

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, 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, the City can require tobacco retailers to comply with tobacco control laws, such as not selling tobacco products to minors, not selling single cigarettes and/or not selling tobacco products within a certain distance of schools; and

WHEREAS, retailers who fail to comply with tobacco control regulations may face fines and other consequences, including having their privilege to sell tobacco suspended or revoked.

WHEREAS, the City Council has deemed it reasonable to enact the ability to institute a Plan of Operation for tobacco retailers that fail to adhere to tobacco control regulations.

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:

ARTICLE XIV. - CIGARETTES

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, jimson 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 person under 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.

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.

Secs. 18-595—18-610. - Reserved.

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 persons under 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 21 years old either directly or through remote control device if the device is inaccessible to all customers.

Sec. 18-613. - Submission and disposition of 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.
- (6) A nonrefundable filing fee of \$100.00 shall be paid for filing an initial application for tobacco license. The fee shall be separate from all other fees set forth in this article. All such applications shall be filed in duplicate in the office of the city comptroller and shall be accompanied by a deposit of a certified cashier's check, a money order, or cash in the full amount of the license fee required [to] be paid for the kind of license applied for, which fee shall be returned to the applicant if such application is denied. The original application shall remain in the office of the city comptroller as a permanent record. The city comptroller shall forthwith deliver a copy of such application together with all attachments to the superintendent of police who shall then cause a thorough investigation to be made into the fitness and eligibility of the applicant for the tobacco license.
- (7) Within 30 days of the receipt of the application by the superintendent of police, he shall report to the mayor the results of his investigation along with his recommendation whether the application should be granted or denied or held for further investigation, including the reasons for such recommendation.
- (8) Within ten days of the receipt of the investigation report and recommendation of the superintendent of police, the city comptroller shall notify the applicant that his application is granted, denied or held for further investigation. The period of such additional investigation shall not exceed an additional 30 days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the city comptroller shall advise the applicant in writing whether the application is granted or denied.
- (9) Whenever an application is denied or held for further investigation, the city comptroller shall advise the applicant of the reasons for such action.
- (10) The failure or refusal of the applicant to timely deliver any books, records or other documents, or to give any information relevant to the investigation of the application, or his refusal or failure to appear at any reasonable time and place for

examination under oath regarding such application, shall constitute an admission by the applicant that he is ineligible for such license and shall be grounds for denial thereof by the city comptroller.

- (11) Authorization for the police to conduct criminal background checks and take fingerprints of all owners/applicants listed on the application.

Sec. 18-614. - Fees.

The applicant for a license under this division shall pay the city treasurer prior to filing an application fee of \$500.00 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 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.~~
- (a) The city manager shall be charged with the administration of this chapter and of such other ordinances relating to cigarettes as may be, from time to time, enacted by the city council.
- (b) The city manager shall have the following powers and duties with respect to cigarette licenses:
1. To revoke or suspend for a period not to exceed 30 days and/or impose a fine not more than \$1,000.00 by the city manager if the city manager shall find after a hearing:
 - a) That the licensee violated any of the provisions of this article, the laws of the state, or ordinances of the city at the licensed location; or
 - b) That the licensee 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.
 2. To enter or to authorize any law enforcement officer or other city employee designated by the city manager to enter, at any time, upon the premises licensed hereunder to determine whether any of the provisions of the state law or city ordinance or any rules or regulations adopted by the city have been or are being violated; and at such time to examine the premises of the licensee in connection therewith.
 3. To examine, or cause to be examined, under oath, any applicant for a local license or for a renewal thereof, or any licensee upon whom notice of a hearing of a violation of law has been served; to examine, or cause to be examined, the books and records of any such applicant or licensee, and to hear testimony and take evidence for use in the performance of the city manager's duties under this chapter.

4. To compel the attendance of a witness by subpoena and the production for examination of any books, payrolls, records, correspondence, documents, papers or other evidence by subpoena duces tecum in any investigation or hearing before the city manager. Further, in case of failure or refusal to obey a subpoena or subpoena duces tecum issued to any person, the city manager may instruct the corporation counsel or his/her designee to seek compliance to the subpoena or subpoena duces tecum by petitioning the circuit court to enforce the subpoena or subpoena duces tecum. Failure to obey any order issued by the circuit court may be punished by the court as contempt thereof.
 5. To receive complaint from any citizen within his jurisdiction that any of the provisions of this chapter or any rules or regulations adopted pursuant to this chapter, have been or are being violated and to act upon such complaints in the manner provided for in this chapter.
- (c) 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.
- (d) 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.

Secs. 18-621—18-630. - Reserved.

18-631. Plan of Operation.

Prior to granting the license, the city council may impose any additional conditions or limitations upon establishment, location, construction, maintenance, or operation of the licensee's establishment as devised by a plan of operation that will provide reasonable measures to control objectionable conditions. The city council may require such evidence and guarantees as it deems necessary, as proof that the conditions imposed are being and will be fulfilled. Where additional limitations and conditions are imposed by the city council including conditions and limitations in an approved plan of operation, the same must be implemented prior to the sale of cigarettes or prior to the issuance of any subsequent license for that site unless the city council adopts another date. Failure to fulfill the conditions and/or limitations shall be grounds for revocation of the license after a hearing held pursuant to section 18-617.

Section 2. 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
_____ day of _____, 2020.

AYES:

NAYS:

ABSENT:

APPROVED:

Jim Ardis, Mayor

ATTEST:

Beth Ball, City Clerk

EXAMINED AND APPROVED:

Corporation Counsel