

74-O-23

AN ORDINANCE

Amending Title 3, Chapter 14 to Ban the Sale of Flavored Tobacco Products

WHEREAS, the Centers for Disease Control data indicates that tobacco is the leading cause of preventable disease, disability, and death in the United States; and

WHEREAS, the City of Evanston has been a public health leader with respect to tobacco cessation and prevention measures; and

WHEREAS, the proliferation of new tobacco products such as flavored tobacco has led to an increase in tobacco usage in the City, including youth use; and

WHEREAS, the implementation of a ban on the sale of flavored tobacco products in the City has the potential to significantly reduce disease and death from tobacco usage by reducing youth experimentation and addiction to tobacco; and

WHEREAS, the Evanston City Council finds that it is in the best interests of the City to amend the City Code to ban the sale of flavored tobacco.

NOW 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, Chapter 14 “Cigarettes, Tobacco and Liquid Nicotine Products” of the Evanston City Code of 2012, as amended, is hereby further amended as follows:

CHAPTER 14 – CIGARETTES, TOBACCO AND LIQUID NICOTINE PRODUCTS.

3-14-1. DEFINITIONS.

<u>BIDI CIGARETTE.</u>	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.
<u>ELECTRONIC CIGARETTE OR E-CIGARETTE.</u> <u>ELECTRONIC SMOKING DEVICE</u>	<p>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.</p> <p><u>Means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.</u></p>
<u>DISTINGUISHABLE</u>	<u>Means perceivable by either the sense of smell or taste.</u>
<u>FLAVOR ENHANCER</u>	<u>Mean any product designed, manufactured, produced, marketed, or sold to produce a flavored tobacco product when added to any tobacco product.</u>
<u>FLAVORED TOBACCO</u>	<u>Means: (1) any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption</u>

	<p><u>of, a tobacco product, including, but not limited to, any taste or smell relating to menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, or any candy, fruit, dessert, alcoholic beverage, herb, or spice; or (2) any tobacco product that contains a cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product that imparts a cooling or numbing sensation. This includes but is not limited to public statements that a product has a minty or cooling effect, such as describing the product as “chill,” “ice,” “fresh,” “arctic,” or “frost</u></p>
> <i>LIQUID NICOTINE.</i>	<p>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.</p>
<i>PERSON.</i>	<p>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.</p>
<i>TOBACCO PRODUCTS.</i>	<p>Any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.</p> <p><u>Means: (1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; (2) any electronic smoking device as defined in this section and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco Product does not include drugs, devices, or combination products</u></p>

<u>TOBACCO RETAILER</u>	<u>Means any person, partnership, joint venture, society, club, trustee, trust, association, organization, or corporation who owns, operates, or manages any tobacco retail establishment. Tobacco retailer does not mean the non-management employees of any tobacco retail establishment.</u>
<u>VENDING MACHINE.</u>	Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco 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 annually.

3-14-4. LICENSE FEE.

The annual 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. All fees and interest on proceeds from fees shall be used to fund the administration and enforcement of this Chapter.

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 and private educational institutions located in any Downtown zoning districts as listed in Title 6, Chapter 11 of the City Code.
- (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 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.

~5~

- (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.~~

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 entitled 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, 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

~7~

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.
- (G) *Inspections.* The Health Director or their authorized designee shall conduct an inspection, which shall include an underage buy attempt, at least once every calendar year for all licensed establishments. Unannounced follow-up compliance checks of all non-compliant tobacco retail establishments will occur within three months of any violation of this chapter.

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.

3-14-14. - FLAVORED TOBACCO PRODUCT SALES PROHIBITED.

It shall be unlawful for any retailer to sell, offer for sale, display, market, or advertise any flavored tobacco product, including menthol products. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has:

- (A) Made a public statement or claim that the tobacco product imparts a taste or smell other than the taste or smell of tobacco;
- (B) Used text or images, or both, on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a taste or smell other than tobacco; or
- (C) Taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a taste or smell other than tobacco.
- (D) The ban goes into effect on April 1, 2024 requiring all retailers to cease selling, offering to sell and possessing with the intent to sell flavored cigarettes and tobacco products, including menthol cigarettes and tobacco product flavor enhancers

3-14-15. – PENALTIES.

In addition to any other penalty provided by law, any tobacco retailer who violates or falls to comply with any portion of this Ordinance shall be subject to the following penalties:

(A) For a first violation, any person who violates this Chapter shall be subject to a fine of not less than \$500 more than \$1,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

(B) For a second violation in a 24-month period, any person who violates this Chapter shall be subject to a fine of not less than \$1,000.00 nor more than \$2,500.00 for each offense and any tobacco license issued under this Chapter shall be suspended for a period of fifteen (15) days.

(C) For a third violation in a 24-month period, any person who violates this Chapter shall have its license revoked by the Health Director.

SECTION 3: All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 4: 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.

SECTION 5: 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 6: This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Introduced: November 13, 2023

Approved:

Adopted: November 27, 2023

November 29, 2023

Daniel Biss

Daniel Biss, Mayor

Attest:

Approved as to form:

Stephanie Mendoza

Alexandra B. Ruggie

Stephanie Mendoza, City Clerk

Alexandra B. Ruggie, Interim Corporation Counsel