

CHAPTER 37A - LICENSURE OF TOBACCO RETAILERS¹¹

Footnotes:

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Editor's note— Ord. No. 4767, § 1, adopted Nov. 9, 2010, amended Ch. 37A in its entirety to read as herein set out. The former Ch. 37A, §§ 37A-1—37A-13, pertained to similar subject matter and derived from § 1 of Ord. No. 4438.

Sec. 37A-1. - Purpose.

- (a) It is the intent of the board of supervisors, in enacting this chapter, to discourage violations of laws which prohibit or discourage sale or distribution of tobacco products and tobacco paraphernalia to minors, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed.
- (b) All amendments to this chapter shall be applied in a prospective manner only, not retrospectively to situations, conditions or facts existing at the time of or prior to the amendment.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-2. - 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) "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 a violation of this chapter, is not an "arm's length transaction".
- (b) "Cigarette" means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.
- (c**b**) —"Cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.
- (d) "Delivery sale" means any sale of tobacco products to a consumer if--
 - (1) the consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mails, or the internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or
 - (2) the tobacco products are delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the tobacco products.

(d) "Little Cigar" means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. "Little Cigar" includes, but is not limited to, Tobacco Products known or labeled as small cigars, little cigars, or cigarillos.

~~(c) "Cigarette" means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.~~

(ed) "Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(fe) "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, or any candy, dessert, alcoholic beverage, herb, or spice.

(gf) "Full Retail Price" means the price listed for a tTobacco pProduct on its pPackaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

(hg) "Health officer" shall means the county health officer or the duly authorized designee of the county health officer.

~~(e)~~ (ih) — "Licensing agent" shall means the Santa Barbara County Treasurer-Tax Collector.

~~(i) "Little Cigar" means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. "Little Cigar" includes, but is not limited to, Tobacco Products known or labeled as small cigars, little cigars, or cigarillos.~~

(jd) "Person" shall means any natural person, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(ke) "School" shall means any public or private kindergarten, elementary, middle, junior high, or high school.

(l) "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 face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

(mf) "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 smoking, preparation, storing or consumption of tobacco products.

(nmg) "Tobacco product" means:

(1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

(2) any Electronic Smoking Device as defined in this section, and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or

(3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, and pipes.

"Tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act,," nor does it mean cannabis products as defined by the Health and Safety Code § 11018.1 or cannabis as defined by Business and Professions Code § 26001, as these laws may be amended from time to time. Tobacco product" shall mean 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, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(onh) "Tobacco retailer" shall mean 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.

(epi) "Tobacco retailer license" or "license" shall mean a business license that permits the retail sale of tobacco products and/or tobacco paraphernalia.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-3. - Requirement for tobacco retailer license.

It is unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer license pursuant to this chapter for each location at which ~~that tobacco retailing activity~~ is to occur. Tobacco retailer licenses are valid for one year. An application to renew a tobacco retailer license should be submitted prior to the expiration of the license.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-4. - Application procedure.

(a) An application for a tobacco retailer license, plus one copy, shall be submitted to the licensing agent in the name of the person(s) proposing to conduct tobacco retailing and shall be signed by such person(s) or an authorized agent thereof. All applications shall be submitted on a form supplied by the licensing agent and shall contain the following information:

(1) The name, address, and telephone number of the applicant(s);

- (2) The business name, address, and telephone number of each location for which a license is sought.
 - (3) Such other information as the licensing agent deems necessary for enforcement of this chapter.
- (b) Once an application has been submitted to the licensing agent, it will be promptly forwarded to the public health department for review. The public health department shall, within twenty-one business days of ~~their~~ receipt of the application, recommend whether or not the licensing agent should issue the tobacco retailer license.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-5. - Issuance of tobacco retailer license.

- (a) Within thirty days of the licensing agent's receipt of an application for a tobacco retailer license, the licensing agent shall issue a license, unless it has been determined by the public health department that the issuance of the license should be denied, based on the following criteria:
- (1) The application is incomplete or inaccurate; ~~or~~
 - (2) The application seeks authorization for tobacco retailing by a person or at a location for which a suspension or revocation with prejudice is in effect pursuant to section 37A-15 of this chapter; or
 - (3) The application seeks authorization for tobacco retailing in an area that is in violation of section 37A-10, ~~or~~ county zoning pursuant to chapter 35 of this code, or in violation of any other provision of county law.
- (b) A denial of a tobacco retailer license may be appealed pursuant to section 37A-15.
- (c) The licensing agent shall keep a permanent record of all tobacco retailer licenses issued, but may destroy such records as provided by law with the approval of the board of supervisors.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-6. - Display of tobacco retailer license.

