

ORDINANCE NO. 17.570

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AN ORDINANCE AMENDING CHAPTER 18, ARTICLE 14 AND CHAPTER 3,
ARTICLE 20 OF THE CODE OF THE CITY OF PEORIA PERTAINING TO THE SALE
OF TOBACCO

WHEREAS, the City of Peoria is a home rule unit of government pursuant to Article VII, Section 6 of the Constitution of the State of Illinois 1970, and may exercise any power and perform any function pertaining to its government and affairs including the regulation of the licensing of massage establishments within its city limits; and

WHEREAS, the City has regulated the sale of tobacco products since 1957; and

WHEREAS, reports of the negative public and personal health effects of traditional forms of tobacco have increased consumer awareness; and

WHEREAS, based on changes implemented by other Illinois municipalities, the Peoria Liquor Commission considered an increase in the age requirement for tobacco sales and purchase in the City from eighteen to twenty-one; and

WHEREAS, the State of Illinois restricts the sale and purchase of tobacco products to minors under the age of eighteen; and

WHEREAS, the State of Illinois has conferred upon the City Council of local governments the authority to determine by ordinance the restrictions centering upon the sale of tobacco; and

WHEREAS, the sale of tobacco is a privilege and not a right, therefore, the City Council may enact regulations and restrictions on local tobacco licenses; and

WHEREAS, many states and individual cities, including the City of Chicago, have raised the age to purchase tobacco to individuals twenty one and older; and

WHEREAS, the City Council has deemed it reasonable to raise the age for the sale and purchase of tobacco products to twenty-one.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS, as follows:

Section 1: Chapter 18 (Licenses and Miscellaneous Business Regulations), Article XIV (Cigarettes) of the Code of the City of Peoria is hereby amended by deleting the stricken language and adding the underlined language as follows:

DIVISION 1. - GENERALLY

Sec. 18-591. - Selling cigarettes containing deleterious or poisonous drugs.

No person shall expose for sale, sell or offer for sale to any person, directly or indirectly, within the city, any cigarettes containing opium, morphine, jimpson weed, belladonna, marijuana, strychnia, cocaine or any other deleterious or poisonous drug.

Sec. 18-592. - Selling to minors.

No person, with or without a license, shall sell or offer to sell, buy for, distribute samples of or furnish any cigar, cigarette, electronic cigarette or electronic cigarette liquids, smokeless tobacco or tobacco in any of its forms to any ~~minor person~~ under ~~18~~twenty-one (21) -years of age.

For the purpose of this article, "smokeless tobacco" means any tobacco products that are suitable for dipping or chewing.

For the purpose of this article, "electronic cigarette" or "e-cigarette" means a battery or other power operated device that contains a combination of nicotine, flavor, and chemicals that are turned into vapor which is inhaled by the user.

For the purpose of this article, "electronic cigarette liquid" means a liquid whether packaged in a cartridge containing nicotine in combination with flavor and chemicals sold and marketed for the refilling of e-cigarettes.

Sec. 18-593. - Selling, etc., near schools.

- (a) No person shall sell, give away, barter, exchange or otherwise deal in, at any place located within 350 feet of the property line of any public, private or parochial elementary, middle or secondary schools, any cigarettes or electronic cigarettes or electronic cigarette liquids, tobacco or tobacco products of any form whatsoever, used in the making of cigarettes, or with which cigarette papers or wrappers are sold or given away.
- (b) For any businesses that sells or offers for sale any cigarettes, electronic cigarettes, electronic cigarette liquids, tobaccos, tobacco products of any form, the distance shall be measured by uninterrupted distance from property line of the school to the property line of the business.
- (c) The above-stated 350 feet restriction shall not apply to any licensee that holds a valid current cigarette license issued under this division as of June 10, 2014, as long as no cigarette license for that location has been revoked and the same licensee continues to timely apply for a renewal of the cigarette license and meets the qualification to hold such license.
- (d) The above-stated 350 feet restriction shall not apply to the location of any business considered a retail gasoline dealer as defined under section 27-261 of the City Code that holds a valid current cigarette license issued under this division as of June 10, 2014, as long as no cigarette license for that location has been revoked for cause.

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Sec. 18-594. - Penalty.

Any person who shall violate any of the provisions of this article shall upon conviction thereof, be punished by a fine set forth in section 1-5.

Nothing in this section shall preclude or affect the enforcement of section 18-617.

DIVISION 2. - LICENSE

Sec. 18-611. - Required.

No person shall keep for sale or to give away, or shall sell or give away, or offer to sell or give away, any cigar, cigarette or any cigarette papers or cigarette wrappers of any kind, electronic cigarette or electronic cigarette liquids, smokeless tobacco or tobacco in any of its forms, at any place within the city, without having first procured a license therefor.

Sec. 18-612. - Vending machines, coin-operated devices, etc.

- (a) When the method of sale of any item described in section 18-611 shall be by means of a vending machine or other coin-operated or mechanical device, no person shall install, keep, maintain or use, or permit the installation, keeping, maintenance or use of any such machine or device, unless there is displayed in the establishment a license for the current calendar year posted pursuant to section 18-616. Each such machine or device shall have a separate license.
- (b) No person shall deliver or install or cause to be delivered or installed any vending machine or other coin-operated device to sell items described in section 18-611 unless there is displayed in the establishment a license for the current calendar year posted pursuant to section 18-616. Each such machine or device shall have a separate license.
- (c) Tobacco products listed in this division may be sold through vending machine only in the following locations:
 - (1) Factories, businesses, offices, private clubs, and other places not open to the general public.
 - (2) Places to which ~~minors~~ persons under ~~18~~ twenty-one (21) years of age are not permitted access.
 - (3) Places where alcoholic beverages are sold and consumed on the premises.
 - (4) Places where the vending machine is under the direct supervision of the owner of the establishment or an employee over 18 years of age. The sale of tobacco products from a vending machine under direct supervision of the owner of the establishments or an employee of the establishment is considered a sale of tobacco products by that person. As used in this section, "direct supervision" means that the owner or employee has an unimpeded line of sight to the vending machine.

- (5) Places where the vending machine can only be operated by the owner or an employee over age ~~18~~ twenty-one (21) years old either directly or through remote control device if the device is inaccessible to all customers.

Sec. 18-613. - Application.

An application for any license required by this division shall be made in writing to the city comptroller which shall set forth the following:

- (1) The name of the individual, partnership, corporation or association applying for the license.
- (2) The residence, phone number and driver's license number of the applicant or partners; or, if a corporation or association, the residence, phone number and driver's license number of the principal officers.
- (3) The location for which the license is requested.
- (4) The type of license requested.
- (5) Whether the applicant, his partners or the principal officers of the corporation or association have been convicted of a criminal offense or ordinance violation (other than traffic or parking offenses) in any jurisdiction and, if so, a list of such convictions with date and prosecuting jurisdiction.

Sec. 18-614. - Fees.

The applicant for a license under this division shall pay the city treasurer prior to filing an application a fee of \$60.00 per year or part thereof for each license.

Sec. 18-615. - Issuance.

The city comptroller shall issue the license requested under this division unless he shall find:

- (1) That the applicant is under the age of ~~18~~ twenty-one (21).
- (2) That the applicant or any principal officer therein has held a license or had an interest in a license issued pursuant to this division that was revoked for cause.

Sec. 18-616. - Posting.

- (a) Every license issued under this division, other than those for a vending machine or coin-operated device, shall, at all times during the period for which it is effective, be posted in a conspicuous place at or near the principal entrance to the premises for which the license is issued.

- (b) Every license issued under this division for a vending machine or coin-operated device shall be either affixed to the device for which it has been issued in a prominent location on the front of the machine or affixed to a pane of glass which is prominently displayed in a conspicuous place upon the premises for which the license is issued.

Sec. 18-617. - Revocation, suspension, and fines.

- (a) Any license issued pursuant to this division may be revoked, suspended for a period not to exceed 30 days and/or imposed a fine not more than \$1,000.00 by the city manager if the city manager shall find after a hearing:
 - (1) That the licensee has violated any of the provisions of this article, the laws of the state, or ordinances of the city at the licensed location.
 - (2) That the licensee has knowingly furnished false or misleading information or withheld relevant information on any application for a license required by this division or any investigation into any such application.
- (b) The licensee shall be responsible for the acts of his agents, servants and employees in the operation of any licensed establishment. Prior to holding a hearing concerning the question of whether a license issued pursuant to this division shall be revoked or suspended, the city manager shall give at least ten days' written notice to the licensee setting forth the alleged violations specifically. The licensee may present evidence at such hearing and cross-examine witnesses.
- (c) Upon the revocation of a cigarette license issued pursuant this division, no cigarette license shall be issued for that location within 12 months of the revocation of the cigarette license and the location must comply with the current distance restriction from a school property as prescribed in section 18-593 of the City Code.

Sec. 18-618. - Transfer.

- (a) A license issued pursuant to this division for other than a vending machine or coin-operated device may not be transferred, sold or assigned to any other person; nor shall such license be transferred to any location other than that listed on the application.
- (b) A license issued pursuant to this division for a vending machine or coin-operated device shall not be transferred to any device other than the one listed on the application. The location of the device, however, may be changed by notifying the comptroller of the new location.

Sec. 18-619. - Sale of single cigarette.

No establishment licensed under this article shall expose for sale, sell or offer for sale to any person, directly or indirectly, within the city, any cigarette not sealed in the original packaging

unless properly marked and packaged for individual sale by the manufacturer or licensed tobacco products distributor.

Sec. 18-620. - Drug paraphernalia.

- (a) No person shall deliver, furnish, transfer, or possess with intent to deliver, furnish or transfer, drug paraphernalia, as defined in 720 ILCS 600/2, subparagraph (d)(5) of the Drug Paraphernalia Control Act, and including glass tubing designed and utilized for the ingestion of crack or cocaine, knowing, or under circumstances where one reasonably should know, that such drug paraphernalia or glass tubing will be used to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of the Illinois Controlled Substances Act, codified at 720 ILCS 570/100 et seq.
- (b) In addition, upon the order of the chief of police with supported basis that an item or items are drug paraphernalia or used to introduce into the human body a controlled substance in violation of the Illinois Controlled Substance Act, a licensee, its agents or employees, that holds a license issued by the city must cease to expose for sale, sell or offer for sale to any person, directly or indirectly, the item or items within 14 days of issuance of such order.
- (c) In addition to the penalty set for the in section 18-617 of this Code, any violation of this section shall upon conviction be punishable with a fine not less than \$500.00.

Section 2: Chapter 20 (Offenses and Miscellaneous Provisions), Article 3 (Minors) of the Code of the City of Peoria is hereby deleted as follows:

~~Sec. 20-52.— Possession of tobacco by minors.~~

~~No person under 18 years of age shall have in his or her possession any cigar or cigarette or tobacco in any of its forms. The incidental and temporary possession of tobacco by retail sales clerks or stock clerks in the performance of their duties shall not be a violation of this section.~~

Section 3. This ordinance shall be in full force and effect ten (10) days after its passage and publication.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this 24th day of APRIL, 2018.

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AYES: Akeson, Cyr, Graveb, Jensen, Riggensch, Ruckriegel, Turner, Mayor Ardis – 8;

NAYS: Montelongo, Moore, Ovler – 3.

