

**80-O-13**

**AN ORDINANCE**

**Amending Title 3, Chapter 14 "Cigarettes and Tobacco Products" and Title 8, Chapter 18 "Clean Air Act" to add Restrictions for Use of Electronic Cigarettes and Liquid Nicotine Products**

**WHEREAS**, electronic cigarettes are devices that convert liquid nicotine into a gas that is inhaled by the consumer; and

**WHEREAS**, the National Institute for Occupational Safety and Health and the Center for Disease Control and Prevention have prepared emergency response information addressing the dangers associated with liquid nicotine. Nicotine affects the nervous system and heart and is addictive. Exposure to relatively small amounts of liquid nicotine can rapidly be fatal; and

**WHEREAS**, the City Council finds that for the health and welfare of its citizens that it is in the City's best interests to regulate e-cigarette usage,

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

**SECTION 1:** The foregoing recitals are hereby found as fact and incorporated herein by reference.

**SECTION 2:** Title 3 "Business Regulations", Chapter 14 is hereby re-titled and further amended to read as follows:

**CHAPTER 14 CIGARETTES, TOBACCO AND LIQUID NICOTINE PRODUCTS**

**3-14-1. DEFINITIONS.**

<i>BIDI CIGARETTE.</i>	A product that: a) contains tobacco that is wrapped in temburni or tendu leaf or that is wrapped in any other material identified by rules of the Department of Health that is similar in appearance or characteristics to the temburni or tendu leaf, and b) does not contain a smoke filtering device.
<i>ELECTRONIC CIGARETTE OR E-CIGARETTE</i>	Means an electronic device usually composed of a mouthpiece, a heating element or atomizer, a battery, and electronic circuits that provides a gas derived from liquid nicotine and/or other substances which is inhaled by a user simulating smoking. The term includes such devices, regardless of the details of the product appearance or marketed name, generally manufactured to resemble cigarette, cigars, pipes, or other smoking devices.
<i>LIQUID NICOTINE</i>	Means any liquid product composed either in whole or part of nicotine, propylene glycol and/or other similar substances and manufactured for use with an e-cigarette to be converted into gas for inhaling.
<i>PERSON</i>	Means any natural person, individual, corporation, limited liability company, unincorporated association, proprietorship, firm, partnership, joint venture, joint stock association, or other entity or business of any kind.
<i>TOBACCO PRODUCTS.</i>	Any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.
<i>VENDING MACHINE.</i>	Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products or liquid nicotine products.

### 3-14-2. 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 or liquid nicotine 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. (See Chapter 8 of this Title.) Said license shall be non-assignable 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.

### **3-14-3. 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.

### **3-14-4. LICENSE FEE.**

The license fee to sell tobacco or liquid nicotine products within the City shall be five hundred dollars (\$500.00) per annum. The license fee for each additional machine at the same premises operated by the same licensee shall be fifty dollars (\$50.00). The license shall authorize the licensee named therein to sell tobacco or liquid nicotine products only at the place designated therein. Said license shall be posted in a conspicuous place in the premises designated therein.

### **3-14-5. LOCATION RESTRICTIONS.**

(A) *Prohibited.* It shall be unlawful for any person to sell, offer for sale, give away, or deliver tobacco or liquid nicotine products within one hundred fifty (150) feet as measured from lot line to lot line of any high school, middle school or elementary school except for the Park School and Rice Children's Center of the Evanston/Skokie School District 65 Special Schools and Centers.

(B) *Penalty.* Any person violating this Section shall be fined not less than five hundred dollars (\$500.00) for each offense, one thousand dollars (\$1,000.00) for the second offense and license revocation for the third offense. In addition to any other penalty, a licensee, or any agent of a licensee, convicted of violating any provision of this Section may subject licensee to having his/her license revoked, suspended or not renewed by the Health Director. For purposes of this Section, a clerk or salesperson is considered an agent of the licensee.

