



**TO:** Mayor and Councilmembers

**FROM:** Michael Jenkins, City Attorney

**CONTACT:** Winnie Cai, Assistant City Attorney

**SUBJECT:** Ordinance Banning Sales of Flavored Tobacco Products

**RECOMMENDATION:**

Conduct second reading by title only and waive further reading and adopt Ordinance No. 21-\_\_ entitled “An Ordinance of the City of Goleta, California, Amending Chapter 5.07 of Title 5 of the Goleta Municipal Code Banning the Sales of Flavored Tobacco Products.”

**BACKGROUND:**

On August 28, 2020, Governor Gavin Newsom signed into law Senate Bill 793, which banned the sale of most flavored e-cigarettes, smokeless tobacco, and cigars in all flavors from fruit to mint to candy products, including menthol cigarettes (“flavored tobacco”). SB 793 was set to go into effect on January 1, 2021. Prior to that, a petition to referendum the law acquired enough signatures to place the item on the ballot in November 2022. The vote in the November 2022 general election will determine whether the state-wide ban on flavored tobacco will be enforceable. However, litigation is likely to ensue even if the voters affirm SB 793. It is likely that litigation surrounding election results could delay enforcement for years. Local entities have the authority to pass their own flavored tobacco ban, which, if more restrictive than SB 793, would be enforceable regardless of the outcome of the November 2022 ballot measure on SB 793.

**DISCUSSION:**

On September 21, 2021, the City Council introduced and conducted the first reading of the Ordinance of the City of Goleta, California, Amending Chapter 5.07 of Title 5 of the Goleta Municipal Code Banning the Sales of Flavored Tobacco Products.

The City Council must conduct a second reading of the Ordinance prior to the Ordinance going into effect on December 4, 2021, the effective date that Council designated at the previous meeting.

**FISCAL IMPACTS:**

There are no fiscal impacts associated with this ordinance amendment.


**Reviewed By:**

  
\_\_\_\_\_  
Kristine Schmidt  
Assistant City Manager

**Legal Review By:**

  
\_\_\_\_\_  
Michael Jenkins  
City Attorney

**Approved By:**

  
\_\_\_\_\_  
Michelle Greene  
City Manager

**ATTACHMENT:**

1. An Ordinance of the City of Goleta, California, Amending Chapter 5.07 of Title 5 of the Goleta Municipal Code Banning the Sales of Flavored Tobacco Products.

**Attachment 1**

Ordinance Banning Sales of Flavored Tobacco Products

## ORDINANCE NO. 21-\_\_

### AN ORDINANCE OF THE CITY OF GOLETA, CALIFORNIA, AMENDING CHAPTER 5.07 OF TITLE 5 OF THE GOLETA MUNICIPAL CODE BANNING THE SALES OF FLAVORED TOBACCO

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

**SECTION 1.** Chapter 5.07 (Tobacco Retailing License) of Title 5 (Business Licenses and Regulations) of the Goleta Municipal Code is amended to read as follows:

#### **5.07.010 Definitions.**

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

“Bona fide purchaser for value” means a person who purchases legal title to a tobacco retailing business without actual or constructive notice of any infirmities, claims or equities against the title.

“Delinquency date” means the first business day after the expiration of a tobacco retailing license.

“Flavored tobacco product” means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.

“Licensee” means any proprietor(s) who holds a valid tobacco retailing license issued pursuant to this chapter.

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

“Proprietor” means a person with a minimum of 10% ownership interest in a tobacco retailing business.

“School” means any daycare program licensed by the State Department of Social Services and any public or private preschool, 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 licensee or employee of the licensee and a direct person-to-person transfer between the purchaser and the licensee or employee of the licensee. A vending machine is a form of self-service display.

“Smoking” or to “smoke” means inhaling, exhaling, burning or carrying any lighted or heated pipe, cigar, cigarette, weed, plant or other combustible organic or chemical substance, the smoke or vapor emission from which is specifically designed or intended to be inhaled or drawn into the nose or mouth.

“Tobacco paraphernalia” means any item designed for the consumption, use, or preparation of tobacco products.

“Tobacco product”

1. Any product containing, made, or derived from tobacco or nicotine 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
2. Any electronic smoking device, with or without nicotine.
3. Any component, part, or accessory of a tobacco product, whether or not sold separately, notwithstanding any provision of this definition to the contrary.

