



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: IC

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: City Council **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 5.16.130, 5.16.140, 5.16.170, 5.16.190; 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.

Pursuant to this item being presented at the City Council meeting on June 17, 2019 to seek approval; it will be brought before the Liquor Control Commission at a meeting scheduled for 4:30 p.m., the same day.

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.

City of St. Charles, Illinois
Ordinance No. 2019-M- _____

An Ordinance Amending Title 5 “Business Licenses and Regulations”, Chapter 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, 5.16.130, 5.16.140, 5.16.170, and 5.16.190; as well as Amending Title 8 “Health and Safety”; Chapter 8.34 “Tobacco Regulation”, Sections 8.34.010 and 8.34.020 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 5.16.010 “Legislative Findings and Declaration” of the St. Charles Municipal Code be and is hereby amended as the following:

- 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 twenty-one (21) years of age.

SECTION TWO: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.020 “Definitions” of the St. Charles Municipal Code, be and is hereby amended as follows:

1. “Alternative nicotine product” means a product 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 “Alternative nicotine product” does not include: 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 for inhalation;
 2. 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 dependence product, or for other medical purposes, and is being marketed and sold solely for that

- approved purpose; any asthma inhaler prescribed by a physician for that condition and is being marketed and sold 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, 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 device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.
 11. “Wholesale tobacco dealer” means any person making, manufacturing of 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.

SECTION THREE: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.030 “Annual License Fee; Proration” of the St. Charles Municipal Code, be and is hereby amended as follows:

- A. It is unlawful to sell or vend through machines or to engage in other retail sales of tobacco, tobacco products, 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, 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, , or tobacco products 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, tobacco products, alternative nicotine products or electronic cigarettes 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.

SECTION FOUR: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.060 “Annual License Fee; Proration” of the St. Charles Municipal Code, be and is hereby amended as follows:

Premises and buildings used for the sale of tobacco, tobacco products, 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.

SECTION FIVE: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.070 “Annual License Fee; Proration” of the St. Charles Municipal Code, be and is hereby amended as follows:

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 alternative nicotine products, or electronic cigarettes to any person under the age of twenty-one (21)years.

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.

SECTION SIX: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.080 “Annual License Fee; Proration” of the St. Charles Municipal Code, be and is hereby amended as follows:

- A. Signs informing the public of the age restrictions provided herein 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. Location 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 (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, 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.

SECTION SEVEN: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.090 “Annual License Fee; Proration” of the St. Charles Municipal Code, be and is hereby amended as follows:

- 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, alternative nicotine products, or electronic cigarettes in any licensed premises.
- B. If an agent or employee of a licensee under this article younger than 18 years of age sells tobacco, tobacco products, 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.

SECTION EIGHT: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.100 “Annual License Fee; Proration” of the St. Charles Municipal Code, be and is hereby amended as follows:

- A. It shall be unlawful for any person under the age of 21 years to purchase tobacco, tobacco products, 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, 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.

SECTION NINE: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.110 “Annual License Fee; Proration” of the St. Charles Municipal Code, be and is hereby amended as follows:

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

SECTION TEN: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.120 “Annual License Fee; Proration” of the St. Charles Municipal Code, be and is hereby amended as follows:

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 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.

SECTION ELEVEN: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.130 “Annual License Fee; Proration” of the St. Charles Municipal Code, be and is hereby amended as follows:

It shall be unlawful for any licensee or any person in the business of selling or otherwise distributing, promoting, 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, any school district, any park district, any public library, or any location where distribution of tobacco, tobacco products, alternative nicotine products, or electronic cigarettes, to persons under 21 cannot be adequately controlled.

SECTION ELEVEN: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.140 “Vending Machines; Locking Devices” of the St. Charles Municipal Code, be and is hereby amended as follows:

- 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 21 years.
- B. Any premises where access by persons under the age of 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.

SECTION ELEVEN: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.170 “Penalty” of the St. Charles Municipal Code, be and is hereby amended as follows:

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.

SECTION ELEVEN: That Title 5 “Business Licenses and Regulations”, Chapter 5.16 “Tobacco”, Section 5.16.190 “Use of Premises After License Revocation” of the St. Charles Municipal Code, be and is hereby amended as follows:

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

SECTION TWELVE: That Title 8 “Health and Safety”, Chapter 8.34 “Tobacco Regulation” of the St. Charles Municipal Code, be and is hereby amended by deleting the chapter in its entirety.

SECTION FOUR: 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 FIVE: 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 _____, 2019.

PASSED by the City Council of the City of St. Charles, Illinois this ____ day of _____, 2019.

APPROVED by the Mayor of the City of St. Charles, Illinois, this ____ day of _____, 2019.

Raymond P. Rogina, Mayor

ATTEST:

City Clerk

COUNCIL VOTE:

Ayes : _____

Nays : _____

Absent : _____