



Legislation Text

File #: 18-0178, **Version:** 2

TO: Mayor Richard C. Irvin

FROM: Deb Lang, Assistant Corporation Counsel

DATE: March 7, 2018

SUBJECT:

An ordinance amending Chapter 13 of the City of Aurora Code of Ordinances Entitled "Cigarettes, Cigars and Tobacco".

PURPOSE:

The proposed amendment seeks to add "alternative nicotine and vapor products" to the ordinance that governs tobacco, cigarettes and cigars as well as change the legal age allowed to purchase said products from eighteen (18) to twenty-one (21).

BACKGROUND:

In February, the City of Aurora met with representatives from the American Heart Association, the Respiratory Health Association and the American Cancer Society Cancer Action Network to hear a proposal regarding their "Tobacco 21" (T21) initiative. The T21 program is designed for local governmental entities and encourages the review of tobacco ordinances to incorporate "alternative tobacco products" as well as adjust the age of individuals eligible to purchase said products. It is also working in tandem with House Bill 4297 and Senate Bill 2332.

Upon beginning the review process, it was discovered that the Aurora Police Department, through a School Resource Officer, had begun working with Alderman Mervine to explore implementing new measures to restrict the use of "alternative tobacco products" in schools. The proposed ordinance combines the T21 language as well as the addition of addressing the alternative nicotine products. Currently, fifteen (15) units of local government have passed local ordinances:

Berwyn
Buffalo Grove
Bolingbrook
Chicago
Deerfield
Elk Grove
Evanston
Highland Park
Lake County
Lincolnshire
Maywood
Mundelein

Naperville
Oak Park
Vernon Hills.

DISCUSSION:

Chapter 13 was last modified in 2009. Since that time, the use and access to alternative nicotine and vapor products has skyrocketed. The proposed changes seek to address access to such products to individuals who are twenty-one (21) and older.

The information provided in support of the T21 initiative is compelling, documents from the various organization championing this change are attached for the Council's review. A few items of note:

T21 predicts a 25% drop in teen tobacco use.

T21 helps prevent the next generation of adult smokers, cutting adult smoking rates by 12%.

In October of 2014, Evanston became the first community to adopt T21 in Illinois. In that time, high schoolers use of all tobacco products (cigarettes, e-cigarettes and hookah) decreased 37.5% from 2015-2017.

The Kane County Health Department conducted a survey of approximately 600 people, 79% of people surveyed support raising the allowable age of purchase to 21.

Regarding the impact to the business community, the City of Aurora has approximately 123 tobacco license holders. Research shows that eighteen (18) to twenty-one (21) year olds account for approximately 2% of sales, so the impact to the business community is nominal.

IMPACT STATEMENT:

The proposed changes to Chapter 13 are anticipated to have a positive impact on the City of Aurora and its residents, particularly in the schools.

RECOMMENDATIONS:

It is respectfully requested the proposed Chapter 13 amendment be forwarded to the Tuesday, March 20, 2018 Committee of the Whole Meeting.

cc: Alderman Hart-Burns, Chairman
Alderman Mervine
Alderman Lofchie
Alderman Franco, Alternate



CITY OF AURORA, ILLINOIS

ORDINANCE NO. _____

DATE OF PASSAGE _____

An Ordinance Amending Chapter 13 of the City of Aurora Code of Ordinances Entitled "Cigarettes, Cigars and Tobacco".

WHEREAS, the City of Aurora has a population of more than 25,000 persons and is, therefore, a home rule unit under subsection (a) of Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, subject to said Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the City of Aurora wishes to encourage responsible tobacco, alternative nicotine product, vapor product and electronic smoking device retail sales and to discourage violations of any such ordinances, especially as they relate to the sale and distribution of these products to individuals under the age of twenty-one (21); and

WHEREAS, the City of Aurora intends to provide minimum standards to safeguard the life, health, property and public welfare in keeping with the character of the city by establishing standards to control the sale, distribution and use of tobacco, alternative nicotine products vapor products and electronic smoking devices to individuals under the age of twenty-one (21); and

WHEREAS, alternative nicotine products, vapor products and electronic smoking devices are designed to be used in the same manner as traditional tobacco products; and

WHEREAS, increasing the minimum age to purchase, possess and sell tobacco, alternative nicotine products, vapor products and electronic smoking devices to twenty-one years of age would have significant public health benefits; and

WHEREAS, the use of electronic smoking devices in smoke-free locations threatens to reverse the progress that has been made in establishing social norm that smoking is not allowed in public places or places of employment set forth in the Smoke Free Illinois Act, 410 ILCS 82/5, et seq.; and

