

ARTICLE 30
REGULATION OF TOBACCO PRODUCTS

Sec. 1. Legislative findings, declaration, and purpose.

The Mt. Vernon City Council finds cigarette smoking and other tobacco use by minors a grave public health problem. Therefore, the purpose of this Article is to implement a strict and enforceable system to prevent the illegal sale of cigarettes and other tobacco products to minors.

(1) Findings:

- a. Cigarette smoking is dangerous to human health;
- b. There exists substantial scientific evidence that the use of tobacco products causes cancer, heart disease, and various other medical disorders;
- c. The Surgeon General of the United States has declared that nicotine addiction from tobacco is similar to addiction to cocaine and is the most widespread example of drug dependence in this country;
- d. The Centers for Disease Control and Prevention have found that among persons who have ever tried a cigarette, more than eighty (80) percent reported having had their first cigarette before age eighteen (18); and
- e. The National Institute on Drug Abuse has found that cigarette smoking precedes and may be predictive of adolescent illicit drug use.

(2) The enactment of this Article intends to further the health, welfare and safety of the residents of the City of Mt. Vernon, Jefferson County, Illinois, particularly those residents under eighteen (18) years of age.

Sec. 2. Definitions.

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

"Compliance check" means an inspection conducted with the intention of assessing retail sales of tobacco products to minors and enforcing age-of-sales laws. Compliance checks are conducted by having designated persons under the age of eighteen (18) years of age attempt to purchase tobacco products from vendors.

"License" means a license issued by the City of Mt. Vernon for the retail sale of tobacco products.

"Licensee" means the holder of a valid license for the retail sale of tobacco products.

"Minor" means any person under the age of eighteen (18) years of age

"Person" means:

1. Any human being who, as owner of a business, delivers tobacco in any form to a minor and accepts money in payment therefor;
2. Any human being who, as an employee for an owner of a business, delivers tobacco in any form to a minor and accepts money for the owner in payment therefor, thus completes a sale by said owner to said minor;
3. Any corporation, partnership, sole proprietorship or body politic having legal rights and duties;
4. Any human being who purchases for or makes a gift to a minor of tobacco in any form.

"Public place" means an area to which the public is invited or in which the public is permitted, including but not limited to any right-of-way, mall or shopping center, park, playground, and any other property owned by the City, any school district, or any park district.

"Self-service displays" means open displays of tobacco products and point-of-sale tobacco promotional products that the public has access to without intervention of a store employee.

"Tobacco products" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco or dipping tobacco.

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

Sec. 3. License required.

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, of giving away or of delivering tobacco products within the City without having first obtained a valid Tobacco Retailer's License from the City of Mt. Vernon for each location in which tobacco products are sold. All such licenses must be renewed annually. Such license shall be in addition to any other license required by the Revised Code of Ordinances or by the State of Illinois. The license shall state the name of the Licensee and shall designate the premises subject of the License. The license year shall be May 1 – April 30.

The license required herein shall be issued by the City Clerk upon such application and forms as may be required by said City Clerk, upon compliance with the provisions of this Article. However, the City Clerk shall not issue a license to any person who shall have committed a violation of this Article and shall have failed to pay the fine or any costs owing under Section 21 herein in full prior to application for a license.

Sec. 4. License fee.

The fee for a one-year Tobacco Retailer's License is twenty-five dollars (\$25.00) for each tobacco retail location. The license fee will be waived during the first licensing year and during each subsequent year if licensee is free of any violation of this Article during the previous licensing year.

Sec. 5. Non-transferability of license.

A Tobacco Retail License is non-transferable to another person. In addition a new license is required for a tobacco retailer who changes location.

Sec. 6. Prohibited sales/distribution

It shall be unlawful for any person to sell, offer for sale, give away or deliver tobacco products to any person under the age of eighteen (18) years.

Sec. 7. Warning signs.

Signs informing the public of the age-of-sale restrictions shall be posted by every licensee at or near every display of tobacco products. Each sign shall be plainly visible and shall state:

"THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW"

The text of such signs must be in red letters on a white background, and said letters must be at least one (1) inch high.

