



City of Chicago



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Office of the City Clerk

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Meeting Date: 1/13/2016

Sponsor(s): Emanuel (Mayor)
Moreno (1)
Burns (4)
Pawar (47)

Type: Ordinance

Title: Amendment of Municipal Code Titles 3 and 4 concerning tax on non-cigarette tobacco products and associated tobacco-related regulations

Committee(s) Assignment: Committee on Finance

SECOND
SUBSTITUTE
ORDINANCE

WHEREAS, The City of Chicago is a home-rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs, a category that includes the authority to legislate for the protection of the public health; and

WHEREAS, The enactment of ordinances and regulations designed to discourage the use of tobacco plainly meets this criterion; and

WHEREAS, The 18 to 20-year-old age range is a critical time for new smokers. Adolescents are more vulnerable than older adults to nicotine addiction, which can harm brain development, and nine out of ten adult smokers start before age 21. Raising the legal age would put tobacco products on par with alcohol and protect young adults from developing a dangerous lifelong habit; and

WHEREAS, Based on numerous studies, it is clear that high tobacco prices reduce tobacco consumption, both among youth users, who are especially price-sensitive, and among adults. A 10-percent increase in cigarette prices reduces demand among adult smokers by an average of 4 percent, and youth smokers are two-to-three times more price sensitive than adults. High prices reduce the prevalence of tobacco use, the probability of trying tobacco for the first time, the average number of cigarettes consumed per smoker, the initiation of daily smoking, and the initiation of daily heavy smoking. Moreover, reductions in the prevalence of smoking lead indirectly to even greater reductions by minimizing peer and parental influences, and by helping addicted smokers successfully quit; and

WHEREAS, The City of Chicago taxes cigarettes and e-cigarettes, but does not tax other tobacco products that are harmful to health, including little cigars, large cigars, smoking tobacco, and smokeless tobacco; and

WHEREAS, As cigarette prices have increased, smokers, particularly youth, have migrated to cheaper tobacco products. Little cigars, for example, appear virtually identical to cigarettes and cost substantially less. Large cigars and smokeless tobacco are also less expensive alternatives. Despite well-documented risks, smokers of all ages – especially youth and young adults in low-income urban areas – erroneously perceive cigars as less harmful than cigarettes; and

WHEREAS, The use of coupons, multi-package discounts, and other price-reduction instruments, all of which are widely available in Chicago, reduce retail prices for tobacco products, even when a tax is in place to increase the price. In a 2011 study of smokers attempting to quit conducted in New York City, 25 percent reported using a coupon or other discount on their last purchase, saving an average \$1.25 per package of cigarettes. Discounts entice consumers, including price-sensitive youth, to purchase deadly and highly addictive products; and

WHEREAS, This body has therefore determined that establishing price floors for tobacco products would help address the persistent availability of low-priced cigarettes and tobacco products in Chicago. Specifically, this body finds that the following price floors are reasonable and appropriate:

- An appropriate price floor for a package of cigarettes is \$11.50, which approximates the total amount of the typical wholesale price per package, plus the combined city, county, state, and federal taxes. This floor corresponds to approximately \$0.58 per cigarette. This minimum should prevent discounting and preserve the public-health-positive deterrent effect of a strong tax.
- An appropriate price floor for a package of little cigars equals the price floor of a package of cigarettes. These products have a similar size, shape, appearance, and carry a similar degree of health risk.
- An appropriate price floor for a cigar weighing at least four pounds per thousand is \$1.74 per cigar. Cigars, like other combustible tobacco products, carry a health risk similar to cigarettes. Commonly, a cigar contains approximately three times the weight of tobacco found in a cigarette. The appropriate price floor is therefore derived by multiplying the price floor of a single cigarette by three.
- An appropriate price floor of smoking tobacco is \$11.50 per 0.65 ounce pouch, or \$17.70 per ounce. A package of cigarettes contains the same quantity of tobacco as approximately 0.65 ounces of smoking tobacco. Therefore, the price floor for 0.65 ounces of smoking tobacco should be the same as a package of cigarettes.
- An appropriate price floor for smokeless tobacco is \$4.00 per ounce. Smokeless tobacco products come in various forms and prices. This price floor is based on a low-price form of smokeless tobacco, moist snuff, a 1.2 ounce can of which is roughly equivalent to a package of cigarettes in terms of tobacco quantity. To make the price floor of smokeless tobacco equal to that of combustible tobacco, the floor would be set at \$11.50 for a 1.2 ounce can, or \$9.58 per ounce. However, although no form of tobacco use is safe, research suggests that smokeless tobacco is associated with lower mortality rates than combustible products. Thus, a lower price floor is appropriate; now, therefore:

