

Chapter 5.16

TOBACCO

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5.16.010 Legislative findings and declaration.

The mayor and city council find and declare that:

- A. Cigarette smoking is dangerous to human health;
- B. There exists substantial scientific evidence that the use of tobacco products causes cancer, heart disease and various other medical disorders;
- C. The Surgeon General of the United States has declared that nicotine addiction from tobacco is similar to addiction to cocaine, and is the most widespread example of drug dependence in this country;
- D. The Director of the National Institute on Drug Abuse concluded that the majority of the three hundred twenty thousand (320,000) Americans who die each year from cigarette smoking became addicted to nicotine as adolescents before the age of legal consent;
- E. The National Institute on Drug Abuse found that cigarette smoking precedes and may be predictive of adolescent illicit drug use;
- F. The present legislative scheme of prohibiting sales of tobacco products to persons under the age of eighteen (18) has proven ineffective in preventing such persons from using tobacco products; and
- G. The enactment of this chapter directly pertains to and is in furtherance of the health, welfare and safety of the residents of the city, particularly those residents under eighteen (18) years of age.

5.16.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them:

“Alternative nicotine products” means a product of device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means (commonly known as e-cigarettes). Alternative tobacco or nicotine products includes synthetic tobacco products which are intended to replicate tobacco and tobacco products. Alternative nicotine products excludes “tobacco products” as defined in this section and any product approved by the United States food and drug administration as a nontobacco product for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

“Hookah Lounge” means an establishment where patrons share shisha (flavored tobacco) from a communal hookah or nargile which is placed at each table. Typically a disposable mouthpiece is provided for each user for hygiene reasons. Some Hookah Bars offer traditional shisha or herbal shisha (contains no tobacco/nicotine) but herbs produce tar when they burn and for the purposes of this ordinance, shall be treated the same as tobacco/alternative nicotine products in reference to their use and/or sale.

“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, alternative nicotine products or tobacco accessories in the city. “Retail” means the sale of commodities in small quantities directly to the ultimate consumer. For example: The sale of tobacco in a grocery store, convenience store, gas station, tavern, restaurant, billiard or bowling alley.

“Tobacco Accessories” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion of tobacco products.

“Tobacco and tobacco products” means cigarettes cigars or tobacco intended for human use, including loose tobacco, pipe tobacco, chewing tobacco and snuff.

“Tobacco product sample” means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotional purposes. Examples include tobacco shop, e-cigarette shops or cigar shop.

“Tobacco product sampler” means any person engaged in the business of tobacco product sampling, alternative nicotine or other than a retail tobacco dealer.

“Tobacco product sampling” means the distribution of tobacco product samples to members of the general public.

“Vending machine” means any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

“Wholesale tobacco dealer” means any person making, manufacturing or jobbing cigars, or selling, offering for sale, exposing for sale, or keeping with the intention of selling or exchanging or delivering at wholesale, any tobacco, snuff, cigars, cigarettes or cigarette papers, including leaf tobacco, alternative nicotine products or any preparations containing tobacco. “Wholesale” means the sale of commodities in quantity usually for resale (as by a retail merchant); no sales directly to the ultimate consumer.

5.16.030 License – Required.

- (A) It is unlawful to sell or vend through machines or to engage in other retail sales of tobacco, tobacco products or alternative nicotine products, without having first obtained a license therefor. Applications for such licenses shall be made to the clerk; and no such license shall be issued to any person who is not a person of good character, or to any corporation that is not represented in the city by a person of good character.