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

“Tobacco retailing business” means a physical location at which tobacco retailing occurs.

“Tobacco retailing license” means the license required pursuant to this chapter.

#### **5.07.020 Requirements and Prohibitions.**

- A. No person shall engage in tobacco retailing in the City without first obtaining and maintaining a valid tobacco retailing license for each location at which any tobacco retailing is to occur.
- B. Licenses may be issued only to authorize tobacco retailing at one fixed location at a time.
- C. No person may engage in tobacco retailing on foot or from vehicles, also known as mobile vending.
- D. In the course of tobacco retailing or in the operation of a tobacco retailing business or maintenance of the location in the City for which a license issued, it shall be a violation of this chapter for a licensee, or agents or employees thereof, to violate any local or State tobacco control law.
- E. A licensee shall prominently display the license in a publicly visible location at the licensed location.
- F. No licensee shall sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of 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.
- G. No person who is younger than 21 years of age shall engage in tobacco retailing.
- H. No licensee shall allow a person who is younger than 21 years of age to engage in tobacco retailing.
- I. No person shall allow a self-service tobacco display at any location for which a tobacco retailing license under this chapter or business license under Chapter 5.01 of this title is required.
- J. A proprietor without a valid tobacco retailing license, including a proprietor whose license has been suspended or revoked, shall:
  - 1. Keep all tobacco products and tobacco paraphernalia out of public view; and
  - 2. Not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the proprietor's tobacco retailing location or that could lead a reasonable consumer to believe that such products can be obtained at that location.
- K. No person may engage in tobacco retailing within 1,000 feet of a school, except if a person has already been tobacco retailing lawfully within 1,000 feet of a school on the effective date of the ordinance codified in this chapter.
  - 1. All distances shall be measured in a straight line from the nearest point on the parcel boundary of an existing or proposed tobacco retailing business to the nearest point on the parcel boundary of the nearest school.

- L. A tobacco retailing license may not be transferred from one proprietor to another or from one location to another. A new tobacco retailing license is required whenever there is a change in proprietors to a tobacco retailing license or a change in the location of a tobacco retailing business. When a transfer of a license is purely from one tobacco retailing business location to another, the licensee must pay two dollars to the Finance Department to effectuate such transfer.
- M. With regard to the imposition of conditions, Sections 5.01.220, 5.01.230, 5.01.240, and 5.01.250 of Chapter 5.01 of this title are incorporated.
- N. *Prohibition of the Sale of Flavored Tobacco Products.* No tobacco retailer shall sell any flavored tobacco product. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has a taste or smell other than tobacco flavor including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product is a flavored tobacco product.

#### **5.07.030 Application and Procedure.**

- A. Application for a tobacco retailing license shall be submitted in the name of each proprietor of a tobacco retailing business and shall be signed by each proprietor or authorized agent thereof.
- B. All applications shall be submitted on a form supplied by the City and shall contain the following information:
  - 1. The name, address, and telephone number of each proprietor of the tobacco retailing business seeking a license.
    - a. If the applicant is a corporation, the name shall be exactly as set forth in its articles of incorporation, state of incorporation, and the name and address of an officer who is duly authorized to accept service of legal process shall be provided.
    - b. If the applicant is a partnership, the name and address of each general partner shall be stated.
  - 2. The name, address, and telephone number of the tobacco retailing business.
  - 3. A single name, address, and telephone number 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 tobacco retailing business.

4. Proof that the proprietor seeking a license under this chapter has been issued a valid State tobacco retailing license by the California Board of Equalization.
  5. Whether or not any proprietor, or agent or employee thereof, has admitted to violating this chapter or has been found after a hearing 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 City deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.
- C. A licensee shall inform the City in writing of any change in the information submitted on an application for a tobacco retailing license within 10 business days of a change.

**5.07.040 License Term and Renewal.**

- A. The term of each tobacco retailing license shall be one year.
- B. A licensee may renew a license by submitting a renewal application and paying the renewal fee.

**5.07.050 Initial and Renewal Fees—Late Penalty After Expiration.**

- A. The fee to issue or to renew a tobacco retailing license shall be established from time to time by resolution of the City Council.
- B. Renewal fees are due on the delinquency date of a tobacco retailing license.
- C. If a proprietor does not renew a tobacco retailing license and pay the renewal fee by the delinquency date, a late penalty of 50% of the renewal fee shall be imposed. The penalty shall not attach until 30 days after the delinquency date.
- D. With regard to the collection and disposition of fees, Sections 5.01.020, 5.01.030, 5.01.380, 5.01.390, 5.01.400 and 5.01.410 of Chapter 5.01 of this title are incorporated.