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

SECTION 1. The foregoing recitals are hereby incorporated as the findings of the City Council.

SECTION 2. Title 3 of the Municipal Code of Chicago is hereby amended by adding a new Chapter 3-49, as follows:

CHAPTER 3-49
CHICAGO OTHER TOBACCO PRODUCTS TAX

3-49-010 Title.

This chapter shall be known and cited as the "Chicago Other Tobacco Products Tax Ordinance" or "OTP Tax Ordinance," and the tax herein imposed shall be known and cited as the "Chicago Other Tobacco Products Tax" or "Chicago OTP Tax."

3-49-020 Definitions.

Whenever any of the following words, terms, or phrases are used in this chapter, they shall have the following meanings:

"Chewing tobacco" means any leaf tobacco that is not intended to be smoked, including plug, fine-cut, and twist tobacco.

"Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette as defined in this chapter), and includes cheroots and stogies.

"Cigarette" has the meaning ascribed to that term in Section 3-42-010 of this Code.

"Cigarette wholesale tobacco dealer" means any person who engages in the business of selling or supplying cigarettes and/or OTP to any person for resale in the City.

"Cigarette wholesale tobacco manufacturer" means any person who makes or fabricates cigarettes and/or OTP and sells them.

"Commissioner" means the commissioner of business affairs and consumer protection.

"Comptroller" means the comptroller of the City.

"Consumer" means a person who purchases OTP from a wholesale tobacco dealer or retail tobacco dealer for use or consumption and not for resale purposes.

"Consume tobacco" means chew, smoke, absorb, dissolve, inhale, snort, sniff, or ingest tobacco by any means.

"Department" means the department of finance of the City.

"Large cigar" means any roll of tobacco, other than a cigarette, wrapped in leaf tobacco or any substance containing tobacco and weighing at least four pounds per one thousand units.

"Little cigar" means any roll of tobacco, other than a cigarette, wrapped in leaf tobacco or any substance containing tobacco and weighing less than four pounds per one thousand units.

"Manufacturer" means any person, other than a retail tobacco manufacturer, who makes or fabricates cigarettes and/or OTP and sells them.

"Other Tobacco Products" ("OTP") means smokeless tobacco, smoking tobacco, large cigars, and little cigars. For purposes of this chapter, the term "Other Tobacco Products" does not include cigarettes, or electronic cigarettes and liquid nicotine products, as defined in chapter 3-47 of this Code.

"Package" means the original packet, box, tin, or other container used to contain and to convey OTP to the consumer.

"Pipe tobacco" includes any smoking tobacco which, because of its appearance, type, packaging, or labeling is suitable for use, and likely to be offered to or purchased by, consumers as tobacco to be smoked in a pipe.

"Purchaser" means a buyer of OTP, including, but not limited to, retail tobacco dealers, retail tobacco manufacturers, and consumers.

"Retail tobacco dealer" means any person who engages in the business of selling tobacco products in the City to a purchaser for use or consumption and not for resale in any form.

"Retail tobacco manufacturer" means any person who engages in the business of manufacturing cigarettes and/or OTP in the City for sale to a purchaser for use or consumption, and not for resale in any form.