WHEREAS, prohibiting the use of electronic smoking devices in smoke-free locations will protect traditionally smoke-free locations and will prevent people from involuntarily inhaling potentially harmful chemicals that may be present in the secondhand vapor of alternative nicotine products; and

WHEREAS, in the interest of protecting the public health and welfare of the residents of the City of Aurora, it is necessary to amend Chapter 13 of the City's Code of Ordinances in such a manner as to allow the for regulation of all alternative nicotine products, vapor products and electronic smoking devices and licensing of all retailers engaged in the sale and distribution of such products)

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Aurora, Illinois, as follows: That Chapter 13 is hereby amended to:

Chapter 13: Cigarettes, Cigars, Tobacco, Alternative Nicotine or Vapor Products

ARTICLE I. - IN GENERAL

Sec. 13-1. -Definitions.

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

Alternative Nicotine Product or Alternative Tobacco Product or Vapor Product: Any product, other than a cigarette, which may or may not contain tobacco and/or nicotine, intended for ingestion into the body and designed, packaged, marketed, or displayed for smoking, absorbing, dissolving, inhaling, sniffing, snorting, placed in oral or nasal cavities, or applied to skin, with the use of any electronic smoking device, including but not limited to, flavored or unflavored e-juice, e-liquid, e-nicotine, vaping juice, liquid nicotine, smoke juice, pipe tobacco, rolling tobacco, hookah tobacco, snuff, dabs, oils, pastes, waxes, chewing tobacco, dipping tobacco, snus, nicotine gel, nicotine lollipops, propylene glycol, vegetable glycerin or any other such preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale or otherwise distributed. "Alternative nicotine product" excludes cigarettes, smokeless tobacco, or other tobacco products as these terms are defined in Section 1 of the Illinois Prevention of Tobacco Use by Minors and Sale and Distribution of Tobacco Products Act, 720 ILCS 675/1, *et seq.*, and any product approved by the United States Food and Drug Administration as a non-tobacco 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.

Electronic Smoking Device: Any electronic and/or battery-operated device, the use of which may resemble smoking that can be used to deliver a dose of an alternative nicotine product or vapor product. "Electronic smoking device" includes, but is not limited to, any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, hookah pipe, product vaporizer, atomizer, tobacco and/or nicotine delivery system, or any other such device or delivery system, regardless of the details of the product appearance or marketed name. The term does not include any product specifically approved by the United States Food & Drug Administration for use in the mitigation, treatment, or prevention of disease.

Tobacco products means any substance containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco, as well as cigarette papers or wrappers.

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.

(Ord. No. 009-131, § 1, 12-22-09)

Sec. 13-2. - Fees.

The fees required by the provisions of this chapter shall be determined, from time to time, by

separate ordinance or resolution of the city council.

(Ord. No. O09-131, § 1, 12-22-09)

(Ord. No. O09-131, § 1, 12-22-09)

Secs. 13-3-13-8. - Reserved.

ARTICLE II. - TOBACCO DEALER'S AND ALTERNATIVE NICOTINE PRODUCT OR VAPOR PRODUCT DEALER'S LICENSE

Sec. 13-9. - Cigarette, tobacco, alternative nicotine product or vapor products dealer's license.

- (a) No person shall sell tobacco products, alternative nicotine product, vapor products or electronic smoking devices in any form in the city without a tobacco, alternative nicotine product or vapor product dealer's license issued by the city treasurer.
- (b) Any person desiring such a license shall first make written application for that purpose to the city treasurer in which shall be set forth the full name of the applicant and the locations at which such sales are proposed to be made as well as such other information as may be necessary for the city to conduct an appropriate background check. However, no such background check shall be required if the applicant is concurrently the holder of a valid city liquor license. If the city treasurer is satisfied upon the conclusion of such background check that the applicant is of good character and reputation and is a suitable person to be entrusted with the sale of tobacco products, he shall cause a license to be issued to such applicant upon payment to the city of the annual license fee specified in section 13-2.
- (c) A license authorizes the person therein named to expose for sale, sell or offer for sale tobacco, alternative nicotine product, vapor products or electronic smoking devices only at the place designated therein.
- (d) No license required by this chapter shall be issued or renewed to the following:
 - (1) A person who is indebted to the city or other governmental entity for payment of any fees, charges, bills or taxes which he is obligated to pay but have remained unpaid for more than forty-five (45) days.
 - (2) A person who has been convicted of a felony under any federal or state law.
 - (3) A person who has been convicted of a violation of any federal, state or city law concerning the possession or sale of tobacco, alternative nicotine product or vapor products or has forfeited his bond to appear in court to answer to any charges for any violation.
 - (4) A person who within one (1) year of application for a tobacco, alternative nicotine product or vapor product dealer's license has been convicted of, plead guilty to, or been placed on supervision for any tobacco, alternative nicotine product or vapor product related offense shall be considered not of good character and reputation.
 - (5) A person whose place of business is conducted by a manager or agent unless such manager or agent possesses the same qualifications required of the licensee, including a background check for both licensee and manager or agent.
 - (6) 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.

