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Legislation Details (With Text)

File #: SO2016-105

Type: Ordinance **Status:** Deferred and Published

File created: 1/13/2016 **In control:** Committee on Finance

Final action: 2/10/2016

Title: Amendment of Municipal Code Titles 3 and 4 concerning tax on non-cigarette tobacco products and associated tobacco-related regulations

Sponsors: Emanuel, Rahm, Moreno, Proco Joe, Burns, William D., Pawar, Ameya

Indexes: Ch. 49 Chicago Other Tobacco Products Tax, Ch. 64 Tobacco Dealers

Attachments: 1. O2016-105.pdf, 2. SO2016-105.pdf

Date	Ver.	Action By	Action	Result
2/10/2016	1	City Council	Deferred and Published	
2/8/2016	1	Committee on Finance	Recommended to Pass	Pass
1/13/2016	1	City Council	Referred	

SECOND SUBSTITUTE ORDINANCE

WHEREAS, The City of Chicago is a home-rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs, a category that includes the authority to legislate for the protection of the public health; and

WHEREAS, The enactment of ordinances and regulations designed to discourage the use of tobacco plainly meets this criterion; and

WHEREAS, The 18 to 20-year-old age range is a critical time for new smokers. Adolescents are more vulnerable than older adults to nicotine addiction, which can harm brain development, and nine out of ten adult smokers start before age 21. Raising the legal age would put tobacco products on par with alcohol and protect young adults from developing a dangerous lifelong habit; and

WHEREAS, Based on numerous studies, it is clear that high tobacco prices reduce tobacco consumption, both among youth users, who are especially price-sensitive, and among adults. A 10-percent increase in cigarette prices reduces demand among adult smokers by an average of 4 percent, and youth smokers are two-to-three times more price sensitive than adults. High prices reduce the prevalence of tobacco use, the probability of trying tobacco for the first time, the average number of cigarettes consumed per smoker, the initiation of daily smoking, and the initiation of daily heavy smoking. Moreover, reductions in the prevalence of smoking lead indirectly to even greater reductions by minimizing peer and parental influences, and by helping addicted smokers successfully quit; and

WHEREAS, The City of Chicago taxes cigarettes and e-cigarettes, but does not tax other tobacco products that are harmful to health, including little cigars, large cigars, smoking tobacco, and smokeless tobacco; and

WHEREAS, As cigarette prices have increased, smokers, particularly youth, have migrated to cheaper

tobacco products. Little cigars, for example, appear virtually identical to cigarettes and cost substantially less. Large cigars and smokeless tobacco are also less expensive alternatives. Despite well-documented risks, smokers of all ages - especially youth and young adults in low-income urban areas - erroneously perceive cigars as less harmful than cigarettes; and

WHEREAS, The use of coupons, multi-package discounts, and other price-reduction instruments, all of which are widely available in Chicago, reduce retail prices for tobacco products, even when a tax is in place to increase the price. In a 2011 study of smokers attempting to quit conducted in New York City, 25 percent reported using a coupon or other discount on their last purchase, saving an average \$1.25 per package of cigarettes. Discounts entice consumers, including price-sensitive youth, to purchase deadly and highly addictive products; and

WHEREAS, This body has therefore determined that establishing price floors for tobacco products would help address the persistent availability of low-priced cigarettes and tobacco products in Chicago. Specifically, this body finds that the following price floors are reasonable and appropriate:

Whenever any of the following words, terms, or phrases are used in this chapter, they shall have the following meanings:

"Chewing tobacco" means any leaf tobacco that is not intended to be smoked, including plug, fine-cut, and twist tobacco.

"Cigar" means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco (other than any roll of tobacco that is a cigarette as defined in this chapter), and includes cheroots and stogies.

"Cigarette" has the meaning ascribed to that term in Section 3-42-010 of this Code.

"Cigarette wholesale tobacco dealer" means any person who engages in the business of selling or supplying cigarettes and/or OTP to any person for resale in the City.

"Cigarette wholesale tobacco manufacturer" means any person who makes or fabricates cigarettes and/or OTP and sells them.

"Commissioner" means the commissioner of business affairs and consumer protection.

"Comptroller" means the comptroller of the City.

"Consumer" means a person who purchases OTP from a wholesale tobacco dealer or retail tobacco dealer for use or consumption and not for resale purposes.

"Consume tobacco" means chew, smoke, absorb, dissolve, inhale, snort, sniff, or ingest tobacco by any means.

"Department" means the department of finance of the City.