**5.07.060 When License Commences.**

If the date specified in either subsection A or B of this section is the first of a calendar month, the period of the license shall begin on such date. Otherwise, the period of the license shall begin on the first of the calendar month which first follows the date specified in subsection A or B. The dates are:

- A. In the case of a new license:
  1. If the applicant is already engaging in the activity for which the license is required, the date on which he or she began such activity or the date on which such activity became subject to the license, whichever is later.
  2. If the application has not begun such activity, the date requested in the application. If no date is requested, the date on which the application for the license is filed.



- B. In the case of a renewal, the expiration date of the license renewed.

**5.07.070 Grounds for Denial, Suspension and Revocation.**

A. Denial.

1. An application may be denied upon any of the following:
  - a. The information presented in the application is inaccurate or false.
  - b. The required fee has not been paid.
  - c. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter (e.g., mobile vending), Code (e.g. zoning regulations), or any other law.
  - d. The application seeks authorization for tobacco retailing at a tobacco retailing business for which a license has been revoked unless the applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the tobacco retailing business as a bona fide purchaser of value.
  - e. The application seeks authorization for a license that has been suspended and the suspension period has not ended yet unless the applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the tobacco retailing business as a bona fide purchaser of value.

B. Suspension.

1. A tobacco retailing license may be suspended if the City finds that the licensee, or an agent or employee thereof, has violated:
  - a. Any provision of this chapter; or
  - b. Any State 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), Business and Professions Code Section 22950 et seq. (Stop Tobacco Access to Kids Enforcement Act (STAKE Act)), and Business and Professions Code Section 25612.5(c)(7).
2. Suspension Periods.
  - a. Upon a first finding by the City of a violation of this chapter by a licensee, or an agent or employee thereof, within any five-year period, the license may be suspended for up to 30 days.
  - b. Upon the second finding by the City of a violation of this chapter by a licensee, or an agent or employee thereof, within any five-year period, the license may be suspended for up to 90 days.

- c. Upon the third finding by the City of a violation of this chapter by a licensee, or an agent or employee thereof, within any five-year period, the license may be suspended for up to 12 months.

C. Revocation.

1. A tobacco retailing license may be revoked if the City finds that one or more of the bases for denial 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. On revocation of a license, no part of the money paid to the City as a fee shall be returned.

**5.07.080 Notice of Denial, Suspension or Revocation—Appeal.**

- A. The City may give notice of intention to deny, suspend or revoke to a licensee or applicant in writing. Within five days thereafter, the licensee or applicant may request in writing a hearing before the City Manager, or designee.
- B. The City Manager, or designee, shall hold a hearing in accordance to Chapter 5.01 of this title.
- C. After a hearing, the City Manager, or designee, shall affirm or reverse the denial, suspension or revocation in writing. If the licensee does not timely request a hearing, the notice of intention to deny, suspend or revoke shall be final.

**SECTION 2. Certification of City Clerk.**

The City Clerk shall certify to the adoption of this ordinance and, within 15 days after its adoption, shall cause it to be published in accord with California Law.

**SECTION 3. Effective Date.**

This ordinance shall take effect on December 4, 2021.

**INTRODUCED ON** the \_\_\_\_ day of \_\_\_\_\_, 2021.

**PASSED, APPROVED, AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

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PAULA PEROTTE, MAYOR

**ATTEST:**

**APPROVED AS TO FORM:**

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DEBORAH S. LOPEZ  
CITY CLERK

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MICHAEL JENKINS  
CITY ATTORNEY

STATE OF CALIFORNIA )  
COUNTY OF SANTA BARBARA ) ss.  
CITY OF GOLETA )

I, Deborah S. Lopez, City Clerk of the City of Goleta, California, do hereby certify that the foregoing Ordinance No. 21-\_\_ was introduced on \_\_\_\_\_, and adopted at a regular meeting of the City Council of the City of Goleta, California, held on the \_\_\_\_\_, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

(SEAL)

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DEBORAH S. LOPEZ  
CITY CLERK