

## **PROPOSED SUBSTITUTE ORDINANCE AMENDMENT #23-2311**

(Legislation and Intergovernmental Relations Committee 5/24/2023)

**Sponsored by:** DONNA MILLER, Cook County Board of Commissioners

### **AN AMENDMENT TO CHAPTER 54, ARTICLE V, TOBACCO DEALERS**

**WHEREAS**, e-cigarettes are hooking a new generation on nicotine putting millions of kids at risk and threatening decades of progress in reducing youth tobacco use, and tobacco companies have focused heavily on flavorings because they know that's what attracts a new generation of users. Research shows that flavoring, regardless of the tobacco product, increases the appeal to youth and adults; and

**WHEREAS**, it has become a nationwide crisis of youth addiction, fueled by thousands of kid-friendly flavors and massive doses of nicotine, some containing as much nicotine as a pack of 20 regular cigarettes; and

**WHEREAS**, according to the 2022 National Youth Tobacco Survey (NYTS), over 2.5 million U.S. kids used e-cigarettes in 2022 and almost 85% of youth users report using flavored e-cigarettes: Fruit (71.6%), candy/desserts (34.1%), mint (30.2%), menthol (28.8%), are the most popular flavors reported; and

**WHEREAS**, from 2017 to 2019, e-cigarette use among high school students more than doubled to 27.5%, leading the U.S. Surgeon General and other public health authorities to declare the problem an "epidemic", and 81% of youth who had never used a tobacco product started with a flavored product; and

**WHEREAS**, in 2021, 46% of high school e-cigarette users vaped on at least 20 days a month, and 30.1 reported vaping every day; and

**WHEREAS**, a study of more than 150 e-cigarette ads found all contained youth-appealing content and half featured animation; and

**WHEREAS**, flavored products are driving youth use and as individuals become increasingly addicted to flavored tobacco products there have been significant reports of severe respiratory illnesses and hospitalizations among youth and adults with use of e-cigarette products; and

**WHEREAS**, the use of menthol flavoring is particularly prevalent among young adults and African Americans with an estimated 85.8% of African American smokers and 46% Hispanic smokers smoking menthol cigarettes in comparison to 28.7% of White smokers, and African American and Hispanic communities are heavily targeted by tobacco companies, which may be a contributing factor to the high tobacco-related morbidity and mortality rates in these communities; and

**WHEREAS**, commonly added sugars to burley tobacco can lead to an increase in toxicants in tobacco smoke that are hazardous to the respiratory tract, and emerging studies have found that short-term exposure to aerosolized flavorings in e-cigarettes and other additives found in e-liquid are dangerous, even deadly. For example, vitamin E acetate has been indicated in EVALI, which stands for e-cigarette or vaping product use associated lung injury. This is a potentially fatal syndrome associated with vaping, and it was on the rise in 2019. These products can have damaging effects on the regulation of blood vessel function due to their effects on endothelial cells which is a risk factor for cardiovascular disease, the number one cause of death in the U.S.; and

**WHEREAS**, these shifts show that one way to address this crisis is to eliminate flavored e-cigarettes, and the American Heart Association advocates for the elimination of all characterizing flavors other than

tobacco from all tobacco products. The removal of all flavorings from tobacco products is necessary to reduce appeal to youth and adults alike; and

**WHEREAS**, the City of Chicago and other U.S. jurisdictions have taken actions to eliminate the sale of flavored nicotine products such as Los Angeles County and the states of Massachusetts, California, New Jersey, New York, and Rhode Island that have enacted statewide flavored tobacco and vape product bans; and

**WHEREAS**, in February 2023, the U.S. Supreme Court declined to hear a challenge to Los Angeles County's ban on sales of flavored tobacco products brought by R.J. Reynolds Tobacco Company; and

**WHEREAS**, it is incumbent upon Cook County to lead the way in the protection of our youth and young adults;

**NOW THEREFORE, BE IT ORDAINED**, by the Cook County Board of Commissioners, that Chapter 54 - Licenses, Permits and Miscellaneous Business Regulations, Article V – Tobacco Dealers, Section 54-301, 54-303, and 54-305 of the Cook County Code are hereby amended as follows:

**Sec. 54-301. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Distribute* means to give, sell, deliver, dispense or issue or offer to give, sell, deliver, dispense or issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.

