



TO: The Honorable Mayor and City Council

FROM: Ty Livingston, Director of Planning & Community Development

DATE: August 11, 2022

SUBJECT: Petition of the City of East Peoria to amend the City Code to require a Special Use and licensing for Smoke Shops.

BACKGROUND: The petition here is to add smoke shops in the City Code. Over the past year, the City has seen a significant increase in the interest for these retail establishments. Many of them are looking at the former cash store locations throughout the City, but not all. The proposal here would make them a Special Use and require a license as well as developing a definition for smoke shops. Of particular concern are locations in close proximity to schools, daycare, and recreational facilities for those under the age of 21. In reviewing area communities, some sort of licensing requirement for these uses is fairly common. While the Special Use would apply to only new petitions for this use once the code change is adopted, the licensing requirements would be applicable to all smoke shops which meet the requirements set forth in the ordinance.

The ZBA recommends approval (4-0) of the proposed text amendment.

RECOMMENDATION: Approval, as presented.

ORDINANCE NO. 4666

AN ORDINANCE ESTABLISHING A NEW CHAPTER 39 IN TITLE 3 OF THE EAST PEORIA CITY CODE FOR THE REGULATION OF BUSINESSES THAT PRIMARILY SELL TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, AND ELECTRONIC CIGARETTE TOBACCO PRODUCTS

WHEREAS, the City has previously adopted ordinances restricting the purchase and use of tobacco products and electronic cigarette devices within the City; and

WHEREAS, pursuant to Section 11-60-2 of the Illinois Municipal Code (65 ILCS 5/11-60-2), the City has the authority to define, prevent, and abate nuisances; and

WHEREAS, the City Council continues to find that the use of tobacco products and electronic cigarettes poses serious health risks to young people, and that electronic cigarettes are disproportionately marketed toward and harmful to young people, which thereby creates a nuisance within the City; and

WHEREAS, the City Council now finds that in an effort to limit access of tobacco products and electronic cigarettes to young persons, smoke shops and tobacco shops should not be located adjacent or nearby schools or childcare facilities in the City; and

WHEREAS, the City Council further finds that the regulation of smoke shops and tobacco shops within the City and where such smoke shops and tobacco shops locate within the City is a significant step in limiting access to these harmful products by young persons; and

WHEREAS, the City hereby also finds that it is in the best interests of the City to amend the City Code to require a license for smoke shop and tobacco shop businesses that mainly sell tobacco products, alternative nicotine produces, and electronic cigarettes within the City as provided herein;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, THAT:

Section 1. The above recitals are found to be true and correct.

Section 2. A new Chapter 39 is hereby added to Title 3 of the East Peoria City Code pertaining to license regulation of businesses that sell tobacco products, alternative nicotine products, or electronic cigarettes as follows:

CHAPTER 39 – SMOKE AND TOBACCO SHOPS

SECTION:

3-39-1. Definitions.

3-39-2. License required.

3-39-3. Fees.

3-39-4. Display of license.

3-39-5. Location restrictions.

3-39-6. Prohibited sales and delivery; signs.

3-39-7. Minimum age to sell.

3-39-8. Certain free distributions prohibited.

3-39-9. Acts and omissions.

3-39-10. Suspension; revocation of license; fines; costs.

3-39-1. Definitions.

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

Alternative Nicotine Products: 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 products" exclude cigarettes, tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995, "tobacco products" and "electronic cigarettes" as defined in this section, and 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 Cigarettes mean:

- (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) (3) any solution or substance, whether or not it contains nicotine intended for use in the device.

"Electronic cigarettes" include, but are not limited to, any electronic nicotine delivery system, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, vape pen, or similar product or device, and any components or parts that can be used to build the product or device. "Electronic cigarettes" do not include cigarettes and tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995; "tobacco products" and "alternative nicotine products" 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; or any therapeutic product approved for use under the Compassionate Use of Medical Cannabis Pilot Program Act.

Tobacco Products: 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 products" include any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco products" do not include "electronic cigarettes" and "alternative nicotine products" 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.

Smoke or Tobacco Shop: A smoke shop or a tobacco shop is any business that derives more than fifty percent (50%) of its gross sales from tobacco or smoking-related products and merchandise, which includes the sale of alternative nicotine products, electronic cigarettes, and/or tobacco products. For the purposes of determining gross sales as provided herein, "smoking-related products" also includes any equipment, apparatus, material, storage container, or furnishing that is used in, used with, or necessary for the activity of smoking or preparing to smoke, such as, but not limited to, ashtrays, rolling papers, pipes, hookah pipes, lighting devices,

or matches. "Smoking-related products" further includes clothing or apparel that displays any alternative nicotine products, electronic cigarettes, tobacco products, cannabis, or any other natural or synthetic substances used for inhalation, or any maker, user, manufacturer, distributor, or retailer of such products. "Smoking-related products" do not include 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. A "smoke or tobacco shop" does not include any adult-use cannabis business operating as a conditional use under Chapter 7.1 of Title 5 of the East Peoria City Code.