### **3-14-6. 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 or liquid nicotine 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 or liquid nicotine 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 OR LIQUID NICOTINE 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 or liquid nicotine products or to misrepresent his/her identity or age or to use any false or altered identification for the purpose of purchasing tobacco or liquid nicotine products.

(D) *Possession.* For any person under the age of eighteen (18) years to possess any tobacco or liquid nicotine 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 Health Director.

**3-14-7. 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 or liquid 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 or liquid 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 or any public library.

**3-14-8. 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 or liquid nicotine products by use of a vending machine. Such vending machines located in areas not open to the public are exempt from this provision.

### **3-14-9. SALE OF BIDI CIGARETTES PROHIBITED.**

No person shall sell, give away, barter, exchange, or otherwise furnish to any other person a bidi cigarette.

### **3-14-10. CONTROL OF PREMISES.**

No person or entity shall be Titled to receive any license for the sale of tobacco or tobacco or liquid nicotine products without providing proof or documentation that the person or entity has legal control over the area wherein the sale of said tobacco, or tobacco, or liquid nicotine products shall occur. Only persons or entities authorized to do business at that location shall be entitled to secure a tobacco or liquid nicotine license at the same location.

### **3-14-11. SELF-SERVICE SALES PROHIBITED.**

It shall be unlawful to sell, offer for sale, give away, or display tobacco products or liquid nicotine for sale at any location where the consumer can acquire those products through self-service. All tobacco or liquid nicotine products will be displayed from behind a sales/service counter so that no consumer can access tobacco or liquid nicotine products without assistance by an employee of the licensee.

### **3-14-12. ADMINISTRATION AND ENFORCEMENT.**

(A) *Administration.* The Health Director is charged with the administration of this Chapter, including the inspection of all places where tobacco or liquid nicotine products are licensed to be sold within the City.

(B) *Suspension Or Revocation Of License.* The 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 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 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. *Health Director's Decision.* The 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 Health Director to have violated any of the provisions of this Chapter shall pay to the City the costs of the hearing before the Health Director on such violation. The Health Director shall determine the costs incurred by the City for said hearing, including, but not limited to, court reporter fees, the cost of transcripts or records, attorney 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 Health Director may allow.

The licensee shall pay said costs to the City within thirty (30) days of notification of the costs by the 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," and/or "liquid nicotine" 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.

### **3-14-13. SALE OF IMPROPERLY PACKAGED TOBACCO OR LIQUID NICOTINE PRODUCTS PROHIBITED.**

It shall be unlawful for any retail establishment to sell, give away, barter, exchange, or otherwise furnish to any other person any tobacco product or liquid nicotine product, including, but not limited to, a single or loose cigarette or e-cigarette, that is not contained within a sealed package provided by the manufacturer that has affixed to it any tax stamps required by law and that complies with all requirements imposed by federal law regarding warnings and other information on packages of tobacco or liquid

nicotine products manufactured, packaged, or imported for sale, distribution, or use in the United States.

**SECTION 3:** Title 8, Chapter 18 "Clean Air Act", Section 3 "Definitions" is hereby amended to alter the definition of "Smoke or Smoking" to read as follows:

Smoke or Smoking: Inhaling, exhaling, or carrying any lighted and/or burning smoking materials. "Smoking" does not include the burning or carrying of incense in a religious ceremony or the use of matches or lighters for nonsmoking purposes. "Smoke" shall also mean the byproduct of the burning of any smoking materials and the release of gaseous vapors from e-cigarettes (as defined in Section 3-14-1).

**SECTION 4:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 5:** If any provision of this ordinance or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

**SECTION 6:** This ordinance shall be in full force and effect from and after its passage, approval and publication in the manner provided by law.

**SECTION 7:** The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

Ayes: 8

Nays: 1

Introduced: September 23, 2013

Approved:

Adopted: October 28, 2013

October 30, 2013

Elizabeth B Tisdahl

Elizabeth B. Tisdahl, Mayor

Attest:

Approved as to form:

Rodney Greene

Rodney Greene, City Clerk

W. Grant Farrar

W. Grant Farrar, Corporation Counsel