacco products and/or alternative nicotine products.~~

63.1.1. Exception: It shall not be a violation of this Section if such use of tobacco by a minor takes place under the direct supervision of a parent or guardian in the privacy of the parent's or guardian's home or ~~and if such use takes place~~ in an established place of worship or tribal meeting place.

63.2. Violations: Any person who violates this Subsection shall be subject to the following penalties: \* \* \*

**SECTION 5:** This Ordinance shall be in full force and effect upon its passage and approval.

PASSED this \_\_\_\_ day of \_\_\_\_\_, 2019.

AYES:

NAYS:

ABSENT:

APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Steve Chirico  
Mayor

ATTEST:

\_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk