

Memorandum
Legal Department, CED and City Clerk



To: Rock Island City Council
From: Hector Lareau and David Morrison, Legal Department
Samantha Gange, City Clerk
Tanner Osing, CED
Subject: Amendments to Article XVIII Sale/Possession of Tobacco Products
Date: March 3, 2023

Attached is the ordinance amending Article XVIII, Sale/Possession of Tobacco Products, sections 8-486, 8-487, 8-489, 8-492, 8-493, 8-494, 8-495, and 8-497.

The proposed amendments include updated and expanded language definitions for new nicotine products like vapes in addition to tobacco products, providing two classes of business licenses for different retailers, and incorporating location requirements for tobacco sales in the Zoning Code.

Regarding licensing, staff recommend taking the same approach as the City's Liquor License, which means that the license will be held by an individual and be non-transferable. A person seeking a license for a particular establishment would have to meet the provisions of Article XVIII and also meet the zoning requirements for the business location. Current business locations that will not meet the proposed zoning requirements will be considered non-conforming uses. Per the Zoning Code, non-conforming uses may continue as long as the building has not been abandoned for more than one (1) year or the use did not change to a permitted use. This means that businesses may continue to operate at current locations even after a business is sold as long as it meets those conditions and the new owner is properly licensed

The additions and changes to the ordinance are highlighted in yellow and deletions are indicated in red.

Recommendation: Recommend that the City Council consider the proposed amendments to Article XVIII, Sale/Possession of Tobacco Products.

Submitted by: Hector Lareau and David Morrison, Legal Department
Samantha Gange, City Clerk
Tanner Osing, Planning & Zoning Manager, CED

Approved by: Todd Thompson, City Manager

ARTICLE XVIII. SALE/POSSESSION OF TOBACCO PRODUCTS

Sec. 8-486. Definitions:

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them:

“Alternative nicotine product” means a product or device not consisting of or containing tobacco that provides for the ingestion into the body of nicotine, whether by chewing, smoking, absorbing, dissolving, inhaling, snorting, sniffing, or by any other means. “Alternative nicotine product” does not include: cigarettes as defined in Section 1 of the Cigarette Tax Act [35 ILCS 130/1] and tobacco products as defined in Section 10-5 [35 ILCS 143/10-5] of the Tobacco Products Tax Act of 1995; tobacco product and electronic cigarette as defined in this Section; or any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

“Electronic cigarette” means:

- (1) any device that employs a battery or other mechanism to heat a solution or substance to produce a vapor or aerosol intended for inhalation;
- (2) any cartridge or container of a solution or substance intended to be used with or in the device or to refill the device; or
- (3) any solution or substance, whether or not it contains nicotine intended for use in the device.

“Electronic cigarette” includes, but is not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, any components or parts that can be used to build the product or device, and any component, part, or accessory of a device used during the operation of the device, even if the part or accessory was sold separately. “Electronic cigarette” does not include: cigarettes as defined in Section 1 of the Cigarette Tax Act; tobacco product and alternative nicotine product as defined in this Section; any product approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose; any asthma inhaler prescribed by a physician for that condition and is being marketed and sold solely for that approved purpose; any device that meets the definition of cannabis paraphernalia under Section 1-10 of the Cannabis Regulation and Tax Act [410 ILCS 705/1-10]; or any cannabis product sold by a dispensing organization pursuant to the Cannabis Regulation and Tax Act [410 ILCS 705/1-1 et seq.] or the Compassionate Use of Medical Cannabis Program Act [410 ILCS 130/1 et seq.].

“Nicotine” means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived.

“Tobacco product” means any product containing or made from tobacco that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, and any other smokeless tobacco product which contains tobacco that is finely cut, ground, powdered, or leaf and intended to be placed in the oral cavity. “Tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include: an alternative nicotine product as defined in this Section; or any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for that approved purpose.

~~—Minor: Any person under eighteen (18) years of age.~~

~~Tobacco Products: Any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, vapes, snuff, chewing tobacco or dipping tobacco.~~

“Vending Machine”: Any mechanical, electric or electronic, self-service device which, upon insertion of money, tokens or any other form of payment, dispenses tobacco products. (Ord. 96-67, 9-16-1996)

Sec. 8-487. License Generally:

It shall be unlawful 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~~ any products regulated by this Chapter ~~within the City without having first obtained a tobacco dealer license therefor pursuant to this chapter.~~ (Ord. 96-67, 9-16-1996). It shall be unlawful to permit smoking, vaping, or otherwise ingesting any tobacco, electronic cigarette, or alternative nicotine products on the premises at an establishment which also sells tobacco, electronic cigarettes, or alternative nicotine products without first obtaining a Class A or Class B license.

