



City of Chicago



SO2013-6160

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	9/11/2013
Sponsor(s):	Burke (14) Burns (4)
Type:	Ordinance
Title:	Amendment of Municipal Code Chapter 4-64 to prohibit distribution and sale of alternative nicotine products to minors....
Committee(s) Assignment:	Joint Committee: Finance; Health and Environmental Protection

New

**SUBSTITUTE
ORDINANCE**

WHEREAS, The City of Chicago is a home rule unit of government pursuant to Article VII, Section 6(a) of the Illinois Constitution; and

WHEREAS, Pursuant to its home rule authority, the City of Chicago may exercise any power and perform any function pertaining to its government and affairs, including promoting the health, safety, and welfare of its citizens; and

WHEREAS, Cigarette smoking has been linked to various cancers and lung diseases; and

WHEREAS, While many struggle with their nicotine and tobacco addiction, those seeking to quit their "habit" have sought several modes of treatment: medicine from their doctors, nicotine patches, and, in recent years, e-cigarettes; and

WHEREAS, E-cigarettes, which first entered the United States market in 2007, are electronic inhalers meant to simulate cigarette smoking. E-cigarettes use a heating element that vaporizes a liquid solution. Some e-cigarettes release nicotine, while some merely release flavored vapor. They are designed to mimic traditional smoking implements in their use and appearance; and

WHEREAS, Though e-cigarettes have been advertised as a "safe" alternative to smoking, they are not currently regulated by the United States Food and Drug Administration (FDA), leaving states and cities to adopt their own regulations; and

WHEREAS, Several states, including Illinois, have adopted legislation banning the sale of e-cigarettes to minors; and

WHEREAS, The Center for Disease Control and Prevention (CDC), in a report released on September 5, 2013, stated that ten percent of high school students surveyed reported using e-cigarettes in 2012, up from 4.7 percent in 2011; and

WHEREAS, In the same study, the CDC reported that these same minors also admitted to smoking conventional cigarettes at the same time; and

WHEREAS, CDC Director Tom Frieden, M.D., M.P.H., has stated that the "increased use of e-cigarettes by teens is deeply troubling. Nicotine is a highly addictive drug. Many teens who start with e-cigarettes may be condemned to struggling with a lifelong addiction to nicotine and conventional cigarettes."; and

WHEREAS, According to Tim McAfee, M.D., M.P.H., the Director of the CDC Office on Smoking and Health, "it should be the goal of all to protect the health of our youth and to keep them from experimenting or using any tobacco product. These dramatic increases in usage suggest that developing strategies to prevent marketing, sales, and use of e-cigarettes among youth is critical."; and

WHEREAS, The City of Chicago finds that e-cigarettes, with their sweet flavored cartridges, represent a calculated attempt by manufacturers to entice children and young adults to purchase and use their devices, and constitute an indirect marketing campaign which targets youth; and

WHEREAS, The City of Chicago finds that the public health and safety of its citizens, particularly its children, is endangered by the lack of comprehensive regulation of e-cigarettes; and

WHEREAS, Regulation of the distribution, sale, and use of e-cigarettes is a legitimate role of government relating to the welfare of its citizens; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Section 4-64-091 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

4-64-091 Tobacco ~~products~~ product defined.

As used in this chapter:

~~"Tobacco products" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, smoking tobacco, and/or smokeless tobacco.~~

"Tobacco product" means any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from tobacco, which product is intended to enable human consumption of the tobacco or nicotine, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means

For purposes of this chapter, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

SECTION 2. Section 4-64-131 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

4-64-131 Tobacco ~~products-vending machines~~ self-service displays – Prohibited.

No person shall engage in the business of a retail tobacco dealer using a ~~cigarette vending machine~~ self-service display

For the purpose of this section, ~~"cigarette vending machine" means any mechanical device used for retail sales of tobacco products, the operation of which is governed or controlled by use of currency, a coin, a token, or credit or debit card.~~ "self-service display" means the open display or storage of tobacco products in a manner that is physically accessible in any way to a member of the general public without a direct person-to-person transfer involving a retail tobacco dealer or his agent. A vending machine is a form of self-service display.

This section does not apply to retail tobacco stores. For purposes of this section, "retail tobacco store" has the meaning ascribed to the term in Section 7-32-010.

SECTION 3. Section 4-64-191 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

4-64-191 Certain transactions prohibited.

No person shall sell, offer for sale, barter or expose for sale any ~~cigarette, tobacco or smokeless tobacco-tobacco product~~ except in its original factory-wrapped package. No person shall sell, offer for sale, barter, or expose for sale any cigarettes in a package containing fewer than 20 cigarettes.