*Flavored liquid nicotine product* means any liquid nicotine product that contains a constituent that imparts a characterizing flavor. As used in this definition, the term "characterizing flavor" means a distinguishable taste or aroma, imparted either prior to or during consumption of a liquid nicotine product, including but not limited to tastes or aromas of menthol, mint, wintergreen, chocolate, vanilla, honey, cocoa, any candy, any dessert, any alcoholic beverage, any fruit, any herb, or any spice, but shall not include the taste or aroma of tobacco. No liquid nicotine product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. A public statement or claim made or disseminated by the manufacturer of a liquid nicotine product, or by any person authorized or permitted by the manufacturer to make or disseminate such statement or claim, that a liquid nicotine product has or produces a characterizing flavor shall establish that the liquid nicotine product is a flavored liquid nicotine product.

*Licensee* means any person obtaining a tobacco product retailer's license under this article.

*Live theatre location* means any building, playhouse, room, hall, or other place utilized by live performers to present artistic representations of real or imagined events in front of a live audience.

*Performance space* means the portion or portions of a live theater location where performances occur. "Performance space" excludes all other portions of live theatre locations, including, but not limited to, hallways, lobbies, and public restrooms.

*Person* means an individual, firm, partnership, joint venture, association, corporation, estate, trust, trustee, or any other group or combination acting as a unit, excepting the United States of America, the State of Illinois, and any political subdivision thereof.

*Photographic identification* means any officially issued card containing the bearer's date of birth that includes a photograph of the person seeking to purchase tobacco products and that is accepted as proof of age under Illinois law.

*Point of sale* means a store, stand, building, boat, vending machine or any other separate place of business maintained by a seller from which tobacco products are made available for sale or distribution to consumers. Point of sale does not include separate cash registers or service counters within a store or other place of business.

*Public Education Program* means an informational campaign in which the public shall be informed of the inherent risks and dangers of consuming tobacco products. The campaign may utilize traditional means of communication such as media advertising, pamphlets, posters, social media and/or any other method necessary.

*Public place* means any area to which the public is invited or permitted.

*Retailer* means any person who sells tobacco products to individuals for personal consumption, or who operates a facility containing vending machines that dispense tobacco products or self-service displays of tobacco products in unincorporated Cook County.

*Sheriff* means the Sheriff of Cook County.

*Tavern* means an enclosed place of business kept, used, maintained, advertised and held out to the public as a place that primarily serves alcoholic liquor for consumption on the premises and in which providing entertainment or the serving of food is only incidental or secondary to the sale of alcoholic beverages for immediate consumption. Examples of places of business not deemed to be taverns within the definitions of this paragraph include, but are not limited to, restaurants, catering halls, bowling alleys, billiard parlors, discotheques, theaters and arenas.

*Theatre actor* means an individual in the process of presenting an artistic representation of real or imagined events in front of a live audience, or in the process of rehearsing to do the same. The term "theatre actor" applies to both women and men.

*Tobacco product sample* means a tobacco product distributed to members of the general public at no cost or at nominal cost for purposes of promoting the product.

*Tobacco products* means any product in leaf, flake, plug, liquid, vapor or any other form, containing nicotine derived from tobacco, which product is intended to enable human consumption of the tobacco or nicotine, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by other means. The term includes tobacco products that are a nonlighted, noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to produce vapor from nicotine in a solution. The term also includes any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. For the purposes of this article, the term "Tobacco products" excludes any product that has been specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

*Vending machine* means any mechanical, electronic or self-service device which upon insertion of money, tokens or any other form of payment, automatically dispenses tobacco products.

