

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 8

Title:

Recommendation to Update Title 5 “Business Licenses and Regulations” and Title 8 “Health and Safety” of the City Ordinance, to Include Modifications to Chapter 5.16 “Tobacco” and Chapter 8.34 “Tobacco Regulation”

Presenter:

Police Chief Keegan

Meeting: Liquor Control Commission

Date: June 17, 2019

Proposed Cost: N/A

Budgeted Amount: \$

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

In an effort to streamline and bring up to date the City Ordinance, the Police Department recommends the attached revisions be made to Title 5 “Business Licenses and Regulations” and Title 8 “Health and Safety” of the City of St. Charles City Code. Please see the attached document which highlights these requested modifications.

Chapters to be modified include: 5.16 “Tobacco”, Sections 5.16.010, 5.16.020, 5.16.030, 5.16.060, 5.16.070, 5.16.080, 5.16.090, 5.16.100, 5.16.110, 5.16.120, and 5.16.030; and by eliminating Chapter 8.34 “Tobacco Regulation” and the corresponding Sections to 8.34, to include 8.34.010 and 8.34.020, in their entirety.

Attachments *(please list):*

Ordinance with proposed changes

Recommendation/Suggested Action *(briefly explain):*

The Police Department recommends approval of these updates to Title 5 “Business Licenses and Regulations” and Title 8 “Health and Safety” of the City Ordinance.

5.16 – Tobacco

Sections

- [5.16.010 – Legislative findings and declaration](#)
- [5.16.020 – Definitions](#)
- [5.16.030 – License - Required](#)
- [5.16.040 – Application](#)
- [5.16.050 – Fee and Term](#)
- [5.16.060 – Licensed premises - Sanitary condition required](#)
- [5.16.070 – Prohibited sales, delivery](#)
- [5.16.080 – Signs](#)
- [5.16.090 – Minimum age to sell tobacco products](#)
- [5.16.100 – Purchase by ~~minors- persons under 21~~ prohibited](#)
- [5.16.110 – Possession by ~~minors- persons under 21~~ prohibited](#)
- [5.16.120 – Proximity to certain institutions](#)
- [5.16.130 – Certain free distributions prohibited](#)
- [5.16.140 – Vending machines; locking devices](#)
- [5.16.150 – Responsibility of licensee for agents and employees](#)
- [5.16.160 – Smoke free areas](#)
- [5.16.170 – Penalty](#)
- [5.16.180 – Tobacco commissioner; tobacco commission; suspension, revocation of license; fines, costs](#)
- [5.16.190 – Use of premises after license revocation](#)
- [5.16.200 – Severability](#)
- [5.16.210 – Repealer](#)

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)-twenty-one (21)~~ years of age.

([1991-M-37](#)): § 1)

- [Back to top](#)

5.16.020 – Definitions

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

1. ~~“Alternative nicotine products”~~ means a product ~~of or~~ 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 product” s does not include: 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.
2. “Electronic Cigarette” means:
 1. any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended intended for inhalation;
 4. any cartridge or container of a solution or substance intended for use in the device. “Electronic cigarette” includes but is not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any components or parts that can be used to build the product or device. “Electronic cigarette” does not include: any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco tobacco dependence product, or for other medical purposes, and is being marketed and sold solely solely for that approved purpose; any asthma inhaler prescribed by a physician for that condition and is being marketed and sold solely solely for that approved purpose; or any therapeutic product approved for use under the Illinois Compassionate Use of Medical Cannabis Pilot Program Act.
3. ~~“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, ~~what shall~~ be treated the same as tobacco/alternative nicotine products in reference to their use and/or sale.
4. ~~“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.
5. ~~“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.
6. ~~“Tobacco and tobacco products”~~ means cigarettes cigars or tobacco intended for human use, including loose tobacco, pipe tobacco, chewing tobacco and snuff.
7. ~~“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.
8. ~~“Tobacco product sampler”~~ means any person engaged in the business of tobacco product sampling, alternative nicotine or other than a retail tobacco dealer.
9. ~~“Tobacco product sampling”~~ means the distribution of tobacco product samples to members of the general public.
10. ~~“Vending machine”~~ means any mechanical, electric or electronic, self-service devise which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

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10.11. “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.

([2014-M-41](#): §1; [1991-M-37](#): §1)

- [Back to top](#)

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, ~~or electronic cigarettes,~~ 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, ~~alternative nicotine products, or electronic cigarettes~~ 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 ~~products 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 products, alternative nicotine products or electronic cigarettes 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.

([2014-M-41](#): § 1; [1991-M-37](#): § 1; [Prior code](#): § 25.401)

- [Back to top](#)

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~~ 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.

([2014-M-41](#): § 1; [1991-M-37](#): § 1; [1979-M-44](#): § 5(c); [Prior code](#): § 25.402)

- [Back to top](#)

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.

([2014-M-41](#): § 1; [1995-M-1](#): § 1; [1991-M-37](#): § 1)

- [Back to top](#)

5.16.060 – Licensed premises - Sanitary condition required

Premises and buildings used for the sale of tobacco, tobacco products, ~~or~~ alternative nicotine products, or electronic cigarettes 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.

- [Back to top](#)

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, or electronic cigarettes, to any person under the age of ~~eighteen~~ eighteen ~~twenty-one~~ twenty-one years.

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A. Before selling, offering for sale, giving, or furnishing tobacco, a tobacco product, alternative nicotine product, or electronic cigarette to another person, the person selling, offering for sale, giving, or furnishing the tobacco, tobacco product, alternative nicotine product, or electronic cigarette shall verify that the person is at least twenty-one (21) years of age by examining from any person that appears to be under thirty (30) years of age a government-issued photographic identification that establishes the person to be twenty-one (21) years of age or older.

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• [Back to top](#)

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 electronic cigarettes~~ and on or upon every vending machine which offers tobacco, tobacco products ~~or~~ 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 ~~EIGHTEEN-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, ~~or~~ 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 (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 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, ~~or~~ 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.

• [Back to top](#)

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, ~~or~~ **electronic cigarettes** 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, ~~or~~ **electronic cigarettes** 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.

• [Back to top](#)

5.16.100 – Purchase by ~~minors~~ **persons under 21** prohibited

- A. It shall be unlawful for any person under the age of ~~18~~ **21** years to purchase tobacco, tobacco products, ~~or~~ alternative nicotine products, ~~or~~ **electronic cigarettes**, 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 products, alternative~~ nicotine products, ~~or~~ **electronic cigarettes**.
- B. ~~No person under twenty-one (21) years of age in the furtherance or facilitation of obtaining any tobacco, tobacco product, alternative nicotine product, or electronic cigarette shall display or use a false or forged identification card or transfer, alter, or deface an identification card.~~

• [Back to top](#)

5.16.110 – Possession by ~~minors~~ **persons under 21** prohibited

It shall be unlawful for any person under the age of ~~18~~ **21** years to possess any tobacco, tobacco ~~products, or alternative products, alternative~~ nicotine products, ~~or~~ **electronic cigarette**, provided that the possession by a person under the age of ~~18~~ **21** 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.

• [Back to top](#)

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 products, alternative~~ nicotine products, ~~or~~ **electronic cigarettes** 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.

• [Back to top](#)

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 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

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products, ~~or~~ 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, any school district, any park district, any public library or any location where distribution of tobacco, tobacco products, ~~or~~ alternative nicotine products, or electronic cigarettes, to ~~minors~~ persons under 21 cannot be adequately controlled.

- [Back to top](#)

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, tobacco products, alternative nicotine products, or electronic cigarettes 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~~ 21 years.
- B. Any premises where access by persons under the age of ~~18~~ 21 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.

- [Back to top](#)

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.

- [Back to top](#)

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.)

- [Back to top](#)

5.16.170 – Penalty

Any person violating any provision of sections 5.16.100 or 5.16.110 shall, upon 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, complete fifteen (15) hours of community service 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 conviction.

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.

- [Back to top](#)

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~~ [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.

- [Back to top](#)

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, or electronic cigarettes in the premises described in such revoked license.

- [Back to top](#)

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.

- [Back to top](#)

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.

- [Back to top](#)

Up to [Title 5 - Business Licenses and Regulations](#)

-  [PDF version](#)

Remove entire Chapter and corresponding sections

~~8.34—Tobacco Regulation~~

~~Sections~~

- ~~• [8.34.010—Possession by minors prohibited](#)~~
 - ~~• [8.34.020—Penalties](#)~~
- ~~8.34.010—Possession by minors prohibited~~

~~It shall be unlawful for any person under the age of eighteen (18) years to possess any tobacco products. To the extent, if at all, that this section is construed to be in violation of 410 ILCS 80/11, it shall be disregarded, but only to such extent it is so construed.~~

~~([1995 M 1: § 1](#); [1991 M 37: § 2](#))~~

- ~~• [Back to top](#)~~

~~8.34.020—Penalties~~

~~Any person violating any provision of this chapter 8.34 shall, upon conviction, be fined fifty dollars (\$50.00) for the first offense, one hundred dollars (\$100.00) for the second offense and five hundred dollars (\$500.00) for each subsequent offense. In the alternative, any person violating any provision of this chapter 8.34 shall, upon conviction, complete twelve (12) hours of community service for the first offense, twenty four (24) hours of community service for the second offense, and one hundred twenty (120) hours of community service for each subsequent offense. All community service shall be completed within one (1) year from the date of conviction.~~

~~([2008 M 46: § 1](#); [1991 M 37: § 2](#))~~