



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item Number: 5d

Title:

Recommendation to approve an Ordinance Amending Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, of the St. Charles Municipal Code

Presenter:

Police Chief Keegan

Meeting: Government Operations Committee **Date:** September 21, 2020

Proposed Cost: \$

Budgeted Amount: \$

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

City staff asked legal counsel to review all of our associated codes pertaining to alcohol, massage, tobacco and video gaming. This review was an “audit” of sorts with the assistance of Tom Bastian from Storino, Ramello and Durkin. Mr. Bastian has extensive experience in these areas of law and worked with staff to ensure each of the respective codes were in compliance with both state and local mandates.

Please see the attached document for the proposed changes to the City of St. Charles City Code.

Pursuant to this item being presented at the Government Operations Committee Meeting on September 21, 2020 to seek approval; it will be brought before the Liquor Control Commission at a meeting scheduled for 4:30 pm, the same day, to process and move it forward to this Committee. This item will then continue on to the City Council Meeting scheduled on October 5, 2020 for final approval.

Attachments *(please list):*

Changes highlighted in ordinance format

Recommendation/Suggested Action *(briefly explain):*

Recommendation to modify City Code with the listed revisions to Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, of the St. Charles Municipal Code.

Recommended Changes to City Tobacco Code August 2020

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.

No license shall be issued or renewed if the license, its officers, directors or shareholders are in arrears on any debt owed to the City.

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, alternative nicotine products, and electronic cigarettes and on or upon every vending machine which offers tobacco, tobacco products alternative nicotine products, or electronic cigarettes 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 TWENTY-ONE 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, alternative nicotine products, or electronic cigarettes 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-twenty-one~~ (21) 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, alternative nicotine products, or electronic cigarettes, 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, alternative nicotine products, or electronic cigarettes 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.

5.16.170 – Penalty

Any person violating any provision of sections 5.16.100 or 5.16.110 shall, upon ~~violation~~~~conviction~~, be fined one hundred dollars (\$100.00) for the first offense, two hundred fifty dollars (\$250.00) for the second offense and five hundred dollars (\$500.00) for each subsequent offense. In the alternative, any person violating any provision of sections 5.16.100 or 5.16.110 shall, upon ~~conviction~~~~violation~~, complete fifteen (15) hours of community restitution for the first offense, thirty (30) hours of community ~~restitution-service~~ for the second offense, and one-hundred (100) hours of community ~~restitution-service~~ for each subsequent offense. All community service shall be completed within one (1) year from the date of ~~conviction~~~~the violation~~.

Any person, firm or corporation violating any provision of this chapter other than 5.16.100 or 5.16.110 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 ~~they~~~~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

City of St. Charles, Illinois
Ordinance No. 2020-M-_____

**An Ordinance Amending Title 5 “Business Licenses and Regulations”;
Chapter 5.16 “Tobacco”; Sections 5.16.050 “Fee and Term”, 5.16.080 “Signs”,
5.16.170 “Penalty”, and 5.16.180 “Tobacco commissioner; tobacco
commission; suspension, revocation of license; fines, costs” of the St. Charles
Municipal Code**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ST. CHARLES,
KANE AND DUPAGE COUNTIES, ILLINOIS, AS FOLLOWS:**

SECTION ONE: That Title 5 “Business Licenses and Regulations,” Chapter 5.16 “Tobacco,” Section 5.16.050 “Fee and Term” of the St. Charles Municipal Code, be and is hereby amended by replacing it with the following:

- 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.

No license shall be issued or renewed if the license, its officers, directors or shareholders are in arrears on any debt owed to the City.

SECTION TWO: That Title 5 “Business Licenses and Regulations,” Chapter 5.16 “Tobacco”, Section 5.16.080 “Signs” of the St. Charles Municipal Code, be and is hereby amended as follows:

- C. Locations Restrictions:
It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco, tobacco products, alternative nicotine products, or electronic cigarettes 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 twenty-one (21) years.

SECTION THREE: That Title 5 “Business Licenses and Regulations,” Chapter 5.16 “Tobacco”, Section 5.16.070 “Penalty” of the St. Charles Municipal Code, be and is hereby amended by replacing it with the following:

Any person violating any provision of sections 5.16.100 or 5.16.110 shall, upon violation, be fined one hundred dollars (\$100.00) for the first offense, two hundred fifty dollars (\$250.00) for the second offense, and five hundred dollars (\$500.00) for each subsequent offense. In the alternative, any person violating any provision of sections 5.16.100 or 5.16.110 shall, upon violation, complete fifteen (15) hours of community restitution for the first offense, thirty (30) hours of community service for the second offense, and one-hundred (100) hours of community

service for each subsequent offense. All community service shall be completed within one (1) year from the date of the violation.

Any person, firm or corporation violating any provision of this chapter other than 5.16.100 or 5.16.110 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.

SECTION FOUR That Title 5 “Business Licenses and Regulations,” Chapter 5.16 “Tobacco”, Section 5.16.180 “Tobacco commissioner; tobacco commission; suspension, revocation of license; fines, costs” of the St. Charles Municipal Code, be and is hereby amended by replacing it with the following:

- 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 they determine 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 affording the licensee an opportunity to appear and defend against the charges.
- 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. All decisions of the tobacco commissioner are appealable in the manner provided by law.

SECTION FIVE: That, after the adoption and approval hereof, this Ordinance shall (i) be printed or published in book or pamphlet form, published by the authority of the City Council of the City of St. Charles, or (ii) within thirty (30) days after the adoption and approval hereof, be published in a newspaper published in and with a general circulation within the City of St. Charles.

SECTION SIX: This Ordinance shall be in full force and effect ten (10) days from and after its passage by a vote of the majority of the corporate authorities now holding office, approval and publication in the manner provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this ____ day of _____, 2020.

PASSED by the City Council of the City of St. Charles, Illinois this ____ day of _____, 2020.

APPROVED by the Mayor of the City of St. Charles, Illinois, this _____ day of _____, 2020.

Raymond P. Rogina, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes : _____

Nays : _____

Absent : _____

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 Ccity the costs of the hearing before the tobacco commission on such violation. The tobacco commissioner shall determine the costs incurred by the Ccity 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. All decisions of the tobacco commissioner are appealable in the manner provided by law.~~