



Office of the City Clerk

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Legislation Details (With Text)

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Final action: 12/14/2016
Title: Amendment of Municipal Code Chapters 3-42 and 4-64 regarding retail tobacco dealers
Sponsors: Burke, Edward M., Thompson, Patrick D., O'Connor, Patrick, Sawyer, Roderick T., Hairston, Leslie A.
Indexes: Ch. 42 Cigarette Tax, Ch. 64 Tobacco Dealers
Attachments: 1. SO2016-9123.pdf

Table with 5 columns: Date, Ver., Action By, Action, Result. Rows show actions by City Council and Committee on Finance on 12/14/2016 and 12/12/2016.

SUBSTITUTE ORDINANCE AS AMENDED

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 a new Section 4-64-175 underscored as follows:

4-64-175. Restrictions on hiring of persons under 21 years of age.

- (a) The holder of a valid retail tobacco dealer license may engage, employ or permit a person under 21 years of age to work on the licensed premises, if the person under 21 years of age has no duties relating to the sale, dispensing, service or delivery of tobacco products on the premises.
b) A licensee who engages, employs or permits a person under 21 years of age to work pursuant to subsection (a) of this section shall not assign or permit that person to perform any duties or acts relating to the sale, dispensing, service or delivery of tobacco products on the premises.
c) A licensee who engages, employs or permits a person under 21 years of age to work as allowed in subsection (a) of this Section 4-64-175 shall be responsible for compliance with the Illinois Child Labor Law in connection with the employment of any person under the age of 16 years. The licensee shall be responsible for assuring that the person so engaged, employed or permitted to work does not consume, obtain or possess tobacco products on the licensed premises.

SECTION 2. Chapter 3-42 of the Municipal Code of Chicago is hereby amended by adding the

language underscored and by deleting the language stricken through as follows:

3-42-020 Tax imposed.

(Omitted text is unaffected by this ordinance)

(e) It shall be unlawful for any retail tobacco dealer or wholesale tobacco dealer to engage in an act of concealment. Any retail tobacco dealer or wholesale tobacco dealer that violates this subsection shall be subject to a fine of \$2,000.00 ~~for the first offense, and a fine of \$4,000.00 to \$10,000.00 for the second and each subsequent offense.~~ Each day that the violation occurs shall be considered as a separate and distinct offense. For purposes of this section, "concealment" means cigarettes, other tobacco products, or cigarette tax stamps, in violation of this subsection, deliberately hidden to prevent or evade discovery and offered for sale by or in the possession of a wholesale or retail tobacco dealer.

3-42-110 Confiscation of illegal cigarettes and cigarette-vending machines.

a) As an alternative to the filing of an action in the circuit court, the comptroller, the commissioner of business affairs and consumer protection, the superintendent of police and their representatives shall have the authority (1) to issue notices of violation, in accordance with Section 2-14-074, to any cigarette purveyor found in possession of unstamped or improperly stamped cigarette packages in violation of this chapter and (2) to seize and store all unstamped or improperly stamped cigarette packages together with any cigarette-vending machines dispensing those cigarette packages.

If the purveyor is not the owner of the cigarette packages or cigarette-vending machines, within ten days of the issuance of a notice of violation pursuant to subsection (a) of this section, the department or the commissioner of business affairs and consumer protection shall notify by certified mail the cigarette purveyor and the owner of the cigarette packages or cigarette-vending machines, if the identity of the purveyor and owner is known or reasonably ascertainable, of the date, time and location of a hearing to determine whether the cigarette packages, at the time of issuance of the notice of violation, were unstamped or improperly stamped in violation of the provisions of this chapter.