"Sale," "resale," or "selling" means any transfer of ownership or possession, or both, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever for a valuable consideration.

"Smokeless tobacco" means any kind and form of tobacco product not intended to be smoked, including snuff, snus, and chewing tobacco.

"Smoking tobacco" means any kind and form of tobacco product prepared in such manner as to be suitable for smoking, in a pipe or otherwise, including, granulated, plug cut, crimp cut, ready rubbed, cavendish, perique, roll-your-own, shorts, refuse scraps, clippings, cuttings, sweeping of tobacco and loose tobacco.

"Snuff" and "snuff flour" means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

"Snus" means any moist tobacco product that is not intended to be smoked.

"Tobacco product" includes, but is not limited to: cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snus, snuff or, snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweeping of tobacco; and all other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both chewing and smoking.

"Use" means any exercise of right or power, actual or constructive, and shall include, but is not limited to, the receipt, storage, or any keeping or retention for any length of time, but shall not include possession for sale by a retail or wholesale tobacco dealer as defined in this chapter.

"Wholesale tobacco dealer" means any person who engages in the business of selling or supplying cigarettes and/or OTP to any person for resale in the City.

3-49-030 Tax imposed.

(a) A tax at the rates specified in subsection (b) of this section is hereby imposed upon the purchase or use of all OTP within the City. The ultimate incidence of and liability for payment of said tax is to be borne by the consumer of said OTP.

(b) The rate of the tax shall be:

- (1) for smoking tobacco, \$6.60 per ounce or fraction thereof;
- (2) for smokeless tobacco, \$1.80 per ounce or fraction thereof;
- (3) for little cigars, \$0.15 per cigar; and
- (4) for large cigars, \$0.90 per cigar.

(c) The tax hereby imposed shall be in addition to any and all other taxes.

3-49-040 Liability for payment.

(a) The ultimate incidence and liability for payment of the tax is on the purchaser.

(b) Nothing in this chapter shall be construed to impose a tax upon the occupation of wholesale tobacco dealer, retail tobacco manufacturer or retail tobacco dealer.

(c) It shall be a violation of this chapter for a retail tobacco dealer to fail to include the tax imposed herein in the sale price of the OTP or to otherwise absorb such tax.

3-49-050 Collection.

(a) Except as otherwise provided herein, any wholesale tobacco dealer shall collect the tax imposed by this chapter from any purchaser to whom the sale of said OTP is made within the City and shall remit to the department the tax levied by this chapter. Any retail tobacco dealer also shall collect the tax from any consumer to whom the sale of said OTP is made within the City. Any such tax shall be collected as a trustee for and on account of the City. The wholesale tobacco dealer and retail tobacco dealer shall remit the tax and file returns in accordance with Section 3-49-060.

(b) Any wholesale tobacco dealer that shall pay the tax imposed by this chapter shall collect the tax from each retail tobacco dealer in the City to whom the sale of OTP is made, and any such retail tobacco dealer shall in turn then collect the tax from the purchaser of said OTP.

(c) If any retail tobacco dealer located in the City shall receive or otherwise obtain OTP upon which the tax imposed hereby has not been collected by any wholesale tobacco dealer, then the retailer shall collect such tax and remit it directly to the department in accordance with Section 3-49-060.

(d) If a wholesale tobacco dealer sells OTP to a purchaser in the City for use or consumption and not for resale, such wholesale tobacco dealer shall collect the tax imposed herein from such purchaser and remit it to the department in the same manner as sales to a retail tobacco dealer.

(e) If a retail tobacco manufacturer sells OTP to a purchaser in the City for use or consumption and not for resale, such wholesale tobacco dealer shall collect the tax imposed herein from such purchaser and remit it to the department in the same manner as a retail tobacco dealer.

3-49-060 Tax payments and returns.

(a) All tax payments and remittances shall be made in accordance with either Section 3-4-187 (payment of actual tax liabilities) or Section 3-4-188 (payment of estimated taxes) of this Code.

