City of Chicago

O2018-4150

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	5/25/2018
Sponsor(s):	Burke (14)
Type:	Ordinance
Title:	Amendment of Municipal Code Title 4 by modifying Section 4-64-100 and adding new Section 4-64-365 concerning sale of flavored liquid nicotine products
Committee(s) Assignment:	Committee on Finance

Finance

ORDINANCE

WHEREAS, the City of Chicago is a home rule unit of government pursuant to the 1970 Illinois Constitution, Article VII, Section 6(a); and

WHEREAS, pursuant to its home rule power, the City of Chicago may exercise any power and perform any function relating to its government and affairs including the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, protecting youth from the deleterious effects of smoking is a long-standing endeavor of this City Council; and

WHEREAS, as traditional cigarette use declines after decades-long public awareness campaigns, electronic cigarette ("e-cigarette") use has surged; and

WHEREAS, according to the Centers for Disease Control and Prevention (CDC) Youth Risk Behaviors Survey the rate of e-cigarette use is now higher than cigarettes among Chicago high school students; and

WHEREAS, the CDC also notes that e-cigarettes are now the most commonly used tobacco product among youth; and

WHEREAS, in the United States, youth are more likely to use e-cigarettes than adults and a report by the U.S. Surgeon General in 2016 cited a 900% increase in e-cigarette use by high school students from 2011 to 2015; and

WHEREAS, the CDC stated in 2016 that more than 2 million U.S. middle and high school students reported using e-cigarettes in the past 30 days, including 4.3% of middle school students and 11.3% of high school students, and only 3.2% of adults were current e-cigarette users; and

WHEREAS, in 2015, most adults over age 45 that used e-cigarettes were former regular smokers and only 1.3% of adults who used e-cigarettes have never been cigarette smokers; and

WHEREAS, in contrast, 40% of e-cigarette users age 18 to 24 had never been regular cigarette smokers; and

WHEREAS, these statistics stand in contrast with the stated consumer group that e-cigarette companies claim to target when, as the makers of JUUL e-cigarettes state, "their goal is to provide *adult* smokers an alternative to traditional cigarettes" (emphasis added); and

WHEREAS, in 2015 the Chicago Department of Public Health and the Mayor's Office launched a public awareness campaign to warn residents of the dangers of e-cigarettes; and

WHEREAS, in 2017, 14.7% of Chicago high school students reported current use of any tobacco product, 7.2% reported current cigar use and 6.6% reported use of electronic vapor products,

which includes e-cigarettes, according to the Healthy Chicago Data Brief 2017 Youth Tobacco Use, a statement with information obtained from the CDC; and

WHEREAS, data on e-cigarette use by Chicago teens only dates to 2017; and

WHEREAS, according to the 2017 Monitoring the Future survey, conducted by the University of Michigan, approximately 1 in 4 high school seniors vape daily, and more than 1 in 10 eighth graders say they have vaped in the past year; and

WHEREAS, according to a report by the U.S. Surgeon General in 2016, the most commonly cited reasons for using e-cigarettes among both youth and young adults are curiosity, flavoring and taste, and low perceived harm compared to other tobacco products – the use of e-cigarettes as an aid to quit conventional cigarettes was not reported as a primary reason for use among youth and young adults; and

WHEREAS, while there is a recent CDC study showing that many adults are using e-cigarettes in an attempt to quit smoking, there has been a significant increase in the usage among youth who are undertaking no such attempt; and

WHEREAS, the U.S. Surgeon General has stated that e-cigarette use is concerning among youth and young adults because nicotine exposure during adolescence can cause addiction and affect brain development, which continues until age 25; and

WHEREAS, a 2006 study by the National Center for Biotechnology Information found that nicotine use impairs development of the prefrontal cortex, and thus, nicotine users perform less well on tasks related to memory and attention compared to people who do not smoke; and

WHEREAS, while many young users believe e-cigarettes are a less dangerous alternative to smoking cigarettes, they still contain nicotine, ultrafine particles, heavy metals, and volatile organic compounds - including glycerol, propylene glycol, and benzoic acid, and their long-term effects on the body are currently unknown; and

WHEREAS, according to a recent study conducted in 2018 by the National Academies of Sciences, Engineering, and Medicine, there is substantial evidence that e-cigarette use by youth and young adults increases their risk of using traditional cigarettes; and

WHEREAS, further, a study conducted by the University of Pittsburgh Schools of the Health Sciences over the course of a full year concluded that young adults who smoke e-cigarettes are more than four times as likely to begin smoking cigarettes compared to their counterparts who do not smoke e-cigarettes; and

WHEREAS, most recently a new e-cigarette brand called the "JUUL" is becoming increasingly popular among youth and young adults; and

WHEREAS, the JUUL's physical appearance resembles a USB flash drive, even charges when it is plugged into a laptop, and does not emit the distinct smell of traditional cigarettes or even

other e-cigarettes, making the device hard for parents or teachers to identify as a smoking device; and