(B) There shall be three (3) categories of tobacco licenses:

1. Retail Tobacco Dealer – over the counter. It shall be unlawful to sell or offer for sale at retail, to give away, deliver or to keep with intention of selling at retail, giving away or delivering tobacco, alternative tobacco devices or tobacco products within the City without first obtaining a retail tobacco license. No smoking, sampling or testing is permitted on the premises.
2. Retail Tobacco Dealer – product sampler. (Specialty Store) It shall be unlawful to permit smoking on the premises at an establishment that also sells tobacco, alternative tobacco devices or tobacco related devices without first obtaining a retail tobacco dealer – product sampler license. The sale, sampling or testing of alternative tobacco products or smoking tobacco shall be permitted on the premises.
3. Wholesale Tobacco Dealer. It shall be unlawful to offer for sale at wholesale, give away, deliver, or keep with the intent of selling at wholesale, giving away or delivering tobacco, alternative tobacco devices or tobacco products within the City without first obtaining a wholesale tobacco dealer license. A wholesale tobacco dealer who also conducts retail sales shall be required to obtain a retail tobacco dealer license in addition to the wholesale tobacco dealer license. No smoking, sampling or testing is permitted on the premises.

5.16.040 Application.

(A) An Applicant shall be an individual or by a duly authorized agent of the Applicant if the Applicant is not a natural person. All information and statements made in the Application shall be made and verified by oath or affidavit. The Application shall contain the following information:

1. The name, address, date of birth, telephone number, and social security number of the Applicant if the Applicant is an individual; or the name, address, date of birth, telephone number, and social security number of (i) each partner if the Applicant is a partnership or (ii) each manager of the Applicant if the Applicant is an entity or other organization.
2. The location and description of the premises or place of business for which the license is being applied for.
3. A statement whether Applicant has made a similar application for a license on any premises other than the premises described in the Application.
4. A statement that Applicant or any manager has never been convicted of a felony or otherwise disqualified to receive a license by reason of any matter or thing contained in the laws of Illinois or the ordinances of the City.
5. A statement as to whether any previous license issued to Applicant by any State or other governmental unit or agency has been suspended or revoked and the reasons therefore.
6. A statement that the Applicant will not violate any of the laws of the state of Illinois or the

provisions of this Ordinance in the conduct of business at the location for which the license is proposed.

(B) Ineligible Person – No license shall be issued to the following persons:

1. A person who is not a citizen of the United States;
2. A person who has been convicted of a felony under any federal or state law;
3. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality;
4. A person whose license under this Ordinance, or any similar regulatory ordinance or statute, has been revoked for cause;
5. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;
6. A person whose place of business is conducted by a manager or assistant manager or agent, unless said manager, assistant manager or agent possesses the same qualifications required by the licensee;
7. A person who does not own the premises for which a license is sought or does not have a lease thereon for the full period for which the license is issued.

5.16.050 Fee and Term.

- (A) The license fee for a Retail Tobacco Dealer – over the counter as well as vending machines shall be \$50.00.
- (B) The license fee for a Retail Tobacco Dealer – product sampler shall be \$100.00.
- (C) The license fee for a Wholesale Tobacco Dealer shall be \$250.00.

The license shall be effective for one (1) year commencing on May 1 and ending on April 30, annually.

5.16.060 Licensed premises – Sanitary condition required.

Premises and buildings used for the sale of tobacco, tobacco products or alternative nicotine products shall be kept in a clean and sanitary condition; the health officer shall investigate such places sufficiently often to insure compliance with the provisions of this section.

5.16.070 Prohibited sales, delivery.

It shall be unlawful for any person, including any licensee under this Chapter, to sell, offer for sale, give away, deliver, promote, or advertise tobacco, tobacco products or alternative nicotine products, to any person under the age of eighteen (18) years.

5.16.080 Signs.

- (A) Signs informing the public of the age restrictions provided herein shall be posted by every licensee at or near every display of tobacco, tobacco products and alternative nicotine products, and on or upon every vending machine which offers tobacco, tobacco

products or alternative nicotine products for sale. Each such sign shall be plainly visible and shall state:

SALE OF TOBACCO ACCESSORIES, SMOKING HERBS, AND ALTERNATIVE NICOTINE PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE OR THE MISREPRESENTATION OF AGE TO PROCURE SUCH A SALE IS PROHIBITED BY LAW.