(b) All tax returns shall be filed with the department on an annual basis on or before August 15 of each year, in accordance with Sections 3-4-186 and 3-4-189 of this Code.

3-49-070 Returns and payments required upon implementation of the tax and after future tax rate increases.

(a) The comptroller is authorized to establish by rule the filing date under this Section, which shall be determined based on considerations of administrative efficiency, and shall in no event be later than 24 days after the effective date of this Section. The comptroller shall publish in one or more newspapers of general circulation in the City, and post on the department website, a copy of the rule with the filing date a minimum of 10 days before that date occurs.

(b) On or before the filing date set in accordance with subsection 3-49-070(a), every retail tobacco dealer and manufacturer shall file with the department, on a form prescribed by the comptroller, a tax return reporting the inventory of OTP in the retailer's possession or control, on the effective date of this Section, for sale in the City. The retailer shall include with the tax return any tax due on the inventory of OTP in its control and possession, for sale in the City, for which all applicable tax has not been collected. The retailer shall in turn collect the tax from its retail purchasers.

(c) Every retail tobacco dealer who possesses OTP for sale in the City purchased prior to the effective date of a Chicago OTP tax increase shall file with the department, on a form prescribed by the comptroller, a tax return attesting to the quantities of such OTP in its possession as of the last day prior to the tax increase, and remit to the department the amount of tax due as a result of each rate increase. The retailer shall in turn collect the tax from its retail purchasers. Each such tax return and payment due under this subsection shall be filed and received by the department by the 24th day following the effective date of each tax increase.

(d) Every retail tobacco dealer and manufacturer required to file a tax return under subsection 3-49-070(b) or 3-49-070(c) who does not file such tax return by its due date, or alternatively does not provide all required information on such tax return, or fails to remit all required tax due computed thereon, shall be subject to a penalty of \$100.00 per business location required to be reported on the tax return, in addition to all other penalties and interest that may be due under the Uniform Revenue Procedures Ordinance, Chapter 3-4 of this Code.

(e) If the comptroller determines that a person subject to the penalty in subsection 3-49-070(d) had reasonable cause for paying late, underpaying the applicable tax, or filing a late or incomplete tax return, then the applicable penalty shall be waived.

(f) The comptroller, or his or her designee, may at any time during the statute of limitations outlined in Section 3-4-120 of this Code examine the books and records of any person required to file a tax return under this Section, and may issue a tax determination and assessment to the person per Section 3-4-160 of this Code, if a determination is made that any amount of tax, penalty, or interest is due.

(g) Every person required to file a tax return under subsection 3-49-070(b) or 3-49-079(c) who files a complete tax return by its due date and makes timely payment of the amount computed thereon shall be eligible to retain a commission in the amount of one percent of the tax computed due thereon.

3-49-080 Books and records.

Every person required to collect the tax imposed by this chapter shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transaction that gave rise, or may have given rise, to the tax liability or any exemption that may be claimed. All such books and records shall be kept in the English language and, at all times during business hours of the day, shall be subject to and available for inspection by the department.

3-49-090 Payment of tax required.

The failure of the retail tobacco dealer or manufacturer to collect the tax imposed by this chapter shall not relieve the purchaser of the duty to pay it. If the retail tobacco dealer or manufacturer fails to collect the tax, the purchaser shall be required to pay it directly to the department in the same manner and form as a retail tobacco dealer.

3-49-100 Authority to appoint collection agents.

In furtherance of administering this chapter, the comptroller shall have the authority to appoint one or more persons within or without the City as collection agents for the tax herein imposed. This includes the authority to enter into service agreements with public and private entities, and to perform any and all acts, including the expenditure of funds subject to appropriation therefor, as shall be necessary or advisable in connection with such service agreements, including any renewals thereto.

3-49-110 Exemptions.

(a) The tax imposed by this chapter shall not apply to the extent it would violate the United States Constitution or the Constitution of the State of Illinois.