"Large cigar" means any roll of tobacco, other than a cigarette, wrapped in leaf tobacco or any substance containing tobacco and weighing at least four pounds per one thousand units.

"Little cigar" means any roll of tobacco, other than a cigarette, wrapped in leaf tobacco or any substance containing tobacco and weighing less than four pounds per one thousand units.

"Manufacturer" means any person, other than a retail tobacco manufacturer, who makes or fabricates cigarettes and/or OTP and sells them.

"Other Tobacco Products" ("OTP") means smokeless tobacco, smoking tobacco, large cigars, and little cigars. For purposes of this chapter, the term "Other Tobacco Products" does not include cigarettes, or electronic cigarettes and liquid nicotine products, as defined in chapter 3-47 of this Code.

"Package" means the original packet, box, tin, or other container used to contain and to convey OTP to the consumer.

"Pipe tobacco" includes any smoking tobacco which, because of its appearance, type, packaging, or labeling is suitable for use, and likely to be offered to or purchased by, consumers as tobacco to be smoked in a pipe.

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- (1) for smoking tobacco, \$6.60 per ounce or fraction thereof;
- (2) for smokeless tobacco, \$1.80 per ounce or fraction thereof;
- 3) for little cigars, \$0.15 per cigar; and
- 4) for large cigars, \$0.90 per cigar.

(c) The tax hereby imposed shall be in addition to any and all other taxes. 3-49-040

Liability for payment.

- a) The ultimate incidence and liability for payment of the tax is on the purchaser.
- b) Nothing in this chapter shall be construed to impose a tax upon the occupation of wholesale tobacco dealer, retail tobacco manufacturer or retail tobacco dealer.
- c) It shall be a violation of this chapter for a retail tobacco dealer to fail to include the tax imposed herein in the sale price of the OTP or to otherwise absorb such tax.

3-49-050 Collection.

- a) Except as otherwise provided herein, any wholesale tobacco dealer shall collect the tax imposed by this chapter from any purchaser to whom the sale of said OTP is made within the City and shall remit to the department the tax levied by this chapter. Any retail tobacco dealer also shall collect the tax from any consumer to whom the sale of said OTP is made within the City. Any such tax shall be collected as a trustee for and on account of the City. The wholesale tobacco dealer and retail tobacco dealer shall remit the tax and file returns in accordance with Section 3-49-060.
- b) Any wholesale tobacco dealer that shall pay the tax imposed by this chapter shall collect the tax from each retail tobacco dealer in the City to whom the sale of OTP is made, and any such retail tobacco dealer shall in turn then collect the tax from the purchaser of said OTP.
- c) If any retail tobacco dealer located in the City shall receive or otherwise obtain OTP upon which the tax imposed hereby has not been collected by any wholesale tobacco dealer, then the retailer shall collect such tax and remit it directly to the department in accordance with Section 3-49-060.
- d) If a wholesale tobacco dealer sells OTP to a purchaser in the City for use or consumption and not for resale, such wholesale tobacco dealer shall collect the tax imposed herein from such purchaser and remit it to the department in the same manner as sales to a retail tobacco dealer.

e) If a retail tobacco manufacturer sells OTP to a purchaser in the City for use or consumption and not for resale, such wholesale tobacco dealer shall collect the tax imposed herein from such purchaser and remit it to the department in the same manner as a retail tobacco dealer.

3-49-060 Tax payments and returns.

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(q) Every person required to file a tax return under subsection 3-49-070(b) or 3-49-079(c) who files a complete tax return by its due date and makes timely payment of the amount computed thereon shall be eligible to retain a commission in the amount of one percent of the tax computed due thereon.

3-49-080 Books and records.

Every person required to collect the tax imposed by this chapter shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transaction that gave rise, or may have given rise, to the tax liability or any exemption that may be claimed. All such books and records shall be kept in the English language and, at all times during business hours of the day, shall be subject to and available for inspection by the department.

3-49-090 Payment of tax required.

The failure of the retail tobacco dealer or manufacturer to collect the tax imposed by this chapter shall not relieve the purchaser of the duty to pay it. If the retail tobacco dealer or manufacturer fails to collect the tax, the purchaser shall be required to pay it directly to the department in the same manner and form as a retail tobacco dealer.

3-49-100 Authority to appoint collection agents.

In furtherance of administering this chapter, the comptroller shall have the authority to appoint one or more persons within or without the City as collection agents for the tax herein imposed. This includes the authority to enter into service agreements with public and private entities, and to perform any and all acts, including the expenditure of funds subject to appropriation therefor, as shall be necessary or advisable in connection with such service agreements, including any renewals thereto.

3-49-110 Exemptions.

a) The tax imposed by this chapter shall not apply to the extent it would violate the United States Constitution or the Constitution of the State of Illinois.

b) It shall be presumed that all sales of OTP in the City are subject to tax under this chapter until the contrary is established. The burden of proving that such is not taxable hereunder shall be upon the person so claiming.

3-49-120 Registration.

Every wholesale tobacco dealer that sells OTP to a retailer or purchaser located in the City, and every retail tobacco dealer and manufacturer that sells OTP in the City, must be register with the department within 30 days of effective date of this ordinance, or within 30 days of commencing business, whichever is later.

3-49-130 Supplementary provisions.

Whenever not inconsistent with the provisions of this chapter, or whenever this chapter is silent, the provisions of the Uniform Revenue Procedures Ordinance, Chapter 3-4 of this Code, as amended, shall apply and supplement this chapter.

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not a natural person, any person who has a substantial ownership or controlling interest in the entity that holds the license) intentionally, knowingly, or recklessly allows the violation to occur, the licensee or such other person shall be punishable in the same manner as if said act had been performed by him or her personally. As used in this subsection, "substantial ownership or controlling interest" means ownership of 25% or more of the entity, or, if the entity is a corporation, ownership of 25% or more of the voting shares of stock; or occupation as a principal officer, member of the board of directors, or manager of the entity.

(d) On June 1 of each year, beginning in 2017, the commissioner shall provide to the City Council Committee on License and Consumer Protection a report describing enforcement of this section by the department of business affairs and consumer protection during the previous 12 months.

(Omitted text is not affected by this ordinance)

~~4-64-200 Purchase or possession of Use of improper identification to purchase tobacco products or tobacco accessories by minors prohibited.~~

It shall be unlawful:

(a) For any individual under the age of 48-21 years to purchase tobacco products, tobacco product samples or tobacco accessories, or to misrepresent the individual's his or her identity or age, or to use any false or altered identification[^] for the purpose of purchasing tobacco products, tobacco product samples, or tobacco accessories; or

(b) For any individual under the age of 18 years to possess or to accept delivery of any tobacco product, tobacco product samples or tobacco accessories, except (i) in the presence of and with the knowledge and consent of the individual's parent or legal guardian, while on private property that is not open to the public, or (ii) at the direction of the individual's employer when required in the performance of the individual's employment duties; or

(e)(b) For any person to give any individual under the age of 48-21 years any identification card not duly issued to such individual, for the purpose of buying tobacco products, tobacco product samples[^] or tobacco accessories.

Any minor who illegally possesses any tobacco product, tobacco product sample or tobacco accessory shall be subject to a fine of \$25.00 for the first offense and a fine of not less than \$50.00 for each subsequent offense.

(Omitted text is not affected by this ordinance)

4-64-210 Posting of warning to minors.

Any person who sells, gives away or distributes tobacco products or accessories shall display a printed card which shall state:

Warning

It Is A Violation Of The Law For Cigarettes Or Other Tobacco Products Or Tobacco Accessories To Be Sold To Any Person Under The Age Of 48-21.. Any Person Who Violates This Law Is Subject To A Fine And Possible Imprisonment.

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for commercial purposes to receive an article, product, service, or accommodation without charge or at a discounted price.

"Price floor" means the minimum price, including all applicable taxes, for which one tobacco product or package of tobacco products may be sold by a retail tobacco dealer.

"Smokeless tobacco" means any kind and form of tobacco product not intended to be smoked, including snuff, snus, and chewing tobacco.

"Smoking tobacco" means any kind and form of tobacco product prepared in such manner as to be suitable for smoking, in a pipe or otherwise, including, granulated, plug cut, crimp cut, ready rubbed, cavendish, perique, roll-your-own, shorts, refuse scraps, clippings, cuttings, sweeping of tobacco and loose tobacco.

4-64-260 Price floors for tobacco products.

a) The following price floors shall apply to sales in the City of Chicago:

1) The price floor for cigarettes shall be \$11.50 per package, provided that this floor may be modified pursuant to subsection 4-64-260(b).

2) The price floor for little cigars shall be shall be \$11.50 per package, provided that this floor may be modified pursuant to subsection 4-64-260(b).

3) The price floor for large cigars shall be \$1.74 per cigar, provided that this floor may be modified pursuant to subsection 4-64-260(b).

4) The price floor for smoking tobacco shall be \$11.50 per 0.65 ounce pouch (\$17.70 per ounce), provided that this floor may be modified pursuant to subsection 4-64-260(b).

