

ORDINANCE NO. 2012-16

AN ORDINANCE OF THE CITY OF SANTA CRUZ
ADDING CHAPTER 6.07 TO THE SANTA CRUZ MUNICIPAL CODE
PERTAINING TO LICENSING OF TOBACCO RETAILERS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SANTA CRUZ AS
FOLLOWS:

Section 1. Chapter 6.07 is hereby added to the Santa Cruz Municipal Code to read as follows:

Chapter 6.07
TOBACCO RETAILER LICENSES

Sections:

- 6.07.010 Definitions.
- 6.07.020 Tobacco retailer license – Violations.
- 6.07.030 Limits on tobacco retail license.
- 6.07.040 Application procedure.
- 6.07.050 Issuance of tobacco retail license.
- 6.07.060 License renewal and expiration.
- 6.07.070 License nontransferable.
- 6.07.080 Fee for license.
- 6.07.090 Suspension or revocation of license by Chief of Police.
- 6.07.100 Notice of intended decision.
- 6.07.110 Procedure for hearing before the Chief of Police.
- 6.07.120 Decision of the Chief of Police.
- 6.07.130 Appeal.
- 6.07.140 Tobacco retailing without a license – Seizure.
- 6.07.150 Enforcement.
- 6.07.160 Notice.
- 6.07.170 Stipulated fine in lieu of hearing.

6.07.010 DEFINITIONS.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

- (a) “Chief of Police” shall refer to the City of Santa Cruz Chief of Police or the person designated by the Chief of Police.
- (b) “Drug paraphernalia” shall have the definitions set forth in California Health and Safety Code Section 11014.5, as that section may be amended from time to time.
- (c) “Person” shall mean any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (d) “Proprietor” shall mean 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.

(e) “Tobacco paraphernalia” shall mean 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.

(f) “Tobacco product” shall mean:

(1) Any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; or

(2) 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, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco-product dependence.

(g) “Tobacco retailer” shall mean any person or business which sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia, or who distributes free or low-cost samples of 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.

6.07.020 TOBACCO RETAILER LICENSE – VIOLATIONS.

(a) It shall be unlawful for any person to act as a tobacco retailer, or to display or advertise the sale of tobacco products or tobacco paraphernalia, without obtaining and maintaining a valid tobacco retailer’s license pursuant to this chapter for each location at which that activity is to occur.

(b) Tobacco retailing by persons on foot or from vehicles is prohibited.

(c) Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

(d) In the course of tobacco retailing or in the operation of a business or maintenance of a location for which a tobacco retailer’s license has been 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.

6.07.030 LIMITS ON TOBACCO RETAIL LICENSE.

(a) No license shall be issued to authorize tobacco retailing at other than a fixed business place.

(b) No license shall be issued to authorize tobacco retailing at any location for which a tobacco retailer license suspension is in effect or during a period of ineligibility following a revocation.

6.07.040 APPLICATION 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. The application shall include a statement signed by each proprietor that no drug paraphernalia is or will be sold at the location for which the license is sought.

(b) It shall be 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.

(c) No proprietor may rely on the issuance of a tobacco retailer's license as a determination by the City that the proprietor has complied with all laws applicable to tobacco retailing.

(d) 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 6.07.090.

(e) 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.

(f) All applications shall be submitted on a form supplied by the Chief of Police and shall contain the following information:

(1) The name, address, and telephone number of each proprietor of the business that is 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 subsection (f)(2) of this section.

(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 State Board of Equalization.

(5) Whether a proprietor has previously been issued a tobacco retailer's license pursuant to this chapter that is or was at any time suspended or revoked, and, if so, the dates and locations of all such suspensions or revocations.

(6) Such other information as the Chief of Police deems reasonably necessary for the administration or enforcement of this chapter.

(7) All information required to be submitted in order to apply for a tobacco retailer's license shall be updated with the Chief of Police whenever the information changes. A tobacco retailer shall provide the Chief of Police with any updates within ten (10) business days of a change.

6.07.050 ISSUANCE OF TOBACCO RETAIL LICENSE.

Upon the receipt of a complete application for a tobacco retailer's license and the license fee required by this chapter, the Chief of Police shall issue a tobacco retail license unless one (1) or more of the following exists:

(a) The application seeks authorization for tobacco retailing at a location for which a current proprietor's suspension is in effect pursuant to this chapter, for which a current proprietor's license has been revoked pursuant to this chapter, or for which this chapter otherwise prohibits issuance of tobacco retailer licenses;

(b) The application seeks authorization for tobacco retailing for a proprietor to whom a suspension is in effect pursuant to this chapter for the subject location or another location, whose license has been revoked pursuant to this chapter for the subject location or another location, or to whom this chapter otherwise prohibits a tobacco retailer license to be issued;

(c) The City has information that the proprietor or his or her agent or employee has violated any local, State or Federal tobacco control law, including this chapter, within the preceding twelve (12) months; or

(d) The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter, that is otherwise unlawful pursuant to this code, or that is unlawful pursuant to any other local, State, or Federal law.

