



City of Chicago



O2018-7371

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	9/20/2018
Sponsor(s):	Dept./Agency
Type:	Ordinance
Title:	Amendment of Municipal Code Chapters 4-64 and 3-47 regarding taxes on liquid nicotine products and placement of products containing nicotine in retail establishments
Committee(s) Assignment:	Committee on Finance

ORDINANCE

WHEREAS, The City of Chicago (“Chicago”) is a home rule municipality as described in Section 6(a), Article VII 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; and

WHEREAS, Chicago has an obligation to safeguard the health, safety, and welfare of its residents; and

WHEREAS, Chicago has a substantial government interest in reducing youth and adult tobacco and nicotine use, and otherwise protecting and promoting public health; and

WHEREAS, Tobacco use is the leading cause of preventable disease and death in the United States; and

WHEREAS, The majority of tobacco use initiation occurs in youth and young adulthood; and

WHEREAS, Nationally, e-cigarettes have been the most commonly used tobacco product among middle and high school students since 2014; and

WHEREAS, Nationally in 2017, 11.7% of high schoolers and 3.3% of middle schoolers reported current use of e-cigarettes; and

WHEREAS, Nationally, one in five high school students and one in 18 middle school students use any tobacco product; and

WHEREAS, Nationally e-cigarette use among youth increased from 1.5% in 2011 to 11.7% in 2017; and

WHEREAS, Tobacco use among Chicago youth is unacceptably high, particularly the use of other tobacco products. For example:

- Although teen cigarette use is at an all-time low of 6%, more teens now use cigars and e-cigarettes than smoke cigarettes - 7.2% of Chicago youth used cigars and 6.6% used e-cigarettes in 2017, and
- 14.5% of high school students reported current use of any tobacco product; and

WHEREAS, Nearly all tobacco use begins during youth and adulthood; and

WHEREAS, The U.S. Surgeon General in 2016 has issued a “Call to Action on e-cigarettes, specifically focusing on youth and young adults”; and

WHEREAS, U.S. Food and Drug Administration Commissioner Scott Gottlieb has stated that “e-cigarette use among youth has hit epidemic proportions”; and

WHEREAS, The U.S. Surgeon General has stated that the use of products containing nicotine in any form by youth is unsafe and can lead to nicotine addiction; and

WHEREAS, The 2018 report by the National Academies of Science, Engineering, and Medicine concluded that there is moderate evidence that e-cigarette use increases the frequency of subsequent combustible tobacco cigarettes among youth and young adults; and

WHEREAS, Exposure to nicotine during adolescence has lasting negative impacts on brain development, affecting addiction, cognition, neural connectivity, and behavioral health. Adolescents can become dependent upon nicotine very soon after starting to use tobacco; and

WHEREAS, 63% of youth users of products created by Juul Labs did not know that their product always contains nicotine; and

WHEREAS, Only a quarter of youth who report vaping, report vaping nicotine despite data from Nielsen indicating that 99% of e-cigarette products sold in 2015 contained nicotine; and

WHEREAS, Less than one-half of youth reported a belief that e-cigarettes are harmful to their health and less than two-thirds report a belief that e-cigarettes can be addictive; and

WHEREAS, Upon systematic review of the science, the Community Preventive Services Task Force recommends increasing the unit price of tobacco products based on strong evidence of effectiveness in reducing tobacco use; and

WHEREAS, The U.S. Surgeon General has called raising tobacco prices “one of the most effective tobacco control interventions”; and

WHEREAS, The Centers for Disease Control and Prevention (CDC) recommends increasing the unit price of tobacco products to prevent tobacco use among youth; and

WHEREAS, CDC’s Best Practices User Guide on Health Equity in Tobacco Prevention and Control states, “evidence also shows that increasing the price of tobacco products can reduce tobacco-related disparities among different income groups and may reduce disparities among different racial and ethnic groups”; and

WHEREAS, Raising the price of tobacco products prevents initiation, reduces consumption, encourages cessation, and prevents relapse; and

WHEREAS, Youth are especially sensitive to changes in price, pricing policies reduce the likelihood that youth will start smoking or become daily smokers; and

WHEREAS, Research shows increasing e-cigarette prices are likely to reduce e-cigarette consumption among youth; and

WHEREAS, The tobacco industry has a long history of targeted marketing toward low income and minority populations; and

WHEREAS, The tobacco industry currently spends the majority of its marketing budget in the retail environment; and