Sec. 8. Identification required.

No licensee or other person shall sell or permit to be sold or give cigarettes or other tobacco products to an individual appearing younger than the age of twenty-seven (27) without requesting and examining photographic identification establishing the purchaser's age as eighteen (18) years of age or greater. A reasonable belief that by a licensee or other person that the person purchasing or accepting cigarettes or other tobacco products is eighteen (18) years or older is not a defense to any action under this Article unless said licensee or other person shall have demanded and received some form of positive identification that such person is eighteen (18) years or older.

Sec. 9. Minimum age to purchase or accept tobacco products.

It shall be unlawful for any person under the age of eighteen (18) years to purchase or accept tobacco products or to misrepresent his/her age or use any false or altered identification with the intention of purchasing or accepting tobacco products.

Sec. 10. Minimum age to sell tobacco products.

It shall be unlawful for any licensee, officer, associate, member, representative, agent or employee of such licensee to engage, employ or permit any person under sixteen (16) years of age to sell tobacco products on any vendor's premises.

Sec. 11. Vending machines prohibited.

Tobacco vending machines or any other devices for the sale or distribution of tobacco products are prohibited.

Sec. 12. Proximity to certain institutions.

It shall be unlawful for any person to sell, offer for sale, give away, offer as a gift or deliver tobacco products within one hundred (100) feet of any school, child care facility or other building used for educational or recreational purposes by persons under eighteen (18) years of age.

Sec. 13. Tobacco samples and certain free distributions prohibited.

It shall be unlawful for any licensee or any person, business, or tobacco retailer to distribute, give away, deliver tobacco products free of charge, or deliver any coupon or rebate for tobacco products, to any person on any right-of-way, park, playground, parking lot or other property owned by the City, any school district, any park district, or any public library.

Sec. 14. Out-of-package sales prohibited.

It is unlawful to sell cigarettes out of the manufacturer's package with required health warnings. It is unlawful to sell cigarettes individually or in packages of fewer than twenty (20) cigarettes per package.

Sec. 15. Vendor-assisted sales.

It shall be unlawful for any licensee, person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service displays or any other means other than vendor-assisted sales.

Sec. 16. Responsibility for agents and employees.

Every act or omission of any nature constituting a violation of any provisions of this Article by any 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.

Sec. 17. Use or possession by minors prohibited.

It shall be unlawful for any person under the age of eighteen (18) years to use or possess any tobacco products, except that it shall not be a violation of this section for a minor to use or possess any tobacco product where such use or possession takes place in an established place of worship or tribal meeting place; provided, however, where such use or possession takes place in an established place of worship or tribal meeting place, such use or possession shall not be a violation only where use is in the performance of a religious service or tribal ceremony and the religious group or tribe is legally established and recognized by the State of Illinois.

Sec. 18. Inspection.

The Chief of Police and such other persons as designated by the City Manager are hereby authorized and empowered, to conduct annual, random, unannounced inspections of all places wherein such tobacco products are licensed to be sold, for the purpose of ascertaining whether the laws of the state and of the City in relation to the same, are being complied with at such place.

Sec. 19. Sales/distribution violation.

Any person who shall violate or shall cause the violation of any provision of this Article other than the purchasing and possession sections of this Article (Section 9 and Section 17 respectively) shall be subject to a fine in the amount of seventy five dollars (\$75.00) paid to the City within 72 hours of the violation which fine shall be paid to the Mt. Vernon Police Department. If the fine is not paid within 72 hours of the violation, then the violation shall be subject to the penalties as provided within Article 22 of the Revised Code of Ordinances, except that the fine shall be not less than one hundred fifty dollars (\$150.00) per each violation. In addition, a Licensee shall be subject to the provisions of Section 21 herein providing for the suspension or revocation of license.

Section 20. Purchase/possession violations.