(b) It shall be presumed that all sales of OTP in the City are subject to tax under this chapter until the contrary is established. The burden of proving that such is not taxable hereunder shall be upon the person so claiming.

3-49-120 Registration.

Every wholesale tobacco dealer that sells OTP to a retailer or purchaser located in the City, and every retail tobacco dealer and manufacturer that sells OTP in the City, must be register with the department within 30 days of effective date of this ordinance, or within 30 days of commencing business, whichever is later.

3-49-130 Supplementary provisions.

Whenever not inconsistent with the provisions of this chapter, or whenever this chapter is silent, the provisions of the Uniform Revenue Procedures Ordinance, Chapter 3-4 of this Code, as amended, shall apply and supplement this chapter.

3-49-140 Rules and regulations.

The comptroller is authorized to adopt, promulgate, and enforce rules and regulations pertaining to the administration and enforcement of this chapter.

3-49-150 Deposit of funds.

All proceeds resulting from the imposition of this tax, including interest and penalties, shall be deposited in the City's corporate fund, and a portion shall be used to fund: (1) an orientation program for incoming ninth graders and at-risk incoming eighth graders in the Chicago Public Schools; (2) smoking and health education for youth, including tobacco cessation programs; and (3) enforcement of the provisions concerning the illegal sale of tobacco products found in Chapter 4-64 of this Code.

3-49-160 Effect of invalidation.

In the event Chapter 3-49 is invalidated by a court of competent jurisdiction or by legislation, the operation, application, and enforcement of Sections 4-64-260 and 4-64-270 shall commence as provided in Section 4-64-250.

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

(Omitted text is not affected by this ordinance)

4-64-190 Furnishing tobacco products or tobacco accessories to minors prohibited.

No person shall sell, give away, barter, exchange or otherwise furnish any tobacco products, tobacco product samples and/or tobacco accessories to any individual who is under 18-21 years of age.

4-64-191. Certain transactions prohibited.

(a) No person shall sell, offer for sale, barter, or expose for sale any 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.

(b) Violations of this section shall be punishable by a fine of not less than \$1,000.00 nor more than ~~\$2,500.00~~ 5,000.00 for the first offense, and not less than \$2,500.00 nor more than ~~\$5,000.00~~ 10,000.00 for each subsequent offense occurring within a period of 24-48 months. Where a violation of this section occurs on a premises licensed for the retail sale of tobacco products, and is committed by any employee or other agent of the retail tobacco licensee, such licensee shall be punishable in the same manner as if said act had been performed by the licensee personally.

(c) In addition to the penalty provided in subsection 4-64-191(b), any person who violates this section shall be punishable by imprisonment for a period not to exceed six months for each offense. For purposes of this subsection, where an act in violation of this section: (1) occurs on a premises licensed for the retail sale of tobacco products, and (2) is committed by an employee or other agent of the retail tobacco licensee; and (3) the licensee (or, if the licensee is

not a natural person, any person who has a substantial ownership or controlling interest in the entity that holds the license) intentionally, knowingly, or recklessly allows the violation to occur, the licensee or such other person shall be punishable in the same manner as if said act had been performed by him or her personally. As used in this subsection, "substantial ownership or controlling interest" means ownership of 25% or more of the entity, or, if the entity is a corporation, ownership of 25% or more of the voting shares of stock; or occupation as a principal officer, member of the board of directors, or manager of the entity.

(d) On June 1 of each year, beginning in 2017, the commissioner shall provide to the City Council Committee on License and Consumer Protection a report describing enforcement of this section by the department of business affairs and consumer protection during the previous 12 months.

(Omitted text is not affected by this ordinance)

4-64-200 ~~Purchase or possession of~~ Use of improper identification to purchase tobacco products or tobacco accessories by minors prohibited.