WHEREAS, Availability, advertising, promotion, and marketing of tobacco products in the retail environment increase youth and adult tobacco use and impulse buys; and

WHEREAS, Point-of-sale tobacco advertising encourages youth to try cigarettes and non-cigarette tobacco products, and can persuade youth who are already experimenting with tobacco products to progress to regular use; and

WHEREAS, Research demonstrates a strong association between point-of-sale displays and advertising with increased smoking initiation and decreased cessation; and

WHEREAS, Research demonstrates a strong association between youth tobacco access behaviors and tobacco use behaviors; and

WHEREAS, Policy, systems, and environmental changes to reduce youth access to tobacco are evidence-based strategies to reduce youth tobacco use; and

WHEREAS, The CDC and World Health Organization recommend that tobacco control programs implement policies to reduce targeted marketing of tobacco products among vulnerable populations, including policies to restrict product placement; now, therefore,

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

SECTION 1. The foregoing recitals are adopted and incorporated into and made a part of this Ordinance.

SECTION 2. Section 4-64-510 of the Municipal Code of Chicago is hereby amended by deleting the struck-through language and inserting the underscored language, as follows:

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 engaged in the business of retail tobacco dealer to:

(1) Use a self-service display or cigarette vending machine, as defined in Section 4-64-100.

(2) Display any tobacco product or tobacco accessories, as defined in Section 4-64-100, or any electronic cigarette or liquid nicotine product, as defined in Section 3-47-020, or other liquid, gel, or other solution intended to be used in an electronic cigarette, except: (i) behind a retail sales counter; and (ii) accessible only to the licensee or his agent or employee. This paragraph (2) shall not apply to a retail tobacco store, as defined in Section 7-32-010.

~~(2)~~(3) Violate the Illinois Drug Paraphernalia Control Act.

~~(3)~~(4) Purchase cigarettes from any person other than a wholesale tobacco dealer.

~~(4)~~(5) Purchase cigarettes from any wholesale tobacco dealer within the City that is not properly licensed under this Chapter to engage in the business of wholesale tobacco dealer.

SECTION 3. Chapter 3-47 of the Municipal Code of Chicago is hereby amended by deleting the struck-through language and inserting the underscored language, as follows:

3-47-020 Definitions.

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

(Omitted text is unaffected by this ordinance)

"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; and (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.*

(Omitted text is unaffected by this ordinance)

3-47-030 Tax imposed.

A tax is hereby imposed on the retail sale of liquid nicotine products in the City. This tax shall be paid by the purchaser, and nothing in this chapter shall be construed to impose a tax on the occupation of retail or wholesale liquid nicotine product dealer. The tax shall be imposed at a rate of ~~\$0.80~~ \$1.50 per product unit, plus an additional ~~\$0.55~~ \$1.20 per fluid milliliter of consumable liquid, gel, salt-based nicotine liquid, or other solution contained in the product.

3-47-040 Liability for payment.

The ultimate incidence and liability for payment of the tax imposed by this chapter is to be borne by the purchaser of liquid nicotine product. It shall be a violation of this chapter for a retail liquid nicotine product dealer to fail to include the tax imposed herein in the sale price of the liquid nicotine product, ~~or to otherwise absorb such tax.~~

3-47-050 Collection.

(Omitted text is unaffected by this ordinance)

E. Every person required to collect the tax imposed by this chapter shall secure the payment of such tax when collecting the sale price of the liquid nicotine product upon which the tax is applied.

SECTION 4. This ordinance shall take full force and effect upon passage and approval.



DEPARTMENT OF PUBLIC HEALTH
CITY OF CHICAGO

September 20, 2018

TO THE HONORABLE, THE CHAIRMAN AND
MEMBERS OF THE CITY COUNCIL COMMITTEE ON
FINANCE

Ladies and Gentlemen:

I transmit herewith an ordinance amending the Municipal Code regarding taxes on liquid nicotine products and placement of products containing nicotine in retail establishments.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Julie Morita, MD
Commissioner
Chicago Department of Public Health

(A1)

CHICAGO September 20, 2018

To the President and Members of the City Council:

Your Committee on Finance having had under consideration a proposed ordinance concerning the authority to amend Chapters 4-64 and 3-47 of the Municipal Code of Chicago regarding liquid nicotine products.

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

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

Roll Call 23-3

Sposato / Reilly / Cochran

Respectfully submitted

voted
NO

(signed) [Signature]

Chairman