Any denial of an application shall be in writing and shall set forth the reasons for denial of the permit. Such denial shall be subject to appeal in accordance with Section 6.07.130 of this chapter and Chapter 4.20 of this code.

6.07.060 LICENSE RENEWAL AND EXPIRATION.

(a) A tobacco retailer license is invalid unless the appropriate fee has been paid in full and the term of the license has not expired. The term of a tobacco retailer license is one (1) year beginning each fiscal year on January 1st and ending on December 31st of the same 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) A tobacco retailer's license that is not timely renewed shall expire at the end of its term. To reinstate a license that has expired, or to renew a license not timely renewed pursuant to subsection (a) of this section, the proprietor must:

(1) Submit the license fee.

- (2) 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 appropriate ineligibility period established for tobacco retailing without a license, as set forth in Section 6.07.090(b), before seeking renewal of the license.

6.07.070 LICENSE NONTRANSFERABLE.

(a) A tobacco retailer's license may not be transferred from one (1) person to another or from one (1) location to another. Whenever a tobacco retailing location has a change in proprietor a new tobacco retailer's license is required.

(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 fully transferred to a new proprietor or fully transferred to entirely new proprietors; and
- (2) The new proprietor(s) provides the City with clear and convincing evidence that the new proprietor(s) has acquired or is acquiring the location in an arm's length transaction. As used in this section, the term "arm's length transaction" shall mean 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.

6.07.080 FEE FOR LICENSE.

The fee to issue or to renew a tobacco retailer's license shall be set by resolution of the City Council from time to time. The fee shall be calculated so as not to exceed that amount which would recover the total cost of both license administration and license enforcement, including, for example, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators. All fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

6.07.090 SUSPENSION OR REVOCATION OF LICENSE BY CHIEF OF POLICE.

(a) In addition to any other remedy authorized by law, a tobacco retailer's license may be suspended and eventually revoked if the Chief of Police finds pursuant to this chapter that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 6.07.020. During any period of license suspension, the retailer must remove all tobacco products from public view.

(b) Time Period of Suspension of License.

(1) Upon the first time that the Chief of Police makes a finding as set forth in subsection (a) of this section, the tobacco retailer's license shall be suspended for up to sixty (60) days.

(2) Upon the second time that the Chief of Police makes a finding as set forth in subsection (a) of this section within sixty (60) months of the first determination, the tobacco retailer's license shall be suspended for one hundred twenty (120) days.

(3) Upon the third time that the Chief of Police makes a finding as set forth in subsection (a) of this section within sixty (60) months of the prior determination, the tobacco retailer's license shall be suspended for one hundred eighty (180) days.

(4) Upon the fourth and each subsequent time that the Chief of Police makes a finding as set forth in subsection (a) within sixty (60) months of the prior determination, the tobacco retailer's license shall be revoked, and no new license may be issued for the location until five (5) years have passed from the date of revocation.

(c) Revocation of License Issued in Error. A tobacco retailer's license shall be revoked if the Chief of Police finds, after written notice and opportunity to be heard, that one (1) or more of the bases for denial of a license under Section 6.07.050 existed at the time the application was made or at any time before the license was issued. The decision by the Chief of Police shall be final. The revocation shall be without prejudice to the filing of a new application for license.

6.07.100 NOTICE OF INTENDED DECISION.

(a) Upon determining the existence of any of the grounds for suspension or revocation of a license, the Chief of Police shall issue to the license holder a notice of intended decision.

(b) The notice of intended decision shall state all the grounds upon which the revocation or suspension is based.

(c) The notice of intended decision shall advise the permit holder that the suspension or revocation shall become final unless the licensee files a written request for hearing before the Chief of Police within ten (10) calendar days of the date of service of the notice of intended decision.

(d) The notice of intended decision shall specify the effective date of the suspension or revocation.

6.07.110 PROCEDURE FOR HEARING BEFORE THE CHIEF OF POLICE.

(a) The written request for a hearing before the Chief of Police must be received by the Chief of Police within ten (10) calendar days of the date of service of the notice of intended decision.

(b) Upon timely receipt of a written request for a hearing and submittal of an administrative hearing fee established by City Council resolution, the Chief of Police shall schedule a hearing

which shall be held no later than thirty (30) calendar days after receipt of a timely request for hearing.