A license shall be purely a personal privilege and shall not constitute property, nor shall it be subject to attachment, garnishment or execution; nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. Such license shall not descend by the laws of testate or intestate devolution, but it shall cease upon the death of the licensee.

Sec. 8-488. Licensing Procedure:

There shall be two categories of tobacco dealer’s licenses. Applications shall be made in writing to the City Clerk on a form(s) provided by the City Clerk’s Office and renewed each year thereafter.

- (1) Class A. Class A licensees shall not derive more than 80% of the location’s revenues from the sale of products regulated by this Chapter. The annual license fee for Class A shall be one hundred twenty-five dollars (\$125.00), payable in accordance with this Chapter.
- (2) Class B. Class B licensees who derive more than 80% of the locations’ revenue from the sale of these products regulated by this Chapter. The annual license fee for Class A shall be two hundred fifty dollars (\$250.00), payable in accordance with this Chapter.

~~—(b) Licensee Fee: The annual license fee for a tobacco dealer’s license shall be one hundred twenty-five dollars (\$125.00), payable in accordance with section 8-2 of this chapter. (Ord. 043-2017, 11-6-2017)~~

Sec. 8-489. Responsibility For Agents And Employees:

~~—(a)~~ Every act or omission of whatsoever nature, constituting a violation of any of the provisions of this article by an officer, director, 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. (Ord. 96-67, 9-16-1996)

Sec. 8-490. Suspension; Revocation Of License; Fines, Costs:

(a) Once a licensee has been notified of a violation of this article, they shall have five (5) days to file a written notice of appeal. If no hearing is requested, the Mayor may suspend, revoke, or issue a written reprimand to any license issued under the provisions of this chapter, if the Mayor determines that the licensee has violated any of the provisions of this article. In lieu of suspension or revocation of a license, the Mayor may instead levy a fine on the licensee. The fine imposed shall not exceed seven hundred fifty dollars (\$750.00) for each violation. Each day on which a violation continues shall constitute a separate violation.

(b) If no hearing is requested by the licensee and the Mayor determines that a letter of reprimand is warranted or the license should be suspended or revoked, he shall issue a written order within five (5) days stating the reasons for the determination, and shall cause a copy of such order to be served upon the licensee within ten (10) days. In the event a penalty is imposed, the order shall specify the date by which the penalty shall be paid. If the penalty is not paid by the specified date, the license shall be suspended for a time determined by the Mayor. All penalties shall be paid at police headquarters. (Ord. 96-67, 9-16-1996)

Sec. 8-491. Hearing Procedures:

(a) If a hearing is requested, in writing, before the Code Hearing Officer the Code Hearing Officer shall schedule a hearing on said matter within thirty (30) days. Said hearing shall be open to the public and a Court Reporter shall transcribe the proceedings.

(b) If the Code Hearing Officer determines that the licensee has violated any of the provisions of this chapter, the Code Hearing Officer may suspend, revoke or issue a written reprimand to any license issued under the provisions of this chapter or, in lieu of suspension or revocation of a license, impose a fine on the licensee not to exceed seven hundred fifty dollars (\$750.00) for each violation. Each day on which a violation continues shall constitute a separate violation.

(c) The Code Hearing Officer shall determine the costs incurred by the City for said hearing, including, but not limited to: Court Reporter fees, the cost of transcript records, attorney fees, the cost of preparing the mailing notices and orders and all other miscellaneous expenses incurred by the City or such lesser sum as the Code Hearing Officer may allow.

(d) The licensee shall pay said costs to the City within thirty (30) days of notification of the costs by the Code Hearing Officer. Failure to pay said costs within thirty (30) days of notification is a violation of this article and may be cause for license suspension or revocation, or the levy of additional fines.

(e) Witnesses shall be sworn; but the hearing shall be informal, and the strict rules of evidence shall not apply.

(f) In the event the licensee wishes to appeal a decision of the Code Hearing Officer, said licensee shall pay the cost of the preparation and transcription of the record of the hearing and shall appeal to the Circuit Court under the provisions of the Administrative Review Act. (Ord. 96-67, 9-16-1996)

Sec. 8-492. Use Of Premises After Revocation:

(a) 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 the conduct of the business of selling "any tobacco products" as defined in this Chapter. ~~section 8-486 of this article in the premises described in such revoked license.~~ (Ord. 96-67, 9-16-1996)

Sec. 8-493. Prohibited Sales, Delivery - Signs:

(a) It shall be unlawful for any person, including any licensee, to sell, offer for sale, give away or deliver tobacco products to any person under the age of ~~eighteen (18)~~ twenty-one (21) years.