Any person under the age of eighteen (18) years that violates the purchasing and use or possession sections (Section 9 and 17 respectively) of this Article shall be subject to a fine in the amount of seventy five dollars (\$75.00), if paid to the City within 72 hours of the violation; which fine shall be paid at the Mt. Vernon Police Department. If the fine is not paid within 72 hours of the violation, then the violation shall be subject to the penalties as provided within Article 22 of the Revised Code of Ordinances, except that the fine shall be not less than one hundred fifty dollars (\$150.00) per each violation.

Sec. 21. Suspension and revocation of license.

In addition to any fine imposed by this Article, a Tobacco Retailer's License shall be subject to suspension or revocation as hereinafter provided. No license shall be suspended or revoked until after notice and an opportunity to be heard has been afforded to the Licensee, unless the Licensee waives such right. The City Manager or his designee is hereby authorized to initiate enforcement against any Licensee who violates any provision of this Article, is authorized to receive complaints of violations from any citizen or from any law enforcing officer, is authorized to conduct hearings upon any complaint or allegation that the provisions to this Article have been violated by a Licensee and is authorized to impose additional fines as provided herein and to suspend or revoke the license issued under Section 3 of this Article.

In the event the hearing officer imposes a fine in addition to or in lieu of a suspension or revocation of a license, the fine shall be five hundred dollars (\$500.00) for the first offense during a twelve month period and one thousand dollars (\$1,000.00) for each additional violation during any twelve month period; in the event any fine is imposed by the hearing officer and said fine is not paid within ten days from date of imposition, then the license shall be revoked, after notice and hearing as provided herein.

No Licensee whose license has been revoked nor any premises subject of a license which has been revoked shall be eligible to receive and hold a license for a period of 24 months after revocation of the license.

All hearings before the City Manager or his designee shall be subject to the following procedures:

1. The licensee shall be entitled to a three (3) day written notice of the hearing.
2. Witnesses shall be sworn, but in all other respects hearings shall be informal and the strict rules of evidence shall not apply.
3. A complete record of all evidence, testimony, and comments before the hearing officer shall be taken by a certified court reporter or certified shorthand reporter.
4. Review of the proceedings before the hearing officer shall be limited to a review of the official record of the proceedings. No new or additional evidence shall be admitted or considered.
5. Initial costs and hourly fees for the certified court or shorthand reporter's attendance at the formal hearings before the hearing officer shall be paid by the City of Mt. Vernon; said costs and hourly fees shall be assessed against

the Licensee if a fine, suspension or revocation is issued or imposed.

6. All costs of preparing and transcribing an official record on administrative review shall be borne by the licensee requesting a review of the official proceedings and shall be paid prior to the preparation of the official record.

The Licensee shall pay any costs imposed herein to the City within thirty (30) days of notification of the costs. Failure to pay said costs within thirty (30) days of notification is a violation of this Article and is cause for revocation of the license. In addition, such costs shall be an obligation due and owing to the City and may be collected and enforced in any manner permitted by law. In the event a civil action is filed in any court of competent jurisdiction, the Licensee shall pay the reasonable attorney's fees and court costs incurred by the City.

Sec. 22. Non-retaliation.

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant or customer reported violations of any provisions of this Article.

Sec. 23. Severability.

If any provision, clause, sentence, or paragraph of this article or the application thereof to any person or circumstance shall be held to be invalid, such invalidity shall not affect the provisions of this article which can be given effect without the invalid provisions or application, and to this end the provisions are declared to be severable.

Sec. 24. Enforcement.

That the provisions of this Article shall be enforced by the City Manager, by such other persons as designated by the City Manager and by the police department.

Enforcement in the form of compliance checks shall take place on at least three (3) occasions of each license year.

In addition to the specific provisions for enforcement as provided herein; each provision of the Ordinance may be enforced as an ordinance violation or as an injunction action in the Circuit Court of Jefferson County.

Sec. 25. Severability.

That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Article are, to the extent of such conflict, expressly repealed.

Sec. 26. Effective date.

That this Article shall be in full force and effect beginning August 1, 2008.