Each licensee shall prominently display the tobacco retailer license at each location where tobacco retailing occurs.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-7. - Fees for tobacco retailer license.

- (a) The initial fee or renewal fee for a tobacco retailer license shall be set forth in the "Tobacco Retailer License Fee Schedule" that is adopted by resolution. The fee shall be paid to the licensing agent when a tobacco retailer license application is submitted. The fee shall be allocated between the licensing agent and the public health department for processing the licenses and administration and enforcement of this chapter.
- (b) **Renewal.** Renewal fees are due the first business day after the date of expiration of a tobacco retailer license. A tobacco retailer will be allowed a thirty-day grace period to pay the renewal fee. If the renewal fee has not been paid by the end of the grace period, a penalty of fifty percent of the renewal fee shall be added to the renewal fee. If the renewal fee and any applicable late penalty are not paid within ninety days after the date of expiration of a tobacco retailer license, then the licensing agent shall automatically revoke the license. Thereafter, if the licensee desires to resume tobacco

retailing, a new license application must be submitted to the licensing agent in accordance with section 37A-4, along with the license fee and late penalty.

(Ord. No. 4767, § 1, 11-9-2010; Ord. No. 4847, § 1, 12-11-2012)

Sec. 37A-8. - Tobacco retailer licenses are nontransferable.

- (a) A tobacco retailer license is nontransferable. If a person to whom a tobacco retailer license has been issued, changes the business location or sells the business, then that person must obtain a new license prior to acting as a tobacco retailer at the new location, or the buyer of the business must obtain a license in the buyer's-new owner's name before acting as a tobacco retailer.
- (b) Prior violations at a location shall continue to be counted against a location and license revocation periods shall continue to apply to a location unless:
 - (1) The location is being or has been fully transferred to a new owner; and
 - (2) The new owner(s) provide the licensing agent with clear and convincing evidence that the new owner(s) is acquiring or has acquired the location in an arm's length transaction.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-9. - Tobacco retailers must operate at a fixed location.

No tobacco retailer license may be issued to authorize tobacco retailing at other than a fixed location. All sales of tobacco products and tobacco paraphernalia to consumers shall be conducted face-to-face and over the counter at the licensed location. For example, tobacco retailing by persons on foot, or from vehicles, or at mobile kiosks is prohibited, and delivery sales of tobacco products to individual consumers at locations without a retailer license is prohibited.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-XXX. - Prohibited sales

No person engaged in tobacco retailing may:

1. Honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;
2. Sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item or service; or
3. Provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.
4. Sell:
 - a. aA flavored tobacco product;
 - b. Any little cigar unless it is sold in a package of at least twenty little cigars;
 - c. Any cigar unless it is sold in a package of at least at least six cigars,; provided, however, that this subsection shall not apply to a cigar that has a price of at least \$10.00 per cigar, including all applicable taxes and fees;

- d. Ceigarettes at a price that is less than \$10.00 per package of twenty cigarettes, including all applicable taxes and fees;
- e. Little cigars at a price that is less than \$10.00 per package of little cigars, including all applicable taxes and fees; or
- f. Ceigars in a package at a price that is less \$5.00 per cigar, including all applicable taxes and fees.
- g. Aany tobacco product by means of a self-service display.

The minimum prices established in this section shall be adjusted annually by the annual average of the percentage change in the Consumer Price Index for all urban consumers for all items for the Los Angeles statistical area as reported by the United States Bureau of Labor Statistics or any successor to that index.
~~The minimum prices established in this section shall be adjusted annually, and/or as needed, by the Department in proportion with the Consumer Price Index, based on data from the United States Bureau of Labor Statistics and the Department's interpretation of that data.~~

Sec. 37A-10. - Prohibition of tobacco retailing within one thousand feet of a school.

- (a) No tobacco retailer license may be issued to authorize tobacco retailing within one thousand feet of a school, except as provided in subsection (b).
- (b) Exceptions. A tobacco retailer operating with a valid tobacco retailer license at a location within one thousand feet of a school, on the operative date of this chapter:
 - (1) May continue to operate under their existing tobacco retailer license and under any tobacco retailer license that is timely renewed for that location. ~~;~~ ~~and~~
 - ~~(2) If a tobacco retailer owns a parcel of real property on the operative date of this chapