

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. 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 determined that establishing price floors for tobacco products will help address the persistent availability of low-priced cigarettes and other tobacco products in Chicago; 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:

"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.

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

"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.

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

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

"Little cigar" means any cigar 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.

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"Other Tobacco Products" ("OTP") means cigars, pipe tobacco, smokeless tobacco, and smoking tobacco. 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" means any 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 traditional pipe. For the purposes of this article, the term "pipe tobacco" shall not include tobacco typically used in a water pipe, such as a hookah.

"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, or exchange or barter, conditional or otherwise, in any manner and 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, snuff flour, snus, and chewing tobacco.

"Smoking tobacco" means any 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 for making cigarettes or cigars, or for use as wrappers thereof, or for use in a water pipe such as a hookah. For the purposes of this article, the term "smoking tobacco" shall not include pipe tobacco, as that term is defined in this section.

"Use" means any exercise of right or power, actual or constructive, including, but not limited to, the receipt, storage, or any keeping or retention for any length of time, but not including 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.

b) The rate of the tax shall be:

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- 1) for smoking tobacco, \$1.80 per ounce;
- 2) for smokeless tobacco, \$1.80 per ounce;
- 3) for pipe tobacco, \$0.60 per ounce;
- 4) for little cigars, \$0.20 per cigar; and
- 5) for large cigars, \$0.20 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 of and liability for payment of the tax imposed by this chapter is to be borne by the consumer.

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 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.

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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 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.

3-49-080 Payment of tax required.

The failure of a 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.

3-49-090 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.

3-49-100 Exemptions-fa) 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.

3-49-110 Registration.

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

3-49-120 Supplementary provisions.

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Whenever consistent 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.

3-49-130 Rules and regulations.

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

3-49-140 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, including smoking and health education, and tobacco cessation programs: and (2) enhanced police services in the City, including, but not limited to, hiring additional police officers.

3 49-150 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 at retail or otherwise for consumption to any individual who is under 4&21 years of age. Nothing in this chapter shall be deemed to prohibit a wholesale or retail tobacco licensee, or an employee of a wholesale or retail tobacco licensee, who is at least 18 years old from engaging in the legal sale of tobacco products and tobacco accessories.

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, with the exception that this prohibition shall not apply to cigars or pipe tobacco. 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) 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 48-21 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~~

fc)(b) For any person to give any individual under the age of 48-21 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 48-21. 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 48-21 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 48-21 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 staved.
- 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:

"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 article), and includes cheroots and stogies.

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

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

"Little cigar" means any cigar 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.

"Pipe tobacco" means any 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 traditional pipe. For the purposes of this article, the term "pipe tobacco" shall not include tobacco typically used in a water pipe, such as a hookah.

"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 a 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 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 for making cigarettes or cigars, or for use as wrappers thereof, or for use in a water pipe such as a hookah. For the purposes of this article, the term "smoking tobacco" shall not include pipe tobacco, as that term is defined in this section.

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 \$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 \$1.36 per cigar, provided that this floor may be modified pursuant to subsection 4-64-260(b).

4) The price floor for pipe tobacco shall be \$4.56 per ounce, provided that this floor may be modified pursuant to subsection 4-64-260(b).

5) The price floor for smoking tobacco shall be \$11.29 per ounce, provided that this floor may be modified pursuant to subsection 4-64-260(b).

6) The price floor for smokeless tobacco shall be \$4.94 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.

4-64-265 Coupons prohibited.

No person shall:

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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 a tobacco product for less than the listed price in exchange for the purchase

of another tobacco product by the consumer, with the exception that this prohibition shall not apply to large cigars or pipe tobacco, which may be sold at a discounted rate equal to or in excess of the applicable price floor, if any, set by the City; or

c) sell, offer for sale, or otherwise provide to a consumer any tobacco products, other than large cigars or pipe tobacco, for less than the listed price.

4-64-270 Minimum package sizes for little cigars.

No retail tobacco dealer shall sell or offer for sale a little cigar unless it is sold in a package of at least 10 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, A 64 191, 4-64-210, a^d-4-64-220, 4-64-260. 4-64-265, and 4-64-270, the

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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, 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; provided, however, that the tax imposed by Section 2 shall not apply to OTP that is in the possession of a retailer as of 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.