3-39-2. License required.

(a) It shall be unlawful for a smoke shop or tobacco shop to sell or offer for sale at retail, or to give away, deliver, or to keep with the intention of selling at retail, tobacco products, alternative nicotine products, or electronic cigarettes within the city without having first obtained a license to do so pursuant to this chapter. Licenses shall be issued for a period of one (1) year from the date of issuance, unless sooner revoked. No licenses shall be transferable to another person or entity or another location.

(b) Application for a license hereunder shall be made in writing to the city clerk pursuant to an application form developed by the city.

3-39-3. Fees.

The annual license fee of One Hundred Dollars (\$100.00) shall be paid to the city for a smoke shop or tobacco shop license for each location where tobacco products, alternative nicotine products, and electronic cigarettes are sold and dispensed by the smoke shop or tobacco shop.

3-39-4. Display of license.

The license or a copy thereof shall be displayed in a visible location in the smoke shop or tobacco shop at the place where tobacco products, alternative nicotine products, and electronic cigarettes are dispensed or sold over the counter by the licensee.

3-39-5. Location restrictions.

Smoke shops and tobacco shops shall be located only in the B-2 business district, general retail, as special use in compliance with the applicable provisions of the East Peoria Zoning Code and the restrictions set forth herein. No license shall be issued for the sale at retail of any tobacco products, alternative nicotine products, and electronic cigarettes

within five hundred (500) feet of any school, childcare facility or other building used for educational or recreational programs for persons under the age of twenty-one (21). The distance of five hundred (500) feet shall be measured from the property line of the licensed premises to the property line of the school, childcare facility or other building used for educational or recreational programs for persons under the age of twenty-one (21).

3-39-6. Prohibited sales and delivery; signs.

(a) It shall be unlawful for any licensee, to sell, offer for sale, give away or deliver tobacco products, alternative nicotine products, and electronic cigarettes to any person under the age of twenty-one (21) years.

(b) Signs informing the public of the age restrictions provided for herein shall be posted by every licensee at the place where tobacco products, alternative nicotine products, and electronic cigarettes are dispensed or sold by the licensee. Each such sign shall be plainly visible and shall state:

THE SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS, AND ELECTRONIC CIGARETTES TO PERSONS UNDER 21 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.

3-39-7. Minimum age to sell.

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 eighteen (18) years of age to sell tobacco products, alternative nicotine products, and electronic cigarettes in any licensed premises.

3-39-8. Certain free distributions prohibited.

It shall be unlawful for any licensee or any person in the business of selling or otherwise distributing, promoting or advertising tobacco products, alternative nicotine products, and electronic cigarettes, or any employee or agent of any such licensee or person, in the course of such licensee's or person's business, or any other person, to distribute, give away or deliver tobacco products, alternative nicotine products, and electronic cigarettes free of charge to any person in any right-of-way, park, playground or other property owned by the City, or any property owned by any school district, park district, or public library.

3-39-10. Acts and omissions.

Every act or omission of whatever nature, constituting a violation of any of the provisions of this chapter 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.

3-39-11. Suspension; revocation of license; fines; costs.

(a) The Mayor shall be charged with the administration of this chapter. The Mayor may suspend or revoke any license issued under the provisions of this chapter, if the Mayor determines that the licensee has violated any of the provisions of this chapter. In lieu of suspension or revocation of a license, the Mayor may instead levy a fine on the licensee of not less than two hundred dollars (\$200.00) nor more than seven hundred fifty dollars (\$750.00).

(b) However, no license shall be suspended or revoked, and no licensee shall be fined except after a hearing with the Mayor with a seven (7) day written notice to the licensee affording the licensee an opportunity to appear and defend against the charges contained in such notice. The seven (7) day notice provision shall begin the day following delivery by certified mail or by personal service.

(c) The Mayor shall, within seven (7) days after such hearing, if the Mayor determines after such hearing that the license should be revoked or suspended, or that the licensee should be fined, state the reason for such determination in a written order and either the amount of the fine, the period of suspension or that the license has been revoked and serve a copy of such order upon the licensee within fourteen (14) days after such hearing.

