

ORDINANCE NO.

FILE OF CITY COUNCIL

BILL NO. 37 - 2021

APRIL 21, 2021

AN ORDINANCE

Amending the Part Three Business Regulation and Taxation Code, Title IX, Fee, by repealing Section 395.24 Cigarette Vending Machine Fees as well as Article 1160 Licensing and Regulation of Cigarette Vending Machines in its entirety.

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

SECTION ONE: That SECTION 395.24 Cigarette Vending Machine Fees be repealed.

395.24 CIGARETTE VENDING MACHINE FEES

The annual license fee for a license to operate one cigarette vending machine in compliance with Article 1160, Licensing and Regulation of Cigarette Vending Machines, shall be One Hundred (\$100) Dollars. (14225 §1 10/21/04; 14513 §1 8/2/07)

SECTION TWO: That ARTICLE 1160 Licensing and Regulation of Cigarette Vending Machines be repealed in its entirety.

ARTICLE 1160

Licensing and Regulation of Cigarette Vending Machines

- 1160.02 Purpose
 - 1160.04 Definition of Terms
 - 1160.06 License Required
 - 1160.08 Licensing Procedures
 - 1160.10 License Fees
 - 1160.12 Display of License
 - 1160.14 Prohibitions and Restrictions
 - 1160.90 Revocation of License
 - 1160.98 Severability
 - 1160.99 Penalty
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1160.02 PURPOSE

The evidence is irrefutable - the use of tobacco products poses a significant danger to the public's health. Because of the special dangers tobacco poses to children's health, the Commonwealth of Pennsylvania prohibits the sale of all tobacco products to anyone under the age of eighteen (18). The following rules and regulations are necessary to enforce the Commonwealth Law and thereby reduce threats to the health of minors by preventing easy access to cigarette vending machines. (12984 §1 6/20/90; 13595 §1 8/8/97)

1160.04 DEFINITION OF TERMS

As used in this ordinance, unless the context otherwise indicates:

A. The term **cigarette vending machine** shall mean any automatic vending machine used for the sale of cigarettes and matches, and controlled by the insertion of a legal tender. It shall not include machines or devices used solely for the vending of service, food or confections;

B. The terms **person, firm, corporation, or association** as used herein shall include the following: Any person, firm, corporation or association which owns any such machine; the person, firm, corporation or association in whose place of business any such machine is placed for use by the public; and the person, firm, corporation or association having control over such machine; provided, however, that the payment of enumerated herein shall be deemed in compliance with this article. (12984 §1 6/20/90; 13595 §1 8/8/97)

1160.06 LICENSE REQUIRED

Any person, firm, corporation or association displaying for public patronage or keeping for operation any cigarette vending machine as herein defined by Section 1160.04 shall be required to obtain a license from the City of Allentown, upon payment of a license fee. Application for such license shall be made to the Bureau of Health upon a form to be supplied by the Bureau of Health for that purpose. Only one machine shall be operated under one license. The applicant or licensee shall be required to secure a license for each and every machine displayed or operated. (12984 §1 6/20/90; 13595 §1 8/8/97)

1160.08 LICENSING PROCEDURES

The application for such license shall contain the following information:

- A. Name and address of the applicant, age, date and place of birth.
- B. Place where machine or device is to be displayed or operated and the business conducted at that place.
- C. Description of machine to be covered by the license, mechanical features, name of manufacturer and serial number.

No license shall be issued to any applicant unless the applicant is over twenty-one (21) years of age and a citizen of the United States. (12984 §1 6/20/90; 13595 §1 8/8/97)

1160.10 LICENSE FEES

Every applicant, before being granted a license shall pay an annual license fee determined by the City of Allentown for the privilege of operating or maintaining for operation each cigarette vending machine. The fees, as required herein, are to be established in accordance with the requirements of the Charter. (14225 §2 10/21/04)

Each license shall expire July 1st of each year. (12984 §1 6/20/90; 13595 §1 8/8/97)

1160.12 DISPLAY OF LICENSE

A. The license or licenses herein provided for shall be posted permanently and conspicuously at the location of the machine in the premises wherein the device is to be operated or maintained to be operated.

B. Such license may be transferred from one machine or device to another similar machine only upon application to the Bureau of Health by giving a description and serial number of the new machine or device to the bureau.

C. If the licensee shall move his place of business to another location within the City of Allentown, the license may be transferred to such new location upon application to the Bureau of Health, giving the street and number of the new location. The new location shall be approved by the Bureau of Health in the same manner as provided in Sections 1160.06 and 1160.08 of this ordinance.

