

9/5/2014
10/15/2014

Effective Date: November 8, 2014

111-O-14

AN ORDINANCE

Amending City Code Subsection 3-14-6, to Increase the Age of Sale and Purchase of Tobacco or Liquid Nicotine Products from Eighteen (18) Years of Age to Twenty-One (21) Years of Age

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

SECTION 1: Legislative Statement.

At the time of passage of this Ordinance, tobacco use remains a leading cause of preventable premature death in the United States, killing nearly half a million Americans and costing the nation almost \$200 billion in healthcare expenses and lost productivity each year. Tobacco use also increases the risks of lung cancer, heart disease, stroke, asthma, emphysema, pre-term delivery, low birth weight, and many other types of cancer. Furthermore, cigarettes are the only consumer products that, when used exactly as intended, kill up to one-third of regular users.

Most smokers start using tobacco as youth or young adults. Ninety-five percent of all adult smokers started smoking before they turned twenty-one years old. Additionally, there is strong evidence that people who begin smoking at an early age are more likely to develop a severe addiction to nicotine than those who start at a later age. The transition from experimental to regular smoking typically occurs around twenty years old. Most people who are not smokers by twenty-one years of age do not start smoking later in their lives.

Raising the legal sales age for cigarettes and tobacco products will reduce access to both products in stores among young adults, between eighteen and twenty

years old, and among youth who are younger than eighteen. Raising the sales age will reduce access to cigarettes and tobacco products by youth because youth often acquire such products from older friends: 90 percent of people purchasing cigarettes for minors are between eighteen and twenty years old.

Other jurisdictions that have increased the minimum sales age for cigarettes and tobacco products have seen decreases in tobacco use among youth. In 2005, Needham, Massachusetts increased the legal sales age from eighteen to twenty-one years. Between 2006 and 2012, the percentage of high school students in Needham who reported smoking declined from 12.9 percent to 5.5 percent, a decrease of over fifty percent. In 2007, England increased the minimum sales age from sixteen to eighteen years. By 2009, there was a thirty percent decline in smoking among youth between the ages of sixteen and seventeen, and younger students between the ages of eleven and fifteen were one-third less likely to be regular smokers than they had been previously.

The City of Evanston has continuously been a public health leader in various aspects. In 2005, the City of Evanston was one of the first communities to ban smoking in public places. This step contributed to the City of Chicago and the State of Illinois eventually becoming smoke-free. Recently, Evanston led the way in Illinois by restricting the sale and use of e-cigarettes in the same fashion as traditional tobacco products in 2013.

Article VII, Section (6)a of the Illinois Constitution of 1970, which states that the “powers and functions of home rule units shall be construed liberally,” was written “with the intention that home rule units be given the broadest powers possible” (*Scadron v.*

City of Des Plaines, 153 Ill.2d 164). Pursuant to 65 ILCS 5/1-2-1, the City may make all rules and regulations to carry into effect the powers granted to the City, such broad and general grant of authority complementing the City's home rule powers. At meetings held in compliance with the provisions of the Illinois Open Meetings Act (5 ILCS 120/1 et seq.), the City Council considered this Ordinance, heard public comment, and made findings. It is well-settled law in Illinois that the legislative judgment of the City Council must be considered presumptively valid (see *Glenview State Bank v. Village of Deerfield*, 213 Ill.App.3d 747(1991)) and is not subject to courtroom fact-finding (see *National Paint & Coating Ass'n v. City of Chicago*, 45 F.3d 1124 (1995)).

The City Council therefore finds that establishing a minimum sales age of twenty-one for cigarettes, tobacco products, and electronic cigarettes will reduce smoking, tobacco, and electronic cigarette use among youth and young adults, and decrease the likelihood that members of this cohort will become smokers or electronic cigarette users later in life. This increase in the minimum sales age will also reduce high school students' opportunities to access tobacco or electronic cigarettes from legal buyers. Finally, raising the minimum sales age will augment existing tobacco prevention and control programs and improve the general health of Evanston residents.

SECTION 2: That Subsection 3-14-6 of the Evanston City Code of 2012, "Prohibitions Regarding Minors," as amended, is hereby further amended to read as follows:

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

twenty-one (21) 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
TWENTY-ONE 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 (1) inch 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 twenty-one (21) years of age to sell tobacco products in any licensed premises.
- (C) Purchase. For any person under the age of twenty-one (21) 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.

SECTION 3: 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.

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

repealed.

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

SECTION 6: If any provision of this ordinance or application thereof to any person or circumstance is ruled 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.

Introduced: October 13, 2014

Approved:

Adopted: October 27, 2014

October 29, 2014

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