b) After issuing a notice of violation, the comptroller or the commissioner of business affairs and consumer protection shall institute an action with the department of administrative hearings which shall appoint an administrative law officer who shall conduct the hearing, no later than 45 days after the issuance of the notice of violation, to determine whether the cigarette packages at the time of issuance of the notice of violation, were unstamped or improperly stamped in violation of the provisions of this chapter. If the alleged violation is not contested or the administrative law officer determines by a preponderance of the evidence that any or all of the cigarette packages were unstamped or improperly stamped in violation of the provisions of this chapter, the administrative law officer shall enter an order requiring payment by the cigarette purveyor or the owner of the following a penalty for cigarettes possessed in violation of Section 3-42-020: between \$2,000.00 and \$10,000.00, as well as ~~\$2,000.00 for a first violation involving forty or fewer packages, and \$50.00 per package for a violation involving over forty packages, and an additional \$1,000.00 for the second and each subsequent offense occurring within 24 months,~~ plus fees for the seizure and storage of any seized cigarette packages or cigarette-vending machines. Any penalty imposed for a violation of Section 3-42-020 shall be in addition to any penalty imposed for a violation of Section 3-42-025. If the administrative law officer determines a violation, all unstamped or improperly stamped cigarette packages seized under this section shall be forfeited to the city and subsequently destroyed or sold at public sale. Any money contained in a cigarette-vending machine seized under this section shall also be forfeited to the city, unless the administrative law officer determines that the evidence presented by the alleged violator at the hearing established that the money

was not consideration for unstamped or improperly stamped cigarette packages. The cigarette purveyor and the owner of the unstamped or improperly stamped cigarette packages or cigarette-vending machines shall be jointly and severally liable for sanctions provided by this section.

c) If the administrative law officer determines a violation, any cigarette-vending machine may be reclaimed, provided that the penalty and fees have been paid. After the expiration of the time during which judicial review of the city's actions may be sought, any

cigarette-vending machines not so reclaimed may be disposed of by the department or the commissioner of business affairs and consumer protection as provided by law.

d) The comptroller or commissioner of business affairs and consumer protection shall have the authority to promulgate rules and regulations setting fees for seizure and daily storage. All fees and penalties imposed pursuant to this section shall constitute debts due and owing the city. The issuance or renewal of any license may be withheld as provided in Section 4-4-150 of this Code, as amended, for such indebtedness.

e) Nothing in this section shall be construed to relieve any person from fine or imprisonment as provided in the uniform revenue procedures ordinance, Chapter 3-4 of this Code, as amended, or from an action to revoke or suspend a license as provided by Section 4-4-280 of this Code, as amended.

SECTION 3. Section 4-64-132 of the Municipal Code of Chicago is hereby amended by adding the language underscored and by deleting the language stricken through as follows:

4-64-132 Cooperation with inspections - Required.

(a) Licensees, and their agents who sell tobacco, shall present valid government-issued identification when an authorized City investigator has identified himself and requested said identification.

(ab) Licensees and their agents are prohibited from closing and locking safe doors and other doors, including, but not limited to, doors to closets and storerooms, when an authorized city investigator has identified himself and announced his intention to inspect the premises for compliance with the requirements of this Code.

(be) Licensees and their agents shall not continue to sell cigarettes and other tobacco products when an authorized city investigator has identified himself and announced his intention to inspect the premises for compliance with the requirements of this Code.

(ed) Within thirty minutes of the arrival of any authorized city inspector charged with responsibility for inspecting the licensed premises, the licensee shall have a person available on site to open any locked safe (s) and door(s) where unstamped cigarettes may be hidden.

(e) Failure by a licensee or any agent to comply shall subject the licensee to penalty under this Title.

SECTION 4. Section 4-64-180 of the Municipal Code of Chicago is hereby amended by adding the language underscored and by deleting the language stricken through as follows:

4-64-180 Prohibited locations.

a) No person shall sell, give away, barter, exchange, or otherwise deal in tobacco products, tobacco product samples, or tobacco accessories at any place located within 100 feet 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 person shall sell, give away, barter, exchange, or otherwise deal in flavored tobacco products, samples of such products, or 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 ~~elementary, middle,~~ or secondary school located in the City of Chicago. This subsection does not apply to retail tobacco stores. For purposes of this subsection, "retail tobacco store" has the meaning ascribed to the term in Section 7-32-010.

(c) After December 31, 2016, the Commissioner of Business Affairs and Consumer Protection shall not issue any new retail tobacco license 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. The prohibition of this subsection (c) shall not apply to (i) renewals of licenses existing as of December 31, 2016, or (ii) applications for a new retail tobacco license pursuant to a purchase of a retail tobacco business at a location that holds such a license on or after December 31, 2016.