D. A license shall not be transferrable from person to person nor place to place, and shall be usable only at the place and by the person designated in the license. (12984 §1 6/20/90)

1160.14 PROHIBITIONS AND RESTRICTIONS

A. No person, firm, corporation or association holding a license under this ordinance shall permit persons under eighteen (18) years of age to operate any cigarette vending machine as defined in Section 1160.04 of this ordinance.

B. No cigarette vending machine shall be located, displayed or operated at any location or establishment unless said establishment prohibits minors from its premises, permits minors only with adult supervision or by virtue of other characteristics excludes minors as expected personnel, i.e., industry. Said establishments will include bars, restaurants with liquor licenses, beer distributors, and those noted in the exclusionary section above.

C. Cigarette vending machines shall only be placed in locations wherein the licensee or designee of licensee can in the normal course of their employment view any person using said machine. Industrial/work locations noted in Section (b) will be exempted from this rule.

D. Cigarette vending machines shall not be placed in patron restrooms or restroom areas, foyers or vestibules, pantry or waiting rooms, or any other inconspicuous areas. Industrial/work locations noted in Section (b) will be exempted from this rule. (12984 §1 6/20/90)

1160.90 REVOCATION OF LICENSE

Every license issued under this ordinance is subject to the right, which is hereby expressly reserved, to revoke the same should the licensee, directly or indirectly, permit the operation of any cigarette vending machine contrary to the provisions of this ordinance, the ordinances of the City of Allentown, or the law of the State of Pennsylvania. Said license may be revoked by the Bureau of Health after written notice to the licensee, which notice shall specify the ordinance or law violations with which the licensee is charged, if after a hearing, the licensee is found to be guilty of such violations. Ten days' notice of the hearing shall be given the licensee. At such hearing the licensee and his attorney may present and submit evidence of witnesses in his defense.

1160.98 SEVERABILITY

It is the intention of the City Council that each separate provision of this ordinance shall be deemed independent of all other provisions herein, and it is further the intention of the City Council that if any provision of this ordinance be declared invalid, all other provisions thereof shall remain valid and enforceable. (12984 §3 6/20/90)

1160.99 PENALTY

Any person, firm, corporation or association violating any of the provisions of this ordinance, in addition to the revocation of his or its license, shall be liable to a fine or penalty of not more than Six Hundred (\$600.00) Dollars or imprisonment of not more than ninety (90) days, or both for each offense. (12984 §1 6/20/90)

SECTION TWO: That this Ordinance will take effect ten (10) days after final passage.

SECTION THREE: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.

- **What Department or bureau is Bill originating from? Where did the initiative for the bill originate?**

Community and Economic Development - Health Bureau

- **Summary and Facts of the Bill**

The bill seeks to repeal Ordinance 12984 of 1990, codified article 1160, Licensing and Regulation of Cigarette Vending Machines. Revenues from licensing have drastically reduced and do not cover the cost of administration. There is no longer a significant public health benefit to regulating the few remaining cigarette vending machines.

- **Purpose – Please include the following in your explanation:**
 - **What does the Bill do – what are the specific goals/tasks the bill seek to accomplish**
 - **What are the Benefits of doing this/Down-side of doing this**
 - **How does this Bill related to the City’s Vision/Mission/Priorities**

The Bill repeals Ordinance 12984 Licensing and Regulation of Cigarette Machines.

During the 1990's, there were many cigarette vending machines located in numerous public places where unaccompanied minors had access to cigarettes. While the Ordinance fulfilled a preventative public health purpose at the time, currently there are only a handful of cigarette machines in private clubs that restrict access. There has been a 90% reduction in revenue from its peak. Currently, annual revenues average \$300. This does not cover the cost of administering the licensing and inspection of cigarette vending machines.

Additionally, when the City moves from Eden Licensing to Energov (both Tyler products), slated for 2022, the General Fund would assume development costs for the licensing process to be housed in a new software that will exceed the annual revenues.

- **Financial Impact – Please include the following in your explanation:**
 - **Cost (Initial and ongoing)**
 - **Benefits (initial and ongoing)**

Cost: Loss of \$300 annual revenues.

Benefits: Savings from reduced administrative expenses and future software development costs. These savings are projected to be greater than the loss of revenues.

- **Funding Sources – Please include the following in your explanation:**
 - **If transferring funds, please make sure bill gives specific accounts; if appropriating funds from a grant list the agency awarding the grant.**

None

- **Priority status/Deadlines, if any**

The repeal should be effective upon passage of the bill.

- **Why should Council unanimously support this bill?**

The licensing of cigarette vending machines no longer has a public health benefit, as nearly all machines have been removed, with a small number remaining in private establishments. Revenues do not cover the current cost of administration and future cost of EnerGov software development.