

ORDINANCE NO. 13-____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLETA
AMENDING TITLE 5 OF THE GOLETA MUNICIPAL CODE TO ADD
CHAPTER 5.07 TO REGULATE TOBACCO RETAILERS AND SALE OF
TOBACCO PRODUCTS**

THE CITY COUNCIL OF THE CITY OF GOLETA DOES ORDAIN AS
FOLLOWS:

SECTION 1 CODE AMENDMENT.

Title 5 of the Goleta Municipal Code is hereby amended to add to read as set forth
below:

Chapter 5.07

SECTIONS:

- 5.07.010 Definitions**
- 5.07.020 Requirements and Prohibitions**
- 5.07.030 Application and Procedure**
- 5.07.040 Issuance of License**
- 5.07.050 License Renewal and Expiration**
- 5.07.060 Licenses Nontransferable**
- 5.07.070 Fixed Location**
- 5.07.080 Fee for License**
- 5.07.090 Compliance Monitoring**
- 5.07.100 Revocation or Suspension; Appeals**
- 5.07.110 Penalties - Enforcement**

5.07.010 Definitions.

The words, terms, phrases, and their derivations set forth in this chapter have the
meanings set forth below.

“Arm’s length transaction” means a sale in good faith and for valuable
consideration that reflects the fair market value in the open market between two
informed and willing parties, neither of which is under any compulsion to
participate in the transaction. A sale between relatives, related companies or
partners, or a sale for which a significant purpose is avoiding the effect of the
violations of this chapter is not an arm’s length transaction.

“Code” means the Goleta Municipal Code.

“Department” means Neighborhood Services and Public Safety Department, and any agency or person designated by the Department to enforce or administer the provisions of this chapter.

“City” means the City of Goleta.

“Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

“Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

“School” means any public or private kindergarten, elementary, middle, junior high, or high school.

“Self-service display” means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

“Smoking” means possessing a lighted tobacco product, lighted tobacco paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind) and means the lighting of a tobacco product, tobacco paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).

“Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of Smoking materials of all types, cigarette rolling machines, and any other item designed for the Smoking, preparation, storing, or consumption of tobacco products.

“Tobacco product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body. “tobacco product” does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia.

“Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

5.07.20 Requirements and Prohibitions.

- A. It shall be unlawful for any person to act as a tobacco retailer in the City without first obtaining and maintaining a valid tobacco retailer’s license pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer’s license is a nuisance as a matter of law.
- B. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee’s agents or employees, to violate any local, state, or federal law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing.
- C. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- D. No person engaged in tobacco retailing shall sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco product or tobacco paraphernalia.
- E. No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in tobacco retailing.

- F. Tobacco retailing by means of a self-service display is prohibited.
- G. A tobacco retailer without a valid tobacco retailer license or a Proprietor without a valid tobacco retailer license, including, for example, a person whose license has been suspended or revoked:
 - 1. Shall keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a license under this section; and
 - 2. Shall not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.
- H. No tobacco retailer license may be issued to authorize tobacco retailing within one thousand feet of a school, except if a tobacco retailer has already been operating lawfully within one thousand feet of a school on the operative date of this chapter. The existing tobacco retailer must obtain a tobacco retailer license and timely renew annually.

5.07.030 Application and Procedure.

- A. Application for a tobacco retailer's license shall be submitted in the name of each Proprietor proposing to conduct retail tobacco sales and shall be signed by each Proprietor or an authorized agent thereof.
- B. It is the responsibility of each Proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retailer's license. No Proprietor may rely on the issuance of a license as a determination by the City that the Proprietor has complied with all laws applicable to tobacco retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to section 5.07.100 of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.
- C. All applications shall be submitted on a form supplied by the Department and shall contain the following information:
 - 1. The name, address, and telephone number of each Proprietor of the business seeking a license.
 - 2. The business name, address, and telephone number of the single fixed

location for which a license is sought.

3. A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of this chapter. If an Authorized Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.
 4. Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
 5. Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years.
 6. Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.
- D. A licensed tobacco retailer shall inform the Department in writing of any change in the information submitted on an application for a tobacco retailer's license within ten (10) business days of a change.
- E. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code, §§ 6250, et seq.) or any other applicable law, subject to the laws' exemptions.

5.07.40 Issuance of license.

- A. Upon the receipt of a complete application for a tobacco retailer's license and the license fee required by this chapter, the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:
1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.
 2. The application seeks authorization for tobacco retailing at a location for which a suspension or revocation of the license has occurred. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the City with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an arm's length transaction.

3. The application seeks authorization for tobacco retailing for a Proprietor to whom this chapter prohibits a license to be issued.
 4. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter (e.g., mobile vending)], that is unlawful pursuant to this Code or that is unlawful pursuant to any other law.
- B. "Substantial evidence" in this section shall mean oral or written evidence within the city's or county's records that is sufficiently reliable and persuasive. It must be the kind of evidence upon which responsible people rely in making important business, personal, and other decisions.

5.07.50 License Renewal and Expiration.

- A. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is one year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than thirty (30) days prior to expiration of the term.
- B. Expiration.
1. A tobacco retailer's license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to Subsection (a), the Proprietor must:
 - a. Submit the license fee and application renewal form; and
 - b. Submit a signed affidavit affirming that the Proprietor:
 - i. Has not sold and will not sell any tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed; or
 - ii. Has waited the period of time required by section 5.07.100 of this chapter before seeking renewal of the license.

5.07.060 Licenses Nontransferable.

- A. A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in Proprietor(s).
- B. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
1. The location has been transferred to new Proprietor(s) in an arm's length transaction; and

2. The new Proprietor(s) provide the City with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an arm's length transaction.

5.07.070 Fixed Location.

No license may issue to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles, also known as mobile vending, is prohibited.

5.07.080 Fee for License.

- A. The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.
- B. Notwithstanding subsection(A), the fee for a tobacco retailer's license shall be adjusted for changes in the cost of living without City Council approval. Changes in cost of living shall be based upon the percentage change in the Consumer Price Index of the United States Department of Labor, Bureau of Labor Statistics for Los Angeles-Anaheim-Riverside, California for the calendar immediately preceding the applicable tax year.

5.07.90 Compliance Monitoring.

- A. Compliance with this chapter shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this chapter. The City may designate any number of additional persons to monitor compliance with this chapter.
- B. The Department shall inspect each tobacco retailer at least once per twelve (12) month period. Nothing in this paragraph shall create a right of action in any licensee or other person against the City or its agents.
- C. Youth Decoys
 1. City shall not enforce any law establishing a minimum age for Tobacco purchases or possession against a person who otherwise might be in

violation of such law because of the person's age (hereinafter "Youth Decoy") if the potential violation occurs when:

- a. the Youth Decoy is participating in an inspection supervised by a peace officer, code enforcement official, or the person designated by the City to monitor compliance with this chapter;
- b. the Youth Decoy is acting as an agent of a person designated by the City to monitor compliance with this chapter; or
- c. the Youth Decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Department or the California Department of Health Services.

5.07.100 Revocation or Suspension; Appeals.

A. Revocation

1. A tobacco retailer's license shall be revoked if the Department finds that one or more of the basis for denial of a license under section 5.07.040 exists. The revocation shall be without prejudice to the filing of a new application for a license following correction of the conditions that required revocation of the license.
2. A tobacco retailer's license shall be suspended under this section, if the Department finds that the licensee or his or her agent or employee has violated any federal, state or local law governing the sale, distribution, advertisement or display of tobacco, tobacco products or tobacco paraphernalia, including but not limited to, Penal Code, section 308(a), or Business and Professions Code, sections 22950, et seq. (Stop Tobacco Access to Kids Enforcement Act or STAKE Act) or Business and Professions Code, section 25612.5(c)(7.).
3. The Department shall give notice of revocation or suspension to a licensee by personal service or by certified mail return receipt requested, addressed to where the license was issued. The notice of revocation or suspension shall be effective when notice is personally served, or when the certified mail return receipt is returned to the Department. If the licensee fails to file a timely appeal of the suspension or revocation pursuant to this section, the notice of suspension or revocation shall be final, subject only to judicial review.

B. Suspension

1. If the Department finds that there are grounds for suspension of a tobacco retailer's license, the following sanctions shall be imposed:
 - a. Upon a first finding by the Department of a violation of this chapter by a

licensee or by any agent or employee of a licensee within any five-year period, the license shall be suspended for thirty days.

- b. Upon the second finding by the Department of a violation of this chapter by a licensee or by any agent or employee of a licensee within any five-year period, the license shall be suspended for ninety days.
- c. Upon the third or subsequent finding by the Department of a violation of this chapter by a licensee or by any agent or employee of a licensee within any five-year period, the license shall be suspended for twelve months. However, if the licensee is operating within one thousand feet of a school pursuant to section 5.07.20, upon the third finding by the Department of a violation by a licensee or by any agent or employee of a licensee within any five-year period; then the tobacco retailer license shall be suspended for five years.

C. Appeal of Denial, Revocation and/or Suspension.

- 1. The decision of the Department to deny the issuance of a tobacco retailer license or to revoke or suspend a license can be appealed in accordance to the procedures set forth in Article IV of chapter 5.01 of this Code.

D. Settlement in Lieu of Appeal Hearing.

- 1. For a first or second alleged violation of this chapter within any five-year period, the Department may engage in settlement negotiations and may enter into a settlement agreement with a tobacco retailer alleged to have violated this chapter, provided that a timely appeal has been filed. Settlements shall not be confidential.
- 2. After a first alleged violation, any settlement must contain the following minimum terms:
 - a. Suspension of the tobacco retailer license for at least fifteen days;
 - b. A settlement payment to the Department of at least one thousand dollars; and
 - c. An admission by the licensee that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.
- 3. After a second alleged violation, any settlement must contain the following minimum terms:
 - a. Suspension of the tobacco retailer license for at least forty-five days;
 - b. A settlement to the Department of at least five thousand dollars; and
 - c. An admission by the licensee that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

5.07.110 Penalties – Enforcement.

- A. Any violation of the provisions of this chapter by any person is a misdemeanor and is punishable by a fine and/or imprisonment in the county jail for a period of not more than six months pursuant to chapter 1 of this Code.
- B. Violations of this chapter are hereby declared to be public nuisances.
- C. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, but not limited to, administrative and judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

SECTION 4 SEVERABILITY.

Should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance shall remain in full force and effect.

SECTION 5 CONSTRUCTION.

The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

SECTION 6 EFFECTIVE DATE.

This ordinance shall take effect on the 31st day following the date of its final adoption.

SECTION 7 CERTIFICATION.

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

INTRODUCED ON the _____ day of _____, 2013.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2013.

ROGER ACEVES, MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH S. LOPEZ
CITY CLERK

TIM W. GILES
CITY ATTORNEY