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**Sec. 54-303. Enforcement and administration; penalties.**

(a) *Duties of Department of Public Health.*

- (1) The Department of Public Health shall be responsible for the enforcement and administration of this Article. The Sheriff and Sheriff's Deputies shall cooperate with the Department of Public Health in carrying out the provisions of this Article.
- (2) The Department of Public Health shall conduct random, unannounced inspections at locations where tobacco products are sold, including tobacco vending machines, to ensure compliance with this Article. The Department of Public Health shall check the compliance at such locations a minimum of one time per 12-month period. The Department of Public Health, semi-annually as part of its quarterly report to the Board of Commissioners as the Board of Health, shall report on the number of inspections conducted and outcomes of such inspections.
- (3) The Department of Public Health shall promulgate reasonable rules and regulations consistent with this Article to provide for the enforcement and administration of this Article. The rules and regulations shall establish procedures for administrative action against those who violate this Article and for a method of administrative adjudication of the violation or violations.
- (4) Any rules or regulations promulgated under this Article shall be filed in the Department of Public Health's principal office and shall be made available for public inspection. Copies shall be made available upon request and payment of a reasonable fee as determined by the Department to cover the cost of providing the copy.
- (5) The Department of Public Health shall conduct a Public Education Program. The Department of Public Health, in its quarterly report to the Board of Commissioners as the Board of Health, shall report on the progress of the Public Education Program.

(b) *Penalties.*

- (1) The Department of Public Health shall impose a fine upon any person who violates the provisions of Section 54-305. Each instance in which Section 54-305 is violated shall constitute a separate and distinct offense. Penalties imposed shall include the following:
  - a. For a first violation, an administrative penalty of \$250.00;
  - b. For a second violation, occurring after a final determination of liability for a first violation, and within a 12-month period, an administrative penalty of \$500.00 and a suspension of the license of the retail tobacco dealer for 30 days;
  - c. For a third violation, occurring after a final determination of liability for a second violation and within a 12-month period, an administrative penalty of \$1,000.00 and a revocation of the license of the retail tobacco dealer for one year.
- (2) The Department of Public Health shall impose a \$500.00 fine upon any person who sells tobacco products without a license as required by Section 54-304(a) or after a license issued pursuant to this article has been suspended. Each instance in which a person sells tobacco products in violation of Section 54-304(a) shall constitute a separate and distinct violation.
- (3) In addition to imposing the fines and other penalties provided by this article, the Department of Public Health may request the State's Attorney to make application on behalf of the County to the Circuit Court of Cook County for an injunction requiring compliance with the provisions of this article or for such order as the court may deem necessary or appropriate to secure such compliance. The State's Attorney may then institute such proceedings on behalf of the Country as provided by law.

- (c) *Judicial review.* A person may seek a writ of certiorari from the Chancery Division of the Circuit Court of Cook County according to applicable law, appealing any final determination of liability or decision of the Department of Public Health under this Article.

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**Sec. 54-305. Prohibitions on sale or distribution of tobacco products.**