- (B) Signs informing the public of the U.S. surgeon general's health warning shall be posted by every licensee selling cigarettes or alternative nicotine products at or near every display of cigarettes or alternative nicotine products and on or upon every vending machine which offers cigarettes or alternative nicotine products for sale. Each such sign shall be plainly visible and shall state:

SURGEON GENERAL'S WARNING: SMOKING BY PREGNANT WOMEN MAY RESULT IN FETAL INJURY, PREMATURE BIRTH, AND LOW BIRTH WEIGHT.

The above signs shall be posted in a conspicuous place and shall be printed on white cards in red letters at least one-half inch (1/2") in height.

- (C) Locations Restrictions: It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco, tobacco products or alternative nicotine products within one hundred feet (100') of any school, childcare facility or other building used for education or recreational programs for persons under the age of eighteen (18) years.
- (D) Certain Free Distributions Prohibited: It shall be unlawful for any licensee or any person in the business of selling or otherwise distributing, promoting or advertising tobacco, tobacco products or alternative nicotine products, or any employee or agent of any such licensee or person, in the course of such licensee's or person's business to distribute, give away or deliver tobacco, tobacco products or alternative nicotine products free of charge to any person on any right of way, park, playground or other property owned by the City, or any other public body, school district or unit of local government.

5.16.090 Minimum age to sell tobacco products.

- (A) It shall be unlawful for any licensee and/or any officer, associate, member, representative, agent or employee of such licensee under this article to engage, employ or permit any person under 16 years of age to sell tobacco, tobacco products or alternative nicotine products in any licensed premises.
- (B) If an agent of employee of a licensee under this article younger than 18 years of age sells tobacco, tobacco products or alternative nicotine products in any licensed premises, an officer, agent or employee of the licensee who is at least 21 years of age shall also be on the licensed premises at the time of such sale and is assisting the employee younger than 18 in the sale process.

5.16.100 Purchase by minors prohibited.

It shall be unlawful for any person under the age of 18 years to purchase tobacco, tobacco products or alternative nicotine products, or to misrepresent their identity or age, or to use any false or altered identification for the purpose of purchasing tobacco, tobacco products or alternative nicotine products.

5.16.110 Possession by minors prohibited.

It shall be unlawful for any person under the age of 18 years to possess any tobacco, tobacco products or alternative nicotine products, provided that the possession by a person under the age of 18 years under the direct supervision of the parent or guardian of such person in the privacy of the parent's or guardian's home shall not be prohibited.

§5.16.120 Proximity to certain institutions.

It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco, tobacco products or alternative nicotine products within 100 feet of any school, child care facility or other building used for education or recreational programs for persons under the age of 18 years.

5.16.130 Certain free distributions prohibited.

It shall be unlawful for any licensee or any person in the business of selling or otherwise distributing, promoting, advertising tobacco, tobacco products or alternative nicotine products or any employee or agent of any such licensee or person, in the course of such licensee's or person's business, to distribute, give away or deliver tobacco, tobacco products or alternative nicotine products free of charge to any person on any right-of-way, park, playground or other property owned by the city, any school district, any park district, any public library or any location where distribution of tobacco, tobacco products or alternative nicotine products to minors cannot be adequately controlled.

5.16.140 Vending machines; locking devices.

- (A) It shall be unlawful for any licensee under this article to sell or offer for sale, give away, deliver or to keep with the intention of selling, giving away or delivering tobacco products by use of a vending machine, unless such vending machine is equipped with a manual, electric or electronic locking device controlled by the licensee so as to prevent its operation by persons under the age of 18 years.
- (B) Any premises where access by persons under the age of 18 years is prohibited and where vending machines are strictly for the use of employees of the business located at such premises shall be exempt from the requirements of subsection (A) of this section.

5.16.150 Responsibility of licensee for agents and employees.

Every act or omission, or whatsoever nature, constituting a violation of any of the provisions of this article by any officer, director, manager or other agent or employee of any licensee shall be deemed and held to be the act of such licensee; and such licensee shall be punishable in the same manner as if such act or omission had been done or omitted by the licensee personally.