It shall be unlawful:

(a) For any individual under the age of ~~18-21~~ years ~~to purchase tobacco products, tobacco product samples or tobacco accessories, or to misrepresent the individual's his or her identity or age, or to use any false or altered identification,~~ for the purpose of purchasing tobacco products, tobacco product samples, or tobacco accessories; or

~~(b) For any individual under the age of 18 years to possess or to accept delivery of any tobacco product, tobacco product samples or tobacco accessories, except (i) in the presence of and with the knowledge and consent of the individual's parent or legal guardian, while on private property that is not open to the public, or (ii) at the direction of the individual's employer when required in the performance of the individual's employment duties; or~~

~~(c)~~ (b) For any person to give any individual under the age of ~~18-21~~ years any identification card not duly issued to such individual, for the purpose of buying tobacco products, tobacco product samples, or tobacco accessories.

~~Any minor who illegally possesses any tobacco product, tobacco product sample or tobacco accessory shall be subject to a fine of \$25.00 for the first offense and a fine of not less than \$50.00 for each subsequent offense.~~

(Omitted text is not affected by this ordinance)

4-64-210 Posting of warning to minors.

Any person who sells, gives away or distributes tobacco products or accessories shall display a printed card which shall state:

Warning

It Is A Violation Of The Law For Cigarettes Or Other Tobacco Products Or Tobacco Accessories To Be Sold To Any Person Under The Age Of 18-21. Any Person Who Violates This Law Is Subject To A Fine And Possible Imprisonment.

(Omitted text is not affected by this ordinance)

4-64-332 Underage tobacco violations – Commissioner of business affairs and consumer protection duties.

(Omitted text is not affected by this ordinance)

(b) The commissioner of business affairs and consumer protection is authorized to establish a program of testing the sales practices of licensed tobacco dealers, to determine whether licensees are selling tobacco products to minors. The program shall include the use of persons under the age of ~~18-21~~ as purchasers of tobacco products, in accordance with procedures established by the commissioner of business affairs and consumer protection. No person under the age of ~~18-21~~ who purchases or attempts to purchase tobacco products as part of the program shall be charged with a violation of Section 4-64-200.

(Omitted text is not affected by this ordinance)

SECTION 4. Chapter 4-64 of the Municipal Code of Chicago is hereby amended by adding a new Article III and a new Section 4-64-338, as follows

ARTICLE III. PRICE FLOORS, COUPON PROHIBITION, AND MINIMUM PACKAGE SIZES FOR TOBACCO PRODUCTS (4-64-250 et seq.)

4-64-250 Stay of operation, application, and enforcement of certain provisions.

(a) The operation, application, and enforcement of Sections 4-64-260 and 4-64-270 is hereby stayed.

(b) In the event Chapter 3-49 of this Code is invalidated by a court of competent jurisdiction or by legislation, the operation, application, and enforcement of Sections 4-64-260 and 4-64-270 shall commence on the 90th day following the date of the final judicial determination or the effective date of the legislation, as applicable.

4-64-255 Definitions.

As used in this article:

“Cigarette” has the meaning ascribed to that term in Section 3-42-010 of this Code.

“Large cigar” means any roll of tobacco wrapped in leaf tobacco or any substance containing tobacco and weighing at least four pounds per one thousand units.

“Little cigar” means any roll of tobacco, other than a cigarette, wrapped in leaf tobacco or any substance containing tobacco and weighing less than four pounds per one thousand units.

“Package” means the original packet, box, tin, or other container used to contain and to convey cigarettes or other tobacco products to the consumer.

“Price reduction instrument” means any coupon, voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or any other form, used

for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.

"Price floor" means the minimum price, including all applicable taxes, for which one tobacco product or package of tobacco products may be sold by a retail tobacco dealer.

"Smokeless tobacco" means any kind and form of tobacco product not intended to be smoked, including snuff, snus, and chewing tobacco.