(d) Any licensee determined by the mayor to have violated any of the provisions of this chapter shall pay to the City the costs of the hearing before the Mayor on such violation. The Mayor shall determine the costs incurred by the city for said hearing, including, but not limited to court reporter fees, the costs of transcripts or records, attorney fees, the cost of preparing and mailing notices and orders, and all other miscellaneous expenses incurred by the city or such lesser sum as the mayor may allow.

(e) The licensee shall pay said fine and/or costs to the city within thirty (30) days of notification of the costs by the Mayor. Failure to pay said costs within thirty (30) days of notification is a violation of this chapter and may be cause for license suspension, revocation, levy of a fine, or other civil remedy.

Section 3. Title 3, Chapter 10, Section 1 of the East Peoria City Code is hereby amended as follows (additions indicated by underline, deletions by ~~strikethrough~~):

3-10-1. Definition.

For the purposes of this chapter:

Cigarette vending machine means and includes any machine dispensing cigarettes, cigars, chewing tobacco, pipe tobacco or other tobacco products, electronic cigarettes, and alternative nicotine products, as those terms are defined in Section 3-39-1 ~~10-1-4.24~~ of the East Peoria City Code, which is operated by the insertion of a coin or other lawful money in exchange for some unit quantity of the contents of said machine.

Section 4. Title 10, Chapter 1, Sections 4.23 through 4.30 of the East Peoria City Code is hereby amended as follows (additions indicated by underline, deletions by ~~strikethrough~~):

10-1-4.23. Smoking/tobacco use at EastSide Centre.

(a) It is unlawful for any person to smoke or use tobacco products or electronic cigarettes at EastSide Centre except in the designated smoking area or when a person is in a personal vehicle with all doors to said vehicle closed. "Tobacco products" and "electronic cigarettes" shall have the same meanings as set forth in section 3-39-1 of this Code.

(b) A violation of this section shall be punishable by a fine of not less than fifty dollars (\$50.00) or more than seven hundred fifty dollars (\$750.00).

10-1-4.24. Possession of tobacco products, electronic cigarettes, and alternative nicotine products by minors prohibited.

(a) It shall be unlawful for any person under eighteen (18) years of age to possess cigarettes, cigars, chewing tobacco, snuff, any other tobacco product, electronic cigarette, or any alternative nicotine product.

(b) It shall be unlawful for any person under twenty-one (21) years of age to possess cigarettes, cigars, chewing tobacco, snuff, any other tobacco product, electronic cigarette, or any alternative nicotine product on school property.

(c) *"School property"* means real property, and any school buildings, accessory buildings, structures and improvements thereon, and

vehicles owned, leased, or rented by a school district, by a school board used primarily for public school purposes.

(d) "Tobacco product," "electronic cigarette," and "alternative nicotine product" shall have the same meanings as set forth in section 3-39-1 of this Code. ~~"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 electronic cigarette and 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.~~

(e) ~~"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, and any components or parts that can be used to build the product or device. "Electronic cigarette" does not include: cigarettes and tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995; 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; or any therapeutic product approved for use under the Compassionate Use of Medical Cannabis Pilot Program Act.~~

~~(f) — "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" excludes cigarettes, tobacco products as defined in Section 10-5 of the Tobacco Products Tax Act of 1995, tobacco products and electronic cigarettes as defined in this section, and 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.~~

~~(eg) Violation of this section shall be punishable by a fine of not less than fifty dollars (\$50.00), nor more than seven hundred fifty dollars (\$750.00).~~

10-1-4.25. Consumption of tobacco products, electronic cigarettes, and alternative nicotine products by minors prohibited.

(a) It shall be unlawful for any person under eighteen (18) years of age to smoke, chew, or otherwise consume tobacco products, electronic cigarettes, or alternative nicotine products. "Tobacco products," "electronic cigarettes," and "alternative nicotine products" shall have the same meanings as set forth in section 3-39-1 ~~10-1-4.24~~ of this Code.

(b) Violation of this section shall be punishable by a fine of not less than fifty dollars (\$50.00), nor more than seven hundred fifty dollars (\$750.00).

10-1-4.26. Smoking in public prohibited.

(a) No person shall smoke tobacco products in a public place, in any place of employment, within fifteen (15) feet of any entrance to a public place or place of employment, or in any enclosed indoor area used by the public or serving as a place of work unless otherwise exempt under state law. No person may smoke in any vehicle owned, leased or operated by the city. A person found guilty of this section shall be fined not less than one hundred dollars (\$100.00) and not more than two hundred fifty dollars (\$250.00).