(b) Signs informing the public of the age restrictions provided for herein shall be posted by every licensee at or near every display of tobacco 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 TO
PERSONS UNDER TWENTY-ONE YEARS EIGHTEEN 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 inch (1") high. (Ord. 96-67, 9-16-1996)

Sec. 8-494. Age Limits Minors:

(a) Minimum Age To Sell Tobacco Products: It shall be unlawful for any licensee or any officer, associate, member, representative, agent or employee of such licenses, to engage, employ or permit any person under twenty-one (21) eighteen (18) years of age to sell tobacco products in any licensed premises.

(b) Purchase By Minors Prohibited: It shall be unlawful for any person under the age of twenty-one (21) eighteen (18) years to possess any tobacco products, or to misrepresent their identity or age, or to use any false or altered identification for the purpose of purchasing tobacco products.

(c) Possession By Minors Prohibited: It shall be unlawful for any person under twenty-one (21) years of age age of eighteen (18) years to possess any tobacco products; ~~provided that the possession by a person under the age of eighteen (18) years is 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. (Ord. 96-67, 9-16-1996)~~

Sec. 8-495. Certain Free Distributions Prohibited:

~~(a)~~ It shall be unlawful for any licensee or any person in the business of selling or otherwise distributing, promoting or advertising tobacco 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 products free of charge to any person on any right of way, park, playground or other property owned by the city or the school district. (Ord. 96-67, 9-16-1996)

Sec. 8-496. Vending Machines-Locking Devices:

(a) It shall be unlawful for any licensee to sell or offer for sale, give away, deliver or to keep with the intention of selling, giving away or delivering tobacco products by use of a vending machine, unless such vending machine is equipped with a manual, electric or electronic locking device controlled by the licensee so as to prevent its operation by persons under the age of twenty-one (21) eighteen (18) years.

(b) Any premises where access by persons under the age of twenty-one (21) eighteen (18) years is prohibited ~~by law, or premises where the public is generally not permitted and where vending machines are strictly for the use of employees of a business located at such premises,~~ shall be exempt from the requirements of subsection (a) of this section. (Ord. 96-67, 9-16-1996)

Sec. 8-497. Remedies For Violation:

(a) Any violation of the provisions of this article, except as otherwise provided in this section, shall be punishable by a minimum fine of two hundred dollars (\$200.00). In the event any person is accused of a violation hereof and does not wish to contest the allegation prior to the time a complaint is issued for the violation, that person so accused may pay to the city at police headquarters a penalty in the sum of one hundred dollars (\$100.00) for and in full satisfaction of said violation.

(b) Any violation committed by any person under the age of twenty-one (21) of subsection ~~a minor of subsection 8-494(b) or (c) of this article,~~ as a first offense, shall be punishable by a minimum fine of fifty dollars (\$50.00). In the event any ~~minor person~~ **minor person** is accused of a violation hereof and does not wish to contest the allegation prior to the time a complaint is issued for the violation, that ~~minor person~~ **minor person** so

accused may pay to the city at police headquarters a penalty in the sum of twenty-five dollars (\$25.00) for and in full satisfaction of said violation. In lieu of any citation payment or any fine mentioned herein for the first offense, a person may notify the chief of police, in writing, of their intention to complete a "tobacco use" class or other similar class put on by the American Lung Association, at such ~~minor's~~ **person's** sole cost and expense, and if such person shall successfully complete such class and provide proof of completion to the chief of police, in writing, then any such citation cost or fine for first offense shall be waived.

(c) These fines are in addition to administrative provisions for suspension, revocation or forfeiture of a license issued pursuant to this article; and payment of such fine shall not constitute an admission of guilt or innocence for purposes of such administrative proceedings for suspension, revocation or forfeiture.

(d) Any duly appointed and authorized security officer for the School District #41 or any subdivision thereof, or any other peace officer, shall have authority to sign all complaints and charge any violations of this section that takes place on School District #41 property. Any duly appointed and authorized administrator for the Alleman High School or any subdivision thereof, or any other peace officer, shall have authority to sign all complaints and charge any violations of this section that takes place on Alleman school property. (Ord. 96-67, 9-16-1996; Ord. 96-83, 10-28-1996)