"Smoking tobacco" means any kind and form of tobacco product prepared in such manner as to be suitable for smoking, in a pipe or otherwise, including, granulated, plug cut, crimp cut, ready rubbed, cavendish, perique, roll-your-own, shorts, refuse scraps, clippings, cuttings, sweeping of tobacco and loose tobacco.

4-64-260 Price floors for tobacco products.

(a) The following price floors shall apply to sales in the City of Chicago:

(1) The price floor for cigarettes shall be \$11.50 per package, provided that this floor may be modified pursuant to subsection 4-64-260(b).

(2) The price floor for little cigars shall be shall be \$11.50 per package, provided that this floor may be modified pursuant to subsection 4-64-260(b).

(3) The price floor for large cigars shall be \$1.74 per cigar, provided that this floor may be modified pursuant to subsection 4-64-260(b).

(4) The price floor for smoking tobacco shall be \$11.50 per 0.65 ounce pouch (\$17.70 per ounce), provided that this floor may be modified pursuant to subsection 4-64-260(b).

(5) The price floor for smokeless tobacco shall be \$4.00 per ounce, provided that this floor may be modified pursuant to subsection 4-64-260(b).

(b) The commissioner of health, with the approval of the comptroller, may amend by rule the price floor applicable to a category of tobacco product in an amount proportional to the change, if any, in the Chicago-Gary-Kenosha area consumer price index. In the event the commissioner amends a price floor, the amended price floor shall not go into effect until 90 days after it is announced via rule promulgated by the department of public health.

(c) No person shall sell or offer for sale a tobacco product to a consumer for a price less than the price floor. A retail tobacco dealer shall prominently display the price of all tobacco products at the point of display or at the point of sale.

4-64-265 Coupons prohibited.

No person shall:

(a) honor or accept a price reduction instrument in any transaction related to the sale of a tobacco product to a consumer;

(b) sell or offer for sale a tobacco product to a consumer through any multi-package discount, or otherwise provide to a consumer any tobacco product for less than the listed price in exchange for the purchase of any other tobacco product by the consumer;

(c) sell, offer for sale, or otherwise provide any product other than a tobacco product to a consumer for less than the listed price in exchange for the purchase of a tobacco product by the consumer; or

(d) sell, offer for sale, or otherwise provide tobacco products to a consumer for less than the listed price.

4-64-270 Minimum package sizes for tobacco products.

(a) Each tobacco product sold or offered for sale by a retail tobacco dealer shall be sold or offered for sale in the package provided by the manufacturer, importer, or packager.

(b) No retail tobacco dealer shall sell or offer for sale a large cigar unless it is sold in a package of at least four large cigars, provided that this subsection shall not apply to any individual large cigar with a listed price of more than \$3.00. The commissioner of health, with the approval of the comptroller, may amend by rule this minimum listed price in proportion to the change, if any, in the Chicago-Gary-Kenosha area consumer price index. In the event the commissioner does so, the amended minimum listed price shall not go into effect until 90 days after it is announced via rule promulgated by the department of public health.

(c) No retail tobacco dealer shall sell or offer for sale a little cigar unless it is sold in a package of at least 20 little cigars.

4-64-280 Enforcement – Regulations.

The department of business affairs and consumer protection shall enforce this article. The commissioners of health and business affairs and consumer protection, acting jointly or individually, may promulgate any rules necessary to administer this article.

(Omitted text is not affected by this ordinance)

4-64-338 Price floor, coupon prohibition, and package size violations.

Any person convicted of a first offense for violating Article III this chapter, or any rule or regulation promulgated pursuant to that article, shall be punished by a fine of not less than \$1,000.00 nor more than \$2,000.00. Any person convicted of a second offense within a five-year period for violating Article III this chapter, or any rule or regulation promulgated pursuant to that article, shall be punished for such offense by a fine of not less than \$2,500.00 nor more than \$3,500.00. Any person convicted of a third offense within a five-year period for violating Article III this chapter, or any rule or regulation promulgated pursuant to that article, shall be punished for such offense by a fine of not less than \$5,000.00 nor more than \$7,500.00. For purposes of this section, multiple violations occurring on the same date shall be deemed a single violation.