(c) The Chief of Police shall serve a notice of hearing on the licensee at least ten (10) calendar days prior to the scheduled date of the hearing.

(d) At the hearing before the Chief of Police, or before a hearing officer at the Chief's option, the licensee shall be given the opportunity to present witnesses and relevant documentary evidence.

(e) The hearing will be conducted informally, and the technical rules of evidence shall not apply. Any and all evidence which the Chief of Police or hearing officer deems reliable, relevant, and not unduly repetitious may be considered.

6.07.120 DECISION OF THE CHIEF OF POLICE.

(a) The Chief of Police, or hearing officer, shall serve on the licensee a written decision sustaining, reversing, or modifying the Chief's or hearing officer's intended decision.

(b) The decision by the Chief of Police, designee, or hearing officer after hearing shall become final unless the licensee files an appeal within the time period specified in Chapter 4.20 of this code.

(c) Any administrative hearing fee submitted by a licensee shall be reimbursed should the Chief of Police reverse the notice of intended decision.

6.07.130 APPEAL.

If a licensee is dissatisfied with the written decision of the Chief of Police or designee, the licensee may file a written appeal. The appeal shall be conducted in accordance with Chapter 4.20 of this code. For purposes of Chapter 4.20, the written decision of the Chief of Police or designee shall constitute an abatement order and the Chief of Police shall be the designated enforcement officer.

6.07.140 TOBACCO RETAILING WITHOUT A LICENSE – SEIZURE.

(a) Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this chapter are subject to seizure by the Chief of Police, or any peace officer, and shall be forfeited after the licensee and any other owner of the tobacco products and tobacco paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the tobacco products and tobacco paraphernalia were not offered for sale or exchange in violation of this chapter.

(b) Forfeited tobacco products and tobacco paraphernalia shall be maintained and destroyed pursuant to the Police Department's policy for seized evidence.

6.07.150 ENFORCEMENT.

(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

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- (b) Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen (18) years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter, and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (c) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- (d) Violations of this chapter are hereby declared to be public nuisances.
- (e) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied or prosecuted pursuant to Title 4 of this code.
- (f)
 - (1) A first violation of this chapter shall constitute an infraction punishable by a fine of \$100.
 - (2) A second violation of this chapter committed within one (1) year of a first violation shall constitute an infraction punishable by a fine of \$500.
 - (3) A third violation of this chapter committed within one (1) year of a second violation shall constitute an infraction punishable by a fine of \$1,000.
 - (4) A fourth or subsequent violation of this chapter committed within one (1) year of a prior violation shall constitute a misdemeanor punishable by a fine of \$5,000.

6.07.160 NOTICE.

Whenever a notice is required to be given under this chapter, it shall be addressed to such person to be notified at the authorized address provided in the application for a tobacco retail license pursuant to Section 6.07.040(f)(3) or, if an authorized address is not supplied, to the business address provided pursuant to Section 6.07.040(f)(2).

6.07.170 STIPULATED FINE IN LIEU OF HEARING.

For a first or second alleged violation of this chapter within any sixty (60)-month period, the City Attorney may allow a tobacco retailer alleged to have violated this chapter to stipulate to the penalties provided for in this section in lieu of the penalties that would otherwise apply under this chapter and to forego a hearing on the allegations. Notice of any stipulation shall be provided to the Police Department and no hearing shall be held. Stipulations shall not be confidential and shall contain the following terms, plus any other noncriminal provisions established by the City Attorney in the interests of justice:

- (a) After a first alleged violation of the chapter at a location:
 - (1) An agreement to stop acting as a tobacco retailer for one (1) day; and/or
 - (2) An administrative penalty of One Thousand and no/100ths (\$1,000.00) Dollars; and/or

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- (3) An admission that the violation occurred and a stipulation that the violation will be considered in determining the penalty for any future violation.
- (b) After a second alleged violation of the chapter at a location within any sixty (60)-month period:
 - (1) An agreement to stop acting as a tobacco retailer for ten (10) days; and/or
 - (2) An administrative penalty of at least Five Thousand and no/100ths (\$5,000.00) Dollars; and/or
 - (3) An admission that the violation occurred and a stipulation that the violation will be considered in determining the penalty for any future violations.

PASSED FOR PUBLICATION this 9th day of October 2012, by the following vote:

AYES: Councilmembers Madrigal, Beiers, Robinson, Coonerty, Terrazas; Vice Mayor Bryant; Mayor Lane.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: ss/Don Lane, Mayor

ATTEST: ss/Bren Lehr, City Clerk Administrator

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PASSED FOR FINAL ADOPTION this _____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk Administrator

This is to certify that the above and foregoing document is the original of Ordinance No. 2012-16 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

City Clerk Administrator