5.16.160 Smoke free areas.

It shall be unlawful for any person to use alternative nicotine products in any area within the City where smoking is prohibited under the provisions of the Smoke Free Illinois Act (410 ILCS 82-1 et seq.)

5.16.170 Penalty.

Any person, firm or corporation violating any provision of this chapter shall be fined not less than one hundred (\$100.00) nor more than five hundred dollars (\$500.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

5.16.180 Tobacco commissioner; tobacco commission; suspension, revocation of license; fines, costs.

- (A) The Local Liquor Control Commissioner shall serve as the tobacco commissioner and shall be charged with the administration of this article and of such other ordinances relating to tobacco sales and licensing as may be from time to time enacted by the city council. A tobacco commission is created, which shall be composed of the same five members of the city's local liquor commission. Accordingly, the terms and provisions of Sections 5.08.020, 5.08.030 and 5.08.035 of this Code are incorporated into this article as though fully set forth in this article, as being specifically applicable to the creation, enforcement, and administration of this article.
- (B) The tobacco commissioner, after a hearing conducted by the tobacco commission may suspend or revoke any license issued under the provisions of this article if he determines that the licensee has violated any of the provisions of this article. In lieu of suspension or revocation of the license, the tobacco commissioner may instead levy a fine on the licensee. The fine imposed shall be in an amount not less than two hundred fifty (\$250.00) dollars and not more than one thousand (\$1,000.00) dollars for each violation. A separate violation of this Ordinance shall be deemed to have been committed on each day during which a violation occurs or is permitted to continue.
- (C) No license issued under this article shall be suspended or revoked and no licensee shall be fined except after a public hearing by the tobacco commission with a seven (7) days written notice to the licensee affording the licensee an opportunity to appear and defend against the charges contained in such notice. The seven (7) days notice provision shall begin the day following delivery by certified mail or by personal service.
- (D) If the tobacco commission determines after such hearing that the license under this Article should be revoked or suspended or that the licensee shall be fined, the tobacco commission shall recommend to the tobacco commissioner either the amount of the fine, the period of suspension or that the license be revoked.
- (E) Any licensee determined by the tobacco commissioner to have violated any of the provisions of this article shall pay to the city the costs of the hearing before the tobacco commission on such violation. The tobacco commissioner shall determine the costs incurred by the city for such hearing, including but not limited to, attorneys' fees, court reporter's fees, fees incurred by the City, Chief of Police and the local Liquor Control Commissioner, the cost of preparing and mailing notices and orders, and all other miscellaneous expenses incurred by the City or such lesser sum as to the tobacco commissioner may allow.
- The licensee shall pay such costs to the city within 30 days of notification of the costs by the tobacco commissioner. Failure to pay such costs within 30 days of notification is a violation of this article and may be cause for license suspension or revocation, or the levy of a fine.
- (F) The terms and provisions of the Illinois Administrative Review Law (735 ILCS 5/3-101 et seq.) shall apply to all orders of the city which revoke or suspend any tobacco dealer's license and/or impose a monetary fine or other penalty, as provided for in this article.

5.16.190 Use of premises after license revocation.

When any license issued under this article shall have been revoked for any cause, no new license shall be granted to such licensee for a period of six months thereafter for the conduct of the business of selling tobacco, tobacco products or alternative nicotine products in the premises described in such revoked license.

5.16.200 Severability.

The various portions of this Ordinance are hereby expressly declared to be severable, and the invalidity of any such portion of this Ordinance shall not affect the validity of any other portions of this Ordinance, which shall be enforced to the fullest extent possible.

5.16.210 Repealer.

All ordinances or portions of ordinances previously passed or adopted by the City of St. Charles that conflict with or are inconsistent with the provisions of this Ordinance are hereby repealed.
(Ord. 2014-M-41§1)