(Omitted text is not affected by this ordinance)

SECTION 5. Chapter 4-64 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

(Omitted text is not affected by this ordinance)

4-64-240 Revocation of licenses.

(a) If a person commits any combination of three or more violations within any 24-month period of Sections 3-42-020, 3-42-025, 3-42-060, 3-42-100, 4-64-132, 4-64-150, 4-64-180, 4-64-190, 4-64-191, 4-64-210, and 4-64-220, 4-64-260, 4-64-265, and 4-64-270, the commissioner shall revoke that person's licenses. If a person commits two or more violations within any 48-month period of Section 4-64-191, the commissioner shall revoke that person's licenses. For purposes of this section: (1) "licenses" includes any and all licenses issued by any officer, department, or agency of the City of Chicago required for retail or other business operations at the location at which the violations occurred, and includes, but is not limited to, retail tobacco licenses; (2) multiple violations occurring on the same date shall be deemed a single violation; and (3) the term "violation" means any final disposition against the licensee on a charge brought pursuant to one of the Code provisions listed above, including, but not limited to, any finding of liability after adjudication on the merits, any default finding of liability, any uncontested finding of liability, any negotiated pre-hearing settlement of the charge, and any voluntary payment of the fine corresponding to the charge. A person subject to revocation pursuant to this subsection shall be entitled to the process described in Section 4-4-280, with the condition that any revocation hearing shall be limited to the issue of whether the licensee's record accurately reflects the existence of a sufficient number of violations to support the revocation decision; the licensee shall not be permitted to challenge the violations themselves, nor any underlying facts asserted or determined therein.

(Omitted text is unaffected by this ordinance)

4-64-245 Nonrenewal of licenses.

(a) If a retail tobacco licensee commits any combination of three or more violations within any 24-month period of Sections 3-42-020, 3-42-025, 3-42-060, 3-42-100, 4-64-132, 4-64-150, 4-64-180, 4-64-190, 4-64-191, 4-64-210, and 4-64-220, 4-64-260, 4-64-265, and 4-64-270, the licensee shall be subject to nonrenewal of the license. If a person commits two or more violations within any 48-month period of Section 4-64-191, the licensee shall be subject to nonrenewal of the license. The commissioner may decline to renew such license, subject to the procedure described in subsection 4-64-245(b). For purposes of this section, multiple violations occurring on the same date shall be deemed a single violation, and the term "violation" means any final disposition against the licensee on a charge brought pursuant to one of the Code provisions listed above, including, but not limited to, any finding of liability after adjudication on the merits of the charge, any default finding of liability, any uncontested finding of liability, any negotiated pre-hearing settlement of the charge, and any voluntary payment of the fine corresponding to the charge.

(Omitted text is unaffected by this ordinance)

SECTION 6. The provisions of this ordinance are declared to be separate and severable. The invalidity of any provision of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

SECTION 7. Following passage and publication, Section 2 and Section 3 of this ordinance shall take effect on July 1, 2016. Section 4 and Section 5 of this ordinance shall take effect 180 days after passage and publication. The remainder of this ordinance shall take effect upon passage and publication.

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CHICAGO February 10, 2016

To the President and Members of the City Council:

Your Committee on Finance having had under consideration

A substitute ordinance concerning the authority to amend Title 3 and Chapter 4-64 of the Municipal Code of Chicago concerning a tax on non-cigarette tobacco products and associated tobacco-related regulations.

O2016-105

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

This recommendation was concurred in by _____ (a viva voce vote) of members of the committee with _____ dissenting vote(s).

Roll Call
22-9

Aldermen Dowell (3), Hairston (5), O'Shea (19), Cochran (20), Zalewski (23), Mitts (37), Sposato (38), Reilly (42), and Tunney (44) vote no.

Respectfully submitted

(signed) [Handwritten Signature]

Chairman