WHEREAS, like many liquid nicotine flavoring products, the nicotine pods for JUUL come in youth appealing flavors such as crème brulee, mango, mint and cool cucumber; and

WHEREAS, a student newspaper at the University of Illinois called JUUL a "new epidemic sweeping across campus;" and

WHEREAS, in some cases, students are replacing the cartridges in the JUUL pen that are full of liquid nicotine with liquid marijuana, according to Mike Gimble, a substance misuse expert; and

WHEREAS, JUUL controls more than 54% of the e-cigarette market, according to the latest retail share data from Wells Fargo Securities and Nielsen, even though the company PAX Labs only recently released JUUL in June 2015; and

WHEREAS, JUUL has become so popular among youth, that smoking a JUUL is now referred to as "Juuling" and has convinced adolescents that "the JUUL is cool" as noted in numerous newspapers including *The New York Times* and *The Wall Street Journal*; and

WHEREAS, students have created games around Juuling including trying to take as many puffs in a classroom before the teacher sees, and personalizing their JUULs with colorful cases and covers, similar to personalizing phone cases; and

WHEREAS, a regular pack of cigarettes contains 20 cigarettes, amounting to an average of 240 milligrams of nicotine per pack, and one JUUL nicotine pod contains the same amount of nicotine as one pack of cigarettes; and

WHEREAS, JUUL uses a different patented formula that combines nicotine with salt that is similar to what is naturally found in the leaves of a tobacco plant, causing the end result to be a stronger e-liquid that vaporizes more smoothly, making it easier to inhale for a longer period of time; and

WHEREAS, a JUUL pod contains 5% nicotine by weight, or 59 mg of nicotine in only 0.7 mL, compared to other popular e-cigarettes on the market that have 24 mg of nicotine in 0.7 mL, making JUUL twice as harmful to users and causing them to become addicted with a much higher rate of nicotine; and

WHEREAS, these high levels render JUUL banned in Europe as the European Union adopted rules restricting e-cigarettes to be limited to 20 milligrams of nicotine; and

WHEREAS, Nicholas Chadi, a clinical pediatrics fellow at Boston Children's Hospital, spoke about the JUUL at the American Society of Addiction Medicine's annual conference in April 2018, and reported that teenagers admit to nicotine cravings after "only a few months of using nicotine;"

WHEREAS, a study published March 2018 in the journal *Pediatrics* found five cancer-causing toxins in the urine of 16-year-olds who inhaled e-cigarette vapor, after analyzing saliva and urine of teenagers aged 13 to 18 who had smoked e-cigarettes recently- citing higher levels of benzene, ethylene oxide, acrylonitrile, acrolein, and acrylamide; and

WHEREAS, additionally, in February 2018, researchers from George Washington University and the UCSF Center for Tobacco Control Research and Education found that daily e-cigarette usage doubles the risk of heart attack, analyzing data from the 2014 and 2016 National Health Interview Surveys of nearly 70,000 Americans; and

WHEREAS, thus, despite the notion that "vaping" may be a less harmful alternative for adults who are looking to quit smoking conventional cigarettes, it is a completely different issue when it comes to teenagers and young adults; and

WHEREAS, increasing the problem is that e-cigarettes are sold in discreet and sleek shapes and sizes, allowing teens to use the products in schools and classrooms without risking detection; and

WHEREAS, for example, JUUL resembles a flash drive and another brand, Suorin, looks like a computer mouse – and thus easily camouflaged as a typical student device; and

WHEREAS, the Food and Drug Administration (FDA) Commissioner Scott Gottlieb recently cited concerns with e-cigarettes and has repeatedly called out the JUUL by name, referring to a recent undercover sting operation that turned up several instances of illegal JUUL sales to minors; and

WHEREAS, a group of United States Senators, led by Illinois Senator Richard Durbin, recently sent a letter to PAX Labs, the company that manufacturers JUUL, asking ten specific questions ranging from ingredients to possible youth prevention programs and also stated their growing concern that JUUL is appealing to kids by design and flavor and that their product will further lead to nicotine addiction and adverse health consequences for a future generation, to which JUUL responded by announcing a $30 million initiative for youth smoking prevention; and

WHEREAS, the same group of United States Senators, also sent a letter to FDA Commissioner Gottlieb urging the agency to take immediate action to remove kid-friendly e-cigarette flavorings from the market and to take action before the scheduled regulation of e-cigarettes in 2022; and

WHEREAS, e-cigarette manufacturers of vaping devices and liquid nicotine are purposefully marketing products with youth appeal, not only by creating flavors ranging from candy to fruit and dessert, but also using their packaging to appear fun or "cool;" and

WHEREAS, in May 2018 the FDA issued warning letters to 13 companies that sell vaping products such as liquid nicotine in packaging that may appeal to children, including products that resemble juice boxes and candy; and

WHEREAS, for example, One Mad Hit Juice Box e-liquid products are marketed in packaging that very closely resembles apple juice boxes targeted to and primarily consumed by young children; and

WHEREAS, further, the e-liquid product smells identical to apple juice and the odor is detectable without opening the packaging; and

