



City of Chicago



SO2022-1756

Office of the City Clerk

Document Tracking Sheet

Meeting Date:

5/25/2022

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Reboyras (30)
Scott, Jr. (24)
Taliaferro (29)
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Sadlowski Garza (10)
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Ramirez-Rosa (35)
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Moore (17)
Dowell (3)
Silverstein (50)
Ordinance

Type:

Title:

Amendment of Municipal Code Chapter 4-64 regarding requirements for prohibiting issuance of additional retail tobacco dealer licenses

Committee(s) Assignment:

Committee on License and Consumer Protection

Chicago City Council, January 18, 2023

To the President and Members of the City Council:

Your Committee on License and Consumer Protection, having under consideration a substitute ordinance introduced by **Alderman Napolitano and others** (which was referred on **May 25, 2022**):

to amend the Municipal Code of Chicago regarding requirements for prohibiting issuance of additional retail tobacco licenses,

begs leave to recommend that Your Honorable Body *p a s s* the substitute ordinance which is transmitted herewith.

This recommendation was concurred in by members of the License Committee on **January 9, 2023**.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Emma Mitts", written over a horizontal line.

EMMA MITTS
CHAIRMAN, COMMITTEE ON
LICENSE AND CONSUMER
PROTECTION

1/6/2023

02022-1756

SUBSTITUTE
ORDINANCE

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

SECTION 1. Chapter 4-64 of the Municipal Code of Chicago is hereby amended by adding the language underscored, and by deleting the language struck through, as follows:

4-64-100 Definitions.

As used in this Chapter 4-64, unless the context clearly indicates that another meaning is intended:

(Omitted text is unaffected by this ordinance)

“Electronic cigarette(s)” shall have the meaning ascribed to that term in Section 7-32-010.

“Electronic cigarette accessories” means any cartridges, cartomizers, clearomizers, tips, atomizers, electronic smoking device batteries, electronic cigarette chargers, and any other item specifically designed for the preparation, charging, or use of electronic cigarettes.

(Omitted text is unaffected by this ordinance)

“Large cigar” means any cigar weighing at least four pounds per one thousand units.

“Liquid nicotine product” means: (1) any electronic cigarette (i) containing liquid, gel, salt-based nicotine liquid, or other solution that contains nicotine, or (ii) packaged with a liquid, gel, salt-based nicotine liquid, or other solution that contains nicotine; or (2) any other container of liquid, gel, salt, salt-based nicotine liquid, or other solution where the liquid, gel, salt-based nicotine liquid, or other solution (i) contains nicotine and (ii) is intended to be utilized in an electronic cigarette. The term “liquid nicotine product” does not include any product regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 301, et seq.

“Little cigar” means any cigar weighing less than four pounds per one thousand units.

(Omitted text is unaffected by this ordinance)

“Retail tobacco dealer” means any person selling, offering for sale, exposing for sale or keeping with the intention of selling or exchanging at retail, tobacco products, electronic cigarette accessories, or tobacco accessories in the City.

“Retail vape store” means a retail establishment that derives more than 20 percent of its gross revenue from the sale, in any combination, of electronic cigarettes, liquid nicotine products, or electronic cigarette accessories.

“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.

4-64-210 License application.

Additional information – Required when. In addition to the requirements set forth in Section 4-4-050, an application for, and, if requested, a renewal of, a tobacco license under this Chapter shall be accompanied by the following information:

(1) a statement identifying the covered business activity in which the applicant intends to engage;

(2) a statement identifying the location of the premises where the covered business activity will take place, and a description of those premises;

(3) a statement whether the applicant or licensee, as applicable, intends to or does sell, offer for sale, or keep with the intention of selling, at retail, any cigarettes, electronic cigarettes, liquid nicotine products, or cigarette papers;

(4) a statement whether the applicant or licensee, as applicable, intends to or does sell, offer for sale, expose for sale or display tobacco accessories, electronic cigarettes, liquid nicotine products, or electronic cigarette accessories on the licensed premises. If so, the following additional information shall be required:

(A) the percentage of total shelf space at the licensed location that is or is anticipated to be used to display tobacco accessories, electronic cigarettes, liquid nicotine products, or electronic cigarette accessories; and

(B) the percentage of total sales that is, or is anticipated to be, derived from the sale of tobacco accessories, electronic cigarettes, liquid nicotine products, or electronic cigarette accessories at the licensed location;

(Omitted text is unaffected by this ordinance)

4-64-500 Additional legal duties – Retail tobacco dealers.