5) The price floor for smokeless tobacco shall be \$4.00 per ounce, provided that this floor may be modified pursuant to subsection 4-64-260(b).

b) The commissioner of health, with the approval of the comptroller, may amend by rule the price floor applicable to a category of tobacco product in an amount proportional to the change, if any, in the Chicago-Gary-Kenosha area consumer price index. In the event the commissioner amends a price floor, the amended price floor shall not go into effect until 90 days after it is announced via rule promulgated by the department of public health.

c) No person shall sell or offer for sale a tobacco product to a consumer for a price less than the price floor. A retail tobacco dealer shall prominently display the price of all tobacco products at the point of display or at the point of sale.

4-64-265 Coupons prohibited.

No person shall:

(a) honor or accept a price reduction instrument in any transaction related to the sale of a tobacco product to a consumer;

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SECTION 5. Chapter 4-64 of the Municipal Code of Chicago is hereby amended by deleting the language stricken and inserting the language underscored, as follows:

(Omitted text is not affected by this ordinance)

4-64-240 Revocation of licenses.

(a) If a person commits any combination of three or more violations within any 24-month period of Sections 3-42-020, 3-42-025, 3-42-060, 3-42-100, 4-64-132, 4-64-150, 4-64-180, 4-64-190, 4-64-191, 4-64-210, 4-64-220, 4-64-260, 4-64-265, and 4-64-270, the commissioner shall revoke that person's licenses. If a person commits two or more violations within any 48-month period of Section 4-64-191, the commissioner shall revoke that person's licenses. For purposes of this section: (1) "licenses" includes any and all licenses issued by any officer, department, or agency of the City of Chicago required for retail or other business operations at the location at which the violations occurred, and includes, but is not limited to, retail tobacco licenses; (2) multiple violations occurring on the same date shall be deemed a single violation; and (3) the term "violation" means any final disposition against the licensee on a charge brought pursuant to one of the Code provisions listed above, including, but not limited to, any finding of liability after adjudication on the merits, any default finding of liability, any uncontested finding of liability, any negotiated pre-hearing settlement of the charge, and any voluntary payment of the fine corresponding to the charge. A person subject to revocation pursuant to this subsection shall be entitled to the process described in Section 4-4-280, with the condition that any revocation hearing shall be limited to the issue of whether the licensee's record accurately reflects the existence of a sufficient number of violations to support the revocation decision; the licensee shall not be permitted to challenge the violations themselves, nor any underlying facts asserted or determined therein.

(Omitted text is unaffected by this ordinance)

4-64-245 Nonrenewal of licenses.

(a) If a retail tobacco licensee commits any combination of three or more violations within any 24-month period of Sections 3-42-020, 3-42-025, 3-42-060, 3-42-100, 4-64-132, 4-64-150, 4-64-180, 4-64-190, 4-64-191, 4-64-210, 4-64-220, 4-64-260, 4-64-265, and 4-64-270, the licensee shall be subject to nonrenewal of the license. If a person commits two or more violations within any 48-month period of Section 4-64-191, the licensee shall be subject to nonrenewal of the license. The commissioner may decline to renew such license, subject to the procedure described in subsection 4-64-245(b). For purposes of this section, multiple violations occurring on the same date shall be deemed a single violation, and the term "violation" means any final disposition against the licensee on a charge brought pursuant to one of the Code provisions listed above, including, but not limited to, any finding of liability after adjudication on the merits of the charge, any default finding of liability, any uncontested finding of liability, any negotiated pre-hearing settlement of the charge, and any voluntary payment of the fine corresponding to the charge.

(Omitted text is unaffected by this ordinance)

SECTION 6. The provisions of this ordinance are declared to be separate and severable. The invalidity of any provision of this ordinance, or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances.

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CHICAGO February 10, 2016 To the

President and Members of the City Council: Your Committee on Finance having had under consideration

A substitute ordinance concerning the authority to amend Title 3 and Chapter 4-64 of the Municipal Code of Chicago concerning a tax on non-cigarette tobacco products and associated tobacco-related regulations.

02016-105

Having had the same under advisement, begs leave to report and recommend that ^ your Honorable Body pass the proposed Substitute Ordinance Transmitted Herewith^x

This recommendation was concurred in by (a(viva voce vote")),
of members of the committee with *dissenting vote(s): isis-^.*

Aldermen Dowell (3), Hairston (5), O'Shea (19), Cochran (20), Zalewski (23), Mitts (37), Sposato (38), Reilly (42), and Tunney (44) vote no.

(signed

Respectfully submitted

Chairman