(e) A tobacco, alternative nicotine product or vapor product license, granted herein, is nontransferable and is valid only for the person(s) or business entity and location specified in the license application.

(1) If licensee changes business location, licensee must obtain a new license prior to engaging in the sale and distribution of tobacco, alternative nicotine product, vapor products or electronic smoking devices at the new location.

(2) Any sale, transfer, or assignment of fifty percent (50%) or more of the ownership of a business, or the death of a shareholder, member and/or partner with fifty percent (50%) or more interest, in a business shall terminate the license. The new owner shall be required to obtain a new license prior to engaging in the sale and distribution of tobacco, alternative nicotine product, vapor products or electronic smoking devices. For purposes of this section, whether the sale, transfer or assignment of fifty percent (50%) or more of a business interest occurs in one or more transactions is not relevant to the termination of the license.

(f) It shall be the responsibility of each licensee to be informed regarding all laws, federal, state or local, applicable to tobacco, alternative nicotine product, vapor product or electronic smoking device retailing.

(1) A license issued contrary to this article, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to the applicable provisions of this article.

(2) Nothing in this article shall be construed to grant any person obtaining and maintaining an tobacco, alternative nicotine product, or vapor product license any status or right other than a limited, conditional privilege to act as a tobacco, alternative nicotine product, vapor product or electronic smoking device retailer at the location identified on the face of the license. Nothing in this article shall be construed to vest in any person obtaining and maintaining a tobacco, alternative nicotine product, or vapor product license any status or right to act as a tobacco, alternative nicotine product, vapor product or electronic smoking device retailer in contravention of any applicable law.

(g) Any licensee who has been convicted of a felony under any federal or state law, any misdemeanor in which tobacco, alternative nicotine products, vapor products or electronic smoking device were involved or any violation listed in subsections (d)(1)-(4) above shall notify the mayor of such conviction. Such notification shall be made within thirty (30) days after the sentencing for the conviction.

(Ord. No. O09-131, § 1, 12-22-09)

Sec. 13-10. - Sales to minors.

(a) No person shall sell or furnish any tobacco products, alternative nicotine product, vapor products or electronic smoking device in any of its forms to any person under twenty-one (21) years of

age.

- (b) Signs informing the public of the age restrictions provided for in this chapter shall be posted by every licensee at or near every display of tobacco, alternative nicotine product, vapor products and electronic smoking devices and on or upon every vending machine which offers tobacco, alternative nicotine product, vapor products or electronic smoking device for sale. Each such sign shall be plainly visible and shall state:

THE SALE OF TOBACCO, ALTERNATIVE NICOTINE PRODUCT, VAPOR PRODUCTS OR ELECTRONIC SMOKING DEVICE 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, such letters to be at least one (1) inch high.

(Ord. No. O09-131, § 1, 12-22-09)

Sec. 13-11. - Sales by minors.

- (a) It shall be unlawful 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, alternative nicotine product, vapor products or electronic smoking device in any licensed premises.

(Ord. No. O09-131, § 1, 12-22-09)

Sec. 13-12. - Purchase by minors.

It shall be unlawful for any person under the age of twenty-one (21) years to purchase tobacco, alternative nicotine products, vapor products or electronic smoking devices, or to misrepresent their identity or age, or to use any false or altered identification for the purpose of purchasing tobacco, alternative nicotine product, vapor products or electronic smoking devices.

(Ord. No. O09-131, § 1, 12-22-09)

Sec. 13-13. Reserved.

(Ord. No. O09-131, § 1, 12-22-09)

Sec. 13-14. - Proximity to certain institutions.

It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco, alternative nicotine product, vapor products or electronic smoking devices within two hundred fifty (250) feet of any school, child care facility or other building used exclusively for education or recreational programs for persons under the age of twenty-one (21) years as measured from building line to building line.