(e d) The commissioner of business affairs and consumer protection and the commissioner of health are each authorized to promulgate any rules necessary to enforce this section.

SECTION 5. Section 4-64-191 of the Municipal Code of Chicago is hereby amended by adding the language underscored and by deleting the language stricken through as follows:

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 subsection (a) 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 each offense ~~for the first offense, and not less than \$2,500.00 nor more than \$5,000.00 for each subsequent offense occurring within a period of 24 months.~~

SECTION 6. Section 4-64-194 of the Municipal Code of Chicago is hereby amended by adding the language underscored and by deleting the language stricken through as follows:

4-64-194 Sale of bidi cigarettes and other tobacco products.

(Omitted text is unaffected by this ordinance)

(c) Any person who violates this section shall be subject to a fine of not less than ~~\$500.00~~ \$1,000.00 nor more than ~~\$2,000.00~~ \$5,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

SECTION 7. Section 4-64-330 of the Municipal Code of Chicago is hereby amended by adding the language underscored and by deleting the language stricken through as follows:

4-64-330 Fines.

(a) Alleged violations of the provisions of Sections 3-42-060, 3-42-100, 4-64-100, 4-64-101, 4-64-131, 4-64-132, 4-64-140, 4-64-150, 4-64-160, 4-64-170, 4-64-175, 4-64-180, 4-64-181, and 4-64-220 shall be adjudicated by the Circuit Court of Cook County, the department of administrative hearings, or the commissioner. Penalties shall be as prescribed in this section, notwithstanding any other general penalty provision in this Code.

(b) In addition to any other penalty provided by law, any person convicted of a first offense for violating found liable of violating any of the Code provisions referenced in subsection (a) of this section shall be punished by a fine of not less than \$200.00 \$1,000.00 nor more than - \$1,000.00 \$5,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense to which a separate fine shall apply. Any person convicted of a second offense within a 24 month period for violating any of the Code provisions referenced in subsection 4 64 330(a) shall be punished for such offense by a fine of not less than \$250.00 nor more than \$1,000.00. Any person convicted of more than two offenses within a 24 month period for violating any of the Code provisions referenced in subsection 4 64 330(a) shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00 for each additional offense. Any person found liable for a violation of Section 4-64-132(b), (c), or (d) shall be punished by a fine of not less than \$2,000.00 nor more than \$10,000.00 for each offense.

SECTION 8. Section 4-64-331 of the Municipal Code of Chicago is hereby amended by adding the language underscored and by deleting the language stricken through as follows:

4-64-331 Underage tobacco violations - Civil penalty.

(a) The commissioner of business affairs and consumer protection may institute an action with the department of administrative hearings in order to determine liability and seek penalties for violations of Sections 4-64-190 and 4-64-210 (which shall hereinafter be referred to collectively as "underage tobacco violations").

(Omitted text is unaffected by this ordinance)

(c) Any person who violates Section 4-64-190 shall be liable for a civil penalty of not less than \$ 1,000.00

nor more than ~~\$2,000.00~~ \$5,000.00 for the first violation, and not less than ~~\$2,500.00~~ nor more than ~~\$5,000.00~~ for each subsequent violation that occurs within 24 months after the first violation. Any person who violates Section 4-64-210 shall be liable for a civil penalty of \$200.00.

(d) Any civil penalty remaining unpaid after the determination of underage tobacco violation liability has become final for purposes of judicial review shall constitute a debt due and owing the city.

SECTION 9. This ordinance shall be in full force and effect after passage and publication.

Alderman

Ward

Alderman Ward

Ward Alderman

CHICAGO December 14, 2016 To the President

and Members of the City Council: Your Committee on Finance having had under consideration

A substitute ordinance as amended authorizing the amendment of Chapters 3-42 and 4-64 of the Municipal Code of Chicago.

Direct Introduction

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

**This recommendation was concurred in by
of members of the committee with**

Respectfully submitted

Chairman