WHEREAS, other companies that received warning letters included NEwhere Inc. whose product Vape Heads Sour Smurf Sauce looks just like the Warheads candy, and Omnia E-Liquid sells a Twirly Pop, that includes a real lollipop; and

WHEREAS, due to this deceptive packaging, there has been a significant number of serious child poisonings due to the ingestion of liquid nicotine by younger siblings in the home; and

WHEREAS, the CDC released a report in April 2014 that found a steady and rapid increase in the number of calls to poison control centers about e-cigarettes and the liquid nicotine used in them; and

WHEREAS, a majority of these calls involved children age 5 and younger, who were poisoned by ingesting liquid nicotine, or absorbing it through the skin; and

WHEREAS, due to the high concentrations of nicotine, even a small amount of the liquid can be deadly, especially for young children; and

WHEREAS, the CDC Director Dr. Tom Friedman, stated "E-cigarette liquids, as currently sold, are a threat to small children because they are not required to be childproof, and they come in candy and fruit flavors that are appealing to children;" and

WHEREAS, the Director of the FDA's Center for Tobacco Products, Mitch Zeller, explained that "it takes a very small amount of these e-liquids, in some cases less than half a teaspoon, to be at the low end of what could be a fatal effect for a kid, and even less than that to make them very, very sick;" and

WHEREAS, between January and April 2018, the American Association of Poison Control Centers (AAPCC) has received 926 e-cigarette devices and liquid nicotine reported exposures across all age groups, meaning a person had contact with the substance in some way, including ingested, inhaled, or absorbed by the skin or eyes; and

WHEREAS, because e-cigarettes are not currently regulated by the FDA and e-cigarette manufacturers are not required to apply to the FDA for review until the summer of 2022, City action is necessary to prevent a new generation of youth from becoming addicted to nicotine; and

WHEREAS, e-cigarette manufacturers market their products as a safe cigarette alternative when just this week it was reported an 18 year old developed "wet lung" after vaping for just three weeks; and

WHEREAS, according to the medical director at Children's Hospital of Pittsburgh, the 18 year old experienced respiratory failure and was unable to get enough oxygen into her blood from her lungs, which required a mechanical ventilator to breath for her until her lungs recovered, and further, she also needed tubes inserted on both sides of her chest to drain fluid from her lungs; and

WHEREAS, while all of the dangers of e-cigarettes are unknown, this much is clear, chemicals in e-cigarettes are still extremely harmful and according to Ilona Jaspers, a professor in the Departments of Pediatrics and Microbiology and Immunology at the University of North Carolina at Chapel Hill, case studies suggest that e-cigarettes will cause negative health consequences that had not been seen with conventional cigarettes; and

WHEREAS, San Francisco recently offered a referendum that would ban all sales of flavored tobacco products if passed and New York has a bill pending that would ban the sale of flavored liquid nicotine products, in an attempt to deter kids from using tobacco products in their lives; and

WHEREAS, Chicago has consistently been at the forefront of the fight to protect its residents and youth from the harm of smoking – counting itself as among the first to prohibit indoor smoking and a leader in increasing the purchasing age to 21; and

WHEREAS, because the majority of e-cigarette use is occurring among youth and teens, the City of Chicago intends to protect this vulnerable younger generation from becoming addicted to nicotine and developing additional health problems such as increased risk of heart attack and respiratory failure; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Title 4 of the Municipal Code of Chicago is hereby amended by inserting language underscored as follows:

4-64-100 Definitions.

[Omitted text is unaffected by this ordinance.]

"Flavored Liquid Nicotine Product" means any liquid nicotine product that contains a constituent that imparts a characterizing flavor. As used in this definition, the term "characterizing flavor" means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a liquid nicotine product including but not limited to tastes or aromas of menthol, mint, wintergreen, chocolate, vanilla, honey, cocoa, any candy, any dessert, any alcoholic beverage, any fruit, any herb, or any spice.

"Liquid Nicotine Product" has the meaning ascribed to that term in Section 3-47-020 of this Code.

SECTION 2. Chapter 4-64 of the Municipal Code of Chicago is hereby amended by inserting Section 4-64-365 as follows:

4-64-365 Sale of flavored liquid nicotine products – Prohibited.

(a) No person shall sell, give away, barter, exchange or otherwise furnish any flavored liquid nicotine product that is not sold pursuant to a prescription.

(b) *Violation – Penalty.* Any person who violates this subsection shall be fined not less than $100.00 nor more than $500.00 for each offense. Any repeat violations of any provision of Section 4-64-365 by a licensee shall be grounds for revocation or suspension of such license. For purposes of this Section, each sale is a violation of this subsection.

(c) *Severability.*
If any provision, clause, sentence, paragraph, section or part of this Chapter or application thereof to any person or circumstance, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this Chapter and the application of such provision to other persons or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section, or part thereof already involved in the controversy in which such judgment has been rendered and to the person and circumstances affected thereby.

SECTION 3. This ordinance shall take effect one hundred and eighty (180) days after passage and publication.

Edward M. Burke
Alderman, 14th Ward