(Ord. No. O09-131, § 1, 12-22-09)

Sec. 13-15. - 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, alternative nicotine product, vapor products or

electronic smoking devices, 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, alternative nicotine product, vapor products or electronic smoking devices 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.

(Ord. No. 009-131, § 1, 12-22-09)

Sec. 13-16. - Sale of individual cigarettes prohibited.

It shall be unlawful for any licensee to sell cigarettes individually.

(Ord. No. 009-131, § 1, 12-22-09)

Sec. 13-17. - Vending machines; locking devices.

- (a) It shall be unlawful for any licensee to sell or offer for sale, give away, deliver or to keep with the intention of selling, giving away or delivering tobacco, alternative nicotine product, vapor products or electronic smoking devices by use of a vending machine, unless such vending machine is:
- (1) Located in a manner that will allow it to be easily and readily observed by the licensee or his employees or agents during all business hours; or
 - (2) 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 twenty-one (21) years.
- (b) Any premises where access by persons under the age of twenty-one (21) years is prohibited by law, or premises where the public is generally not permitted and where vending machines are strictly for the use of employees of business located at such premises, shall be exempt from the requirements of subsection (a) above.
- (c) Any licensee holding a valid Class B or Class E city liquor license shall be exempt from the requirements of subsections (a) and (d).
- (d) Notwithstanding subsection (a) above, vending machines initially installed under this section after April 1, 1998, shall be 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 twenty-one (21) years.

(Ord. No. 009-131, § 1, 12-22-09)

Sec. 13-18. - Responsibility 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, 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.

(Ord. No. 009-131, § 1, 12-22-09)

Sec. 13-19. - Fine, suspension or revocation of licenses.

- (a) The mayor shall be charged with the administration of this chapter. The mayor may assign the administration of any violation of this Article to the Local Tobacco and Alternative Nicotine Control Hearing Officer to enforce this article. The Local Tobacco and Alternative Nicotine Control

Hearing Officer will have the same power and duties as established in Chapter 6, Article II, in administering any violation of a license in Chapter 13. The Local Tobacco and Alternative Nicotine Control Hearing Officer may impose a fine of not less than five hundred dollars (\$500.00) or more than one thousand dollars (\$1,000.00) plus costs or suspend for any period up to thirty (30) days or revoke for cause any license issued under this chapter if he determines that the licensee has violated any of the following provisions:

- (1) The licensee has violated any law of the state, any ordinance of the county, or any ordinance of the city, which affected the public health, welfare and safety and which violation occurred as part of the operation of the licensee's business or upon the licensed premises or adjacent premises.
 - (2) The licensee has violated any of the provisions of this chapter or any federal or state law pertaining to the sale of tobacco, alternative nicotine product, vapor products or electronic smoking device.
 - (3) The licensee is more than forty-five (45) days delinquent in the payment of any debt to the city.
- (b) No fine, suspension or revocation shall be imposed except after a public hearing by the Local Tobacco and Alternative Nicotine Control Hearing Officer or his designee in accordance with the following:
- (1) The licensee shall be given a three-day written notice affording the licensee an opportunity to appear and defend.
 - (2) All such hearings shall be open to the public.
 - (3) If the Local Tobacco and Alternative Nicotine Control Officer determines after such hearing that there should be a fine, revocation or suspension, he shall not later than five (5) days after such hearing, state the reasons for such a determination in a written order and shall serve a copy of such order upon the licensee.
 - (4) In all hearings pursuant to this section, the evidence presented shall be reduced to writing and an official record of the proceedings maintained.
- (c) Each day on which a violation continues shall constitute a separate violation.
- (d) The findings, decision and order of the Local Tobacco and Alternative Nicotine Control Hearing Officer shall be subject to review in the Circuit Court of Kane County, and the provisions of the administrative review law (735 ILCS 5/3-101 et seq.), and all amendments and modifications thereto, and the rules adopted pursuant thereto, are adopted and shall apply to and govern every action for the judicial review of the final findings, decision and order issued under this article.

(Ord. No. 009-131, § 1, 12-22-09)

Sec. 13-20. - Use of premises after revocation.

When any license shall have been revoked for any cause, no license shall be granted to any person for the period of twelve (12) months thereafter for the sale of tobacco, alternative nicotine product, vapor products or electronic smoking devices in the premises described in such revoked license.

(Ord. No. 009-131, § 1, 12-22-09)

Sec. 13-21. - Transition provision.