In addition to the applicable legal duties set forth Chapter 4-4 of this Code and in Article III of this Chapter, each licensee engaged in the business of retail tobacco dealer shall have the following duties:

(Omitted text is unaffected by this ordinance)

(5) Sales data – Required.

(i) The licensee must keep sales data, by product, on the percentage, dollar value, and number of units sold for each of the following products: loose tobacco, cigarettes, cigarillos, cigars, pipes, other smoking devices and accessories, hookahs and related products, electronic cigarettes, liquid nicotine products, and electronic cigarette accessories.

(ii) Such records shall be open for inspection, at all reasonable times, by the Commissioner or Comptroller or the Commissioner of Public Health or their respective designees or by any duly authorized member of the Department of Police, Department of Business Affairs and Consumer Protection, Department of Finance, or Department of Public Health.

(iii) The failure by a licensee or such licensee's agent to comply with this subsection (5) shall subject the licensee to the applicable penalty set forth in Section 4-64-900.

4-64-510 Additional prohibited acts – Retail tobacco dealers.

In addition to the applicable prohibited acts set forth in Chapter 4-4 of this Code and in Article III of this Chapter, it shall be unlawful for any ~~licensee~~ person engaged in the business of retail tobacco dealer to:

(Omitted text is unaffected by this ordinance)

4-64-515 Prohibited locations – Retail tobacco dealers.

(a) No ~~licensee~~ person engaged in the business of retail tobacco dealer shall sell, give away, barter, exchange or otherwise deal in tobacco products, ~~or tobacco accessories, or electronic cigarette accessories~~ at any location that has a property line within 100 feet of the property line of any building or other location used primarily as a school, child care facility, or for the education or recreation of children under 18 years of age.

(b) No ~~licensee~~ person engaged in the business of retail tobacco dealer shall sell, give away, barter, exchange, or otherwise deal in flavored tobacco products, ~~or tobacco accessories, or electronic cigarette accessories for such products~~ at any location that has a property line within 500 feet of the property line of any public, private, or parochial secondary school located in the City of Chicago. This subsection (b) shall not apply to retail tobacco stores. For purposes of this subsection, "retail tobacco store" has the meaning ascribed to that term in Section 7-32-010.

(c) The Commissioner of Business Affairs and Consumer Protection shall not issue any new tobacco license to engage in the business of retail tobacco dealer at any location that has a property line within 500 feet of the property line of any public, private, or parochial secondary school located in the City of Chicago. This subsection (c) shall not apply to: (1) renewals of licenses existing as of December 31, 2016, or (2) applications for a new tobacco license to engage in the business of retail tobacco dealer pursuant to a purchase of a retail tobacco business at a location that holds such a license on or after December 31, 2016.

(d) Except for businesses holding a valid retail tobacco dealer license on February 4, 2023, the Commissioner of Business Affairs and Consumer Protection shall not issue any new retail tobacco dealer license for a retail tobacco store, as defined by Section 7-32-010, that has a property line within 1,000 feet of the property line of any existing retail tobacco store, as defined by Section 7-32-010. This section shall not apply to: (1) renewals of licenses existing as of February 4, 2023; or (2) applications for a new retail tobacco dealer license pursuant to a purchase of a retail tobacco business at a location that holds such a license on or after February 4, 2023.

(e) Except for businesses holding a valid retail tobacco dealer license on February 4, 2023, the Commissioner of Business Affairs and Consumer Protection shall not issue any new retail tobacco dealer license for a retail vape store that has a property line within 1,000 feet of the property line of any existing licensed retail tobacco dealer. This section shall not apply to: (1) renewals of licenses existing as of February 4, 2023; or (2) applications for a new retail tobacco dealer license pursuant to a purchase of a retail tobacco business at a location that holds such a license on or after February 4, 2023.