(b) "*Public place,*" "*place of employment*" and "*smoke*" shall have the same meanings as defined in the Smoke Free Illinois Act, as may be amended by state legislation or otherwise implemented by regulations by the department of public health or other authorized state agency. "Public place" includes student dormitories as described in section 25 of the Act. "Tobacco products" shall have the same meanings as set forth in section 3-

39-1 of this Code and shall include further any other items or materials that fall within the definition of "smoke" or "smoking" under the Smoke Free Illinois Act.

10-1-4.27. Smoking of e-cigarettes on city property prohibited.

(a) It is unlawful for any person to smoke or otherwise use an electronic cigarette in any manner that emits smoke or vapor while in a city building or facility or within fifteen (15) feet of an entrance to a city building or facility, including all the indoor areas of the Civic Complex located at 401 West Washington Street (which includes the Fondulac Library Building) and any indoor or outdoor area of EastSide Centre, except in a designated smoking area or when a person is in a personal vehicle with all doors to said vehicle closed.

(b) "Electronic cigarettes" shall have the same meaning as set forth in section ~~3-39-1~~ 10-1-4.24 of this Code.

(c) Any person convicted of violating this section shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than two hundred fifty dollars (\$250.00) for each offense.

10-1-4.28. Smoking of e-cigarettes in public places prohibited.

(a) It is unlawful for any person to smoke or otherwise use an electronic cigarette in any manner that emits smoke or vapor while in a public place, within fifteen (15) feet of any entrance to a public place, in any enclosed indoor area used by the public, or in any vehicle owned, leased, or operated by the city.

(b) "Electronic cigarette" shall have the same meaning as set forth in section ~~3-39-1~~ 10-1-4.24 of this Code. "Public place" shall have the same meaning as set forth in section 10-1-4.26 of the City Code. "Public place" shall not include any areas or places that are exempt under Section 35 of the Illinois Smoke Free Act as this provision may be amended from time to time by the state legislation or otherwise implemented by regulations by the department of public health or other authorized state agency, and shall not include retail businesses or establishments commonly known as "vape shops" that derive more than eighty (80) percent of their gross revenue from the sale of electronic cigarettes and electronic smoking devices and related products and accessories, including but not limited to, atomizers, cartridges, drip tips, and e-liquids, and in which the sale of any other products is merely incidental to such retail business or establishment. "Vape shops" do not include a tobacco department or section of a retail or commercial establishment or any establishment holding a valid liquor, food, or restaurant license.

(c) Any person convicted of violating this section shall be punished by a fine of not less than one hundred dollars (\$100.00) and not more than two hundred fifty dollars (\$250.00) for each offense.

10-1-4.29. Purchase of tobacco products, electronic cigarettes or alternative nicotine products by persons under twenty-one (21) prohibited.

(a) It shall be unlawful for any person under twenty-one (21) years of age to buy any tobacco product, electronic cigarette, or alternative nicotine product, or to use any false or altered identification for the purpose of purchasing tobacco products, electronic cigarettes, or alternative nicotine products. "Tobacco products," "electronic cigarettes," and "alternative nicotine products" shall have the same meanings as set forth in section 3-39-1 10-1-4.24 of this Code.

(b) Violation of this section shall be punishable by a fine of not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00).

10-1-4.30. Sale or furnishing of tobacco products, electronic cigarettes, or alternative nicotine products to persons under twenty-one (21) prohibited.

(a) No person shall sell, buy for, distribute samples of, or furnish any tobacco products, electronic cigarettes, or any alternative nicotine products to any person under twenty-one (21) years of age. "Tobacco products," "electronic cigarettes," and "alternative nicotine products" shall have the same meanings as set forth in section 3-39-1 10-1-4.24 of this Code.

(b) Violation of this section shall be punishable by a fine of not less than fifty dollars (\$50.00) nor more than seven hundred fifty dollars (\$750.00).

Section 5. This Ordinance is hereby ordered to be published in pamphlet form by the East Peoria City Clerk and said Clerk is ordered to keep at least three (3) copies hereof available for public inspection in the future and in accordance with the Illinois Municipal Code.

Section 6. This Ordinance is in addition to all other ordinances on the subject and shall be construed therewith excepting as to that part in direct conflict with any other ordinance, and in the event of such conflict, the provisions hereof shall govern.

Section 7. This Ordinance shall be in full force and effect from and after its passage, approval and ten (10) day period of publication in the manner provided by law.

PASSED BY THE COUNCIL OF THE CITY OF EAST PEORIA, TAZEWELL COUNTY, ILLINOIS, IN REGULAR AND PUBLIC SESSION THIS _____ DAY OF _____, 2022.

APPROVED:

Mayor

ATTEST:

City Clerk

EXAMINED AND APPROVED:

Corporation Counsel