- (a) Any license in effect upon the effective date of this chapter and which is located within one hundred (100) feet of a school, child care facility, or other building used exclusively for education or recreational programs for persons under the age of twenty-one (21) years shall not be denied annual renewal solely because of the license location.
- (b) A license shall not be denied solely because of the license location if the subject location is within one hundred (100) feet of a school, child care facility, or other building used exclusively for education or recreational programs for persons under the age of twenty-one (21) years and a license was in effect at the subject location on April 8, 2003.

(Ord. No. 009-131, § 1, 12-22-09)

ARTICLE III. - TOBACCO, ALTERNATIVE NICOTINE PRODUCT OR VAPOR PRODUCTS USE, PROHIBITIONS AND COMPLIANCE MONITORING

Sec. 13-26. - City of Aurora police campus.

No person shall smoke or use tobacco products anywhere on the property, including but not limited to the entirety of the outdoor grounds and the interior of all buildings thereon, of the City of Aurora police campus located at 1200 East Indian Trail. Aurora, Illinois. All words and phrases in this section not otherwise defined in this chapter shall have the meanings set forth in the Smoke Free Illinois Act. 410 ILCS 82/1 et seq., as amended from time to time.

(Ord. No. 009-131, § 1, 12-22-09)

Sec. 13-27. Prohibited Products.

It shall be a violation of Article II of this Chapter for any licensee to sell, distribute or market any alternative nicotine product or vapor products that contain cannabis, and/or any other controlled substances or analog substances as set forth in the Illinois Cannabis Control Act, 720 ILCS 550/1, et seq., and Illinois Controlled Substances Act, 720 ILCS 570/1, et seq.

Sec. 13-28. Prohibited use of electronic smoking devices in smoke-free places.

(a) It shall be a violation of this article to use an electronic smoking device in any place, or in a manner, prohibited under the Smoke Free Illinois Act, 410 ILCS 82/1, et seq., which is referred to, adopted, and made a part hereof as if fully set forth in this article.

(b) No person, employer, business entity, whether for-profit or nonprofit, shall permit the use of electronic smoking devices in an area under the legal or *de facto* control of that location and in which smoking is prohibited under the Smoke Free Illinois Act, 410 ILCS 82/1.

(c) Alternative nicotine product, vapor products and electronic smoking devices are prohibited in

or on the grounds of any school including schools of higher education, preschool, or day care facility.

Sec.13-29. Compliance Monitoring.

It shall be the duty of the police department to monitor compliance with tobacco, alternative nicotine product or vapor products and electronic smoking devices regulations of this city and/or all of the state laws applicable to tobacco, alternative nicotine product or vapor products and electronic smoking devices in this city, to make arrests for violations, to investigate violations and to cooperate with the city personnel of the city in the administration of the tobacco, alternative nicotine product or vapor products and electronic smoking devices laws and in developing ways and means to improve conditions, and to carry out those duties specifically imposed upon the department by this article and the tobacco, alternative nicotine product or vapor products and electronic smoking devices ordinances of this city.

Sec. 13-30. - Sales, Purchase and Possession by Individuals under twenty-one years of age.

- (a) It shall be unlawful for any individual to sell tobacco, alternative nicotine product, vapor products or electronic smoking devices without a license.
- (b) It shall be unlawful for any person under the age of twenty-one (21) years to purchase tobacco, alternative nicotine products, vapor products or electronic smoking devices, or to misrepresent their identity or age, or to use any false or altered identification for the purpose of purchasing tobacco, alternative nicotine product, vapor products or electronic smoking devices.
- (c) It shall be unlawful for any person under the age of twenty-one (21) years to possess any tobacco, alternative nicotine product, vapor products or electronic smoking devices; provided that the possession by a person under the age of twenty-one (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.
- (d) Any person who violates this Section shall be subject to the following penalties:
 - i. For a first time violation a fine of not less than one hundred dollars (\$100) or more than two hundred dollars (\$200).
 - ii. For a second violation a fine of not less than one hundred and fifty dollars (\$150) or more than two hundred and fifty dollars (\$250).
 - iii. For a third violation a fine of not less than two hundred and fifty dollars (\$250) or more than three hundred and fifty dollars (\$350).
 - iv. Four or more violations shall have a fine of not less than three hundred and fifty dollars (\$350) or more than seven hundred and fifty dollars (\$750).

A violation of Section 13-30 shall proceed before an administrative hearing that is set forth at the date, time and place as is set forth in the violation notice issued and served, or such additional

notices as are issued in accordance with this division.