~~Any person who violates this section shall be subject to~~ Violations of this section involving 40 or fewer cigarettes, or any amount of any tobacco product other than cigarettes, shall be punishable by a fine of \$1,000.00 for a violation involving forty or fewer cigarettes, and \$25.00 per cigarette for a violation involving over forty cigarettes, and an additional \$2,000.00 for the second and each subsequent offense the first offense and \$2,000 for each subsequent offense. Violations of this section involving more than 40 cigarettes shall be punishable by a fine of \$25.00 per cigarette for the first offense and \$50.00 per cigarette for each subsequent offense.

SECTION 4. Section 7-32-010 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

7-32-010 Definitions.

(Omitted text is not affected by this ordinance)

"Electronic cigarette" means any electronically actuated device which in operation causes the user to exhale any smoke, vapor, or other substance other than those produced by unenhanced human exhalation. "Electronic cigarette" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or under any other product name or descriptor. The term "electronic cigarette" does not include any asthma inhaler or other device that has been specifically approved by the United States Food and Drug Administration.

(Omitted text is not affected by this ordinance)

"Live theatre location" means any building, playhouse, room, hall, or other place utilized by live performers to present artistic representations of real or imagined events in front of a live audience.

"Performance space" means the portion or portions of a live theater location where performances occur. "Performance space" excludes all other portions of live theatre locations, including, but not limited to, hallways, lobbies, and public restrooms.

(Omitted text is not affected by this ordinance)

"Retail tobacco store" means a retail establishment that derives more than 80% of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories cigarettes, cigarillos, cigars, pipes, other smoking devices and accessories, hookahs and related products, and/or electronic cigarettes and related products, and in which the sale of other products is merely incidental. "Retail tobacco store" does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.

"Smoke" or "smoking" means either (1) the carrying, smoking, burning, inhaling, or exhaling of any kind of lighted pipe, cigar, cigarette, hookah, weed, herbs, or any other lighted smoking equipment; or (2) the use of any electronic cigarette.

"Theatre actor" means an individual in the process of presenting an artistic representation of real or imagined events in front of a live audience, or in the process of rehearsing to do the same. The term "theatre actor" applies to both women and men.

SECTION 5. Section 7-32-035 of the Municipal Code of Chicago is hereby amended by inserting the language underscored, as follows:

7-32-035 Exemptions.

Notwithstanding any other provision of this chapter, smoking is allowed in the following areas:

(1) Private residences or dwelling places, except when used as a child care, adult day care, or healthcare facility or any other home-based business open to the public.

(2) Retail tobacco stores as defined in Section 010 of this chapter in operation prior to January 1, 2008. Any retail tobacco store that begins operation after January 1, 2008 may only qualify for an exemption if located in a freestanding structure occupied solely by the business and smoke from the business does not migrate into an enclosed area where smoking is prohibited Notwithstanding any other provision in this subsection, the use of electronic cigarettes is allowed in any retail tobacco store.

(3) Hotel and motel sleeping rooms that are rented to guests and are designated as smoking rooms, *provided that all smoking rooms on the same floor must be contiguous and smoke from these rooms must not infiltrate into nonsmoking rooms or other areas where smoking is prohibited.* Not more than 25% of the rooms rented to guests in a hotel or motel may be designated as rooms where smoking is allowed. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms.

In addition, theatre actors shall be allowed to use nicotine-free electronic cigarettes within performance spaces.

SECTION 6. Sections 1, 2, and 3 of this ordinance shall take effect six months after passage and approval. Following due passage and approval, sections 4 and 5 of this ordinance shall take effect on April 29, 2014.

Edward M. Burke
Alderman, 14th Ward

William D. Burns
Alderman, 4th Ward

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CHICAGO January 15, 2014

To the President and Members of the City Council:

Your Joint Committee on Finance and Committee on Health and Environmental Protection having had under consideration

A substitute ordinance amending Chapters 4-64 and 7-32 of the Municipal Code of Chicago regarding e-cigarettes.

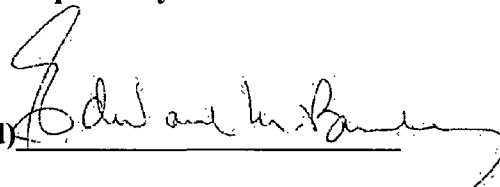
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Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Ordinance Transmitted Herewith

This recommendation was concurred in by _____ (a roll call vote of members of the committee with 5 dissenting vote(s).
(Aldermen Dowell, Hairston, Waguespack, Colon, Reilly vote No)

Respectfully submitted

(signed)



Chairman

Document No. _____

**REPORT OF THE COMMITTEE ON FINANCE
TO THE CITY COUNCIL
CITY OF CHICAGO**

[illegible]