- (a) *Underage tobacco sales.*
- (1) No retailer may sell or distribute tobacco products to any person under 21 years of age.
  - (2) Each retailer shall request and examine the photographic identification of any person purchasing tobacco products so as to verify that the purchaser is over 21 years of age or older. No such verification is required for any person who appears without reasonable doubt to be over the age of 27.
- (b) *Sale of tobacco products other than in sealed packages.* No retailer may break or otherwise open any cigarette or smokeless tobacco package to sell or distribute individual cigarettes or a number of unpackaged cigarettes that is smaller than the minimum cigarette package size of 20 cigarettes or any quantity of cigarette tobacco or smokeless tobacco that is smaller than the smallest package distributed by the manufacturer for individual consumer use.
- (c) *Distribution of tobacco product samples prohibited.* No person shall give away, barter, exchange, distribute or in any way dispense free of charge or at nominal cost any tobacco product samples, and/or any coupon redeemable for any tobacco products, on any public street, alley, sidewalk, or in any public park, ground or playground, or in areas open to the public in any publicly owned or operated building or at any place located within 500 feet of any building or other location used primarily as a school, child care facility, or for the education or recreation of children under 18 years of age.
- (d) *Prohibited locations.* No retailer shall sell or distribute tobacco products at any place located within 500 feet of any building or other location used primarily as a school, child care facility, or for the education or recreation of children under 18 years of age. This prohibition shall not apply to those businesses engaged in the retail sale of tobacco products at a location that would otherwise be prohibited by this article that were in existence prior to passage of this article. This exemption shall apply to any new owner at the same location providing the same service.
- (e) *Restrictions on tobacco product vending machines.*
- (1) No retailer shall sell or distribute tobacco products through a vending machine unless the vending machine is located:
    - a. In an area of factories, businesses, offices, private clubs and other places not open to the public; or
    - b. In taverns.
  - (2) Tobacco products may be sold or distributed by a tobacco product vending machine in a tavern only in the following ways:
    - a. The tobacco product vending machine must be placed at a distance of a minimum of 25 feet from any entrance to the premises; and
    - b. The tobacco product vending machine must be directly visible by the owner or the lessee of the premises, or the licensee's employee or agent during the operation of such vending machine.

- (f) *Posting of warning to minors.* Every retailer of tobacco products shall place and maintain, in legible condition, at each point of sale of tobacco products to consumers, including the front of each vending machine, a sign stating:

"Warning"

It is a Violation of the Law For Cigarettes Or Other Tobacco Products To Be Sold To Any Person Under The Age of ~~18~~ 21."

The sign shall not be less than eight inches by 11 inches in size, except for a sign placed on the front of a vending machine. The sign for a vending machine shall not be less than four inches by four inches in size. The text of such printed card shall be in red letters on a white background, said letters to be at least one inch high.

- (g) *Self-service sales prohibited.* It shall be unlawful to sell, offer for sale, give away, or display tobacco products for sale at any location where the consumer can acquire those products through self-service. For the purposes of this Section, "self-service" means displayed or stored in a manner that is physically accessible in any way to a member of the general public without a direct person-to-person transfer involving the employee of the licensee. This restriction shall not apply to customer self-service as described in Subsection (e) of this Section, restrictions on tobacco product vending machines.
- (h) *Minimum age to sell tobacco products.* 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 18 years of age to sell tobacco products in any licensed premises.
- (i) *Sale or distribution of flavored liquid nicotine products.*

(1) No retailer shall sell, give away, barter, exchange or otherwise furnish to any other person any flavored liquid nicotine product as defined in section 54-301.

Any retailer who violates this section shall be subject to a fine of not less than \$1,000 nor more than \$5,000 for each offense. Each day that a violation continues shall constitute a separate and distinct offense.

(2) It shall be unlawful for retailers to display any flavored liquid nicotine product as defined in section 54-301.

a. For a first violation of this section the Department of Public Health shall impose an administrative penalty of \$500 dollars.

b. For a second violation of this section, occurring after a final determination of liability for a first violation, and within a 12-month period, an administrative penalty of \$500.00 shall be imposed by the Department of Public Health and a suspension of the license of the retailer for 30 days.

c. For a third violation occurring after a final determination of liability for a second violation and within a 12-month period, an administrative penalty of \$1,000.00 and a revocation of the license of the retailer for one year shall be imposed by the Department of Public Health.

d. In addition to imposing the fines and other penalties provided by this article, the Department of Public Health may request the State's Attorney to make application on behalf of the County to the Circuit Court of Cook County for an injunction requiring compliance with the provisions of this section or for such order as the court may deem necessary or appropriate to secure such compliance. The State's Attorney may then institute such proceedings on behalf of the Country as provided by law.

e. Judicial Review. A person may seek a writ of certiorari from the Chancery Division of the Circuit Court of Cook County according to applicable law, appealing any final determination of liability or decision of the Department of Public Health under this section.

Effective Date: This Ordinance Amendment shall be effective 60 days after approval and adoption.