

8/23/96
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82-O-96

AN ORDINANCE

Regulating the Sale of Tobacco Products

WHEREAS, the City Council finds and declares that there is substantial scientific evidence that the use of tobacco products causes cancer, heart disease and various other medical disorders; and

WHEREAS, 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; and

WHEREAS, the Director of the National Institute on Drug Abuse concluded that the majority of Americans who die each year from cigarette smoking became addicted to nicotine as adolescents before the age of legal consent; and

WHEREAS, the National Institute on Drug Abuse found that cigarette smoking precedes and may be predictive of adolescent illicit drug use; and

WHEREAS, the present City legislation 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

WHEREAS, the City Council declares that the enactment of this Ordinance directly pertains to and is in furtherance of the health, safety and welfare of the residents of Evanston, particularly those under eighteen (18) years of age,



NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That Chapter 16 of Title 3 of the Evanston City Code, 1979, as amended, is hereby deleted in its entirety and the following new Chapter 16 is adopted in lieu thereof:

CHAPTER 16

CIGARETTES AND TOBACCO PRODUCTS

3-16-1: DEFINITIONS:

TOBACCO PRODUCTS:

Any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.

VENDING MACHINE:

Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products.

3-16-2: LICENSE REQUIRED: It shall be unlawful for any person to sell or offer for sale, at retail, to give away, deliver or to keep with the intention of selling at retail, giving away or delivering tobacco products within the City without having first obtained a license therefor. Said license shall be required regardless of the method of sale or dispensing and shall include sales and dispensing by self-help, manual service, mechanical service or coin-operated device. Said license shall be nonassignable and nontransferable by the licensee, but may be transferred from one machine to a replacement device without notification to the City Collector.

In the event the licensee chooses to offer such materials for sale by means of a vending machine device exclusively, the provisions of this Section shall not be interpreted to require an additional license and fee for the premises whereon such device is located.

3-16-3: LICENSE APPLICATION: Application for a license hereunder shall be filed in writing with the City Collector on a form to be provided by the City.



3-16-4: LICENSE FEE: The license fee to sell tobacco products within the City shall be one hundred fifty dollars (\$150.00) per annum. The license fee for each additional machine at the same premises operated by the same licensee shall be twenty-five dollars (\$25.00). The license shall authorize the licensee named therein to sell tobacco products only at the place designed therein. Said license shall be posted in a conspicuous place in the premises designated therein.

3-16-5: LOCATION RESTRICTIONS: It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco products within one hundred feet (100') of any school, child care facility or other building used for education or recreational programs for persons under the age of eighteen (18) years. Such restriction shall not apply to such businesses in existence prior to passage of this Ordinance provided that such businesses continue to provide the same service, and remove all tobacco advertising from the premises. This exemption shall apply to any new owner at the same location providing the same service.

3-16-6: PROHIBITIONS REGARDING MINORS: It shall be unlawful:

- (A) Sales To: For any person, including any licensee, to sell, offer for sale, give away or deliver tobacco products to any person under the age of eighteen (18) years.

Signs informing the public of the age restrictions provided for herein shall be posted by every licensee at or near every display of tobacco products and on or upon every vending machine which offers tobacco products for sale. Each such sign shall be plainly visible and shall state:

**THE SALE OF TOBACCO
PRODUCTS TO PERSONS UNDER
EIGHTEEN YEARS OF AGE IS
PROHIBITED BY LAW**

The text of such signs shall be in red letters on a white background; said letters to be at least one inch (1") high.

- (B) Sale By: For any licensee or any officer, associate, member, representative, agent or employee of such licensee, to engage, employ or permit any person under eighteen (18) years of age to sell tobacco products in any licensed premises.
- (C) Purchase: For any person under the age of eighteen (18) years to purchase tobacco products or to misrepresent his/her identity or age or to use any false or altered identification for the purpose of purchasing tobacco products.
- (D) Possession: For any person under the age of eighteen (18) years to possess any tobacco products; provided, that the possession by a person under the age of eighteen (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.

- (E) **Penalties Generally:** Any person violating subsection (A) or (B) of this Section shall be fined not less than two hundred dollars (\$200.00) 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. In addition to any other penalty, a licensee convicted of violating any provision of this Section may be subject to having his/her license revoked, suspended or not renewed by the Public Health Director.

3-16-7: 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 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 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 or any public library.

3-16-8: VENDING MACHINE SALES PROHIBITED: It shall be unlawful for any person 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. Such vending machines located in areas not open to the public are exempt from this provision.

3-16-9: ADMINISTRATION AND ENFORCEMENT:

- (A) **Administration:** The Public Health Director is charged with the administration of this Chapter, including the inspection of all places where tobacco products are licensed to be sold within the City.
- (B) **Suspension or Revocation of License:** The Public Health Director may suspend or revoke any license issued under the provisions of this Chapter if he/she determines that the licensee has violated any of the provisions hereof.
- (C) **Fine in Lieu of Suspension or Revocation:** In lieu of suspension or revocation of a license, the Public Health Director may, instead, levy a fine on the licensee. The fine imposed shall not exceed five hundred dollars (\$500.00) for each violation. Each day on which a violation continues shall constitute a separate violation.

- (D) **Hearing; Decision; Fees:**

1. **Notice of Hearing:** No such license shall be suspended or revoked and no licensee shall be fined except after a public hearing by the Public Health Director with a seven (7) day written notice to the licensee affording the licensee an opportunity to appear and defend against the charges contained in such notice. The seven (7) day



notice provisions shall begin the day following delivery by certified mail or by personal service.

2. Public Health Director's Decision: The Public Health Director shall within seven (7) days after such hearing, if he/she determines after such hearing that the license should be revoked or suspended, or that the licensee should be fined, state the reason for such determination in a written order and either the amount of the fine, the period of suspension or that the license has been revoked and serve a copy of such order within the seven (7) days upon the licensee. Fines shall be paid to the City within thirty (30) days of said decision.

3. Fees: Any licensee determined by the Public Health Director to have violated any of the provisions of this Chapter shall pay to the City the costs of the hearing before the Public Health Director on such violation. The Public Health Director shall determine the costs incurred by the City for said hearing, including, but not limited to, court reporter's fees, the cost of transcripts or records, attorneys' fees, the costs of preparing and mailing notices and orders and all other miscellaneous expenses incurred by the City or such lesser sum as the Public Health Director may allow.

The licensee shall pay said costs to the City within thirty (30) days of notification of the costs by the Public Health Director. Failure to pay said costs within thirty (30) days of notification is a violation of this Chapter and may be cause for license suspension or revocation or the levy of a fine.

- (E) Use of Premises after License Revocation: When any license shall have been revoked for any cause, no license shall be granted to said licensee for the period of six (6) months thereafter for selling "tobacco products," as defined in this Chapter in the premises described in such revoked license.
- (F) Responsibility of Licensee for Agents and Employees: Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Chapter by any officer, director, a 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.

SECTION 2: That Section 3-8-1 of the Evanston City Code, 1979, as amended, is hereby further amended by adding the following sentence to the definition of "Coin-operated Device":

Provided, however, that vending machines for tobacco products are excluded from this definition.



SECTION 3: That Section 3-8-4 of the Evanston City Code, 1979, as amended, is hereby further amended by deleting cigarette dispensing devices.

SECTION 4: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5: That this ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: September 9, 1996

Adopted: September 30, 1996

Approved: September 30, 1996

Lorraine A. Norton
Mayor

ATTEST:

Lester Lewis
City Clerk

Approved as to form:

[Signature]
Corporation Counsel