~~(d)~~ (f) The Commissioner of Business Affairs and Consumer Protection and the Commissioner of Health are hereby authorized to promulgate rules necessary or appropriate to enforce this section.

(Omitted text is unaffected by this ordinance)

ARTICLE IX. ENFORCEMENT – PENALTIES (4-64-900 et seq.)

A. FINES (4-64-900 et seq.)

4-64-900 Fines – Specific offenses.

(a) Alleged violations of this Chapter 4-64 shall be adjudicated by the Circuit Court of Cook County, or by the Department of Administrative Hearings, or by the Commissioner. Penalties shall be as prescribed in this section, notwithstanding any other general penalty provision in this Code.

(b) Except as otherwise provided in subsection (c) of this section, and in addition to any other penalty provided by law, any person found liable of violating Sections 3-42-060, 3-42-100, 4-64-200(a), 4-64-300, 4-64-310, 4-64-315, 4-64-340, 4-64-400(1), 4-64-500(1), 4-64-500(2), 4-64-500(3)(i), 4-64-500(5), 4-64-510(1), 4-64-515, 4-64-520, 4-64-710 or 4-64-820(a) or any rule duly promulgated thereunder shall be punished by a fine of not less than \$1,000.00 nor more than \$5,000.00 each offense. Each day that a violation continues shall constitute a separate and distinct offense.

(c) Any person found liable of violating Section 4-64-500(3)(ii) through (3)(iv), inclusive, shall be punished by a fine of not less than \$2,000.00 nor more than \$10,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

4-64-910 Fines – Underage tobacco violations.

(a) *Violations of Section 4-64-345.* Any person who violates Section 4-64-345 shall be punished by a fine of not less than ~~\$1,000.00~~ \$2,000.00 nor more than ~~\$5,000.00~~ \$10,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

(b) *Violations of Section 4-64-360 and Section 4-64-500(4)(i).* Any person who violates Sections 4-64-360 or 4-64-500(4)(i) shall be punished by a fine of not less than \$200.00 nor more than \$500.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

G. B. REVOCATION* (4-64-930 et seq.)

(Omitted text is unaffected by this ordinance)

D. C. NON-RENEWAL (4-64-940 et seq.)

(Omitted text is unaffected by this ordinance)

E. D. OTHER ENFORCEMENT PROVISIONS (4-64-950 et seq.)

(Omitted text is unaffected by this ordinance)

F. E. RULES (4-64-960 et seq.)

(Omitted text is unaffected by this ordinance)

SECTION 2. Section 7-32-035 of the Municipal Code of Chicago is hereby amended by adding the language underscored, and by deleting the language struck through, 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~~ prohibited in any retail tobacco store.

(Omitted text is unaffected by this ordinance)

SECTION 3. This ordinance shall be in full force and effect 10 days following passage and publication, except for the amendment to Section 4-64-500 which shall be in full force and effect on June 1, 2023.

Anthony V. Napolitano
Alderman, 41st Ward



CITY OF CHICAGO

OFFICE OF THE CITY CLERK
ANNA M. VALENCIA

Chicago City Council Co-Sponsor Form

Document No.: 02022-1756

Subject: Amend Municipal Code regarding requirements for prohibiting issuance of additional retail tobacco license.

Adding Co-Sponsor(s)

Please ADD Co-Sponsor(s) Shown Below – (Principal Sponsor's Consent Required)

Alderman PAT DOWELL *Pat Dowell* 17RD (Ward)
(Signature)

Alderman _____ (Ward)
(Signature)

Date Filed: JUNE 17, 2022 Principal Sponsor: *[Signature]*
(Signature)

Removing Co-Sponsor(s)

Please REMOVE Co-Sponsor(s) Below – (Principal Sponsor's Consent NOT Required)

Alderman _____ (Ward)
(Signature)

Alderman _____ (Ward)
(Signature)

Date Filed: _____

- Final Copies To Be Filed With:
- Chairman of Committee to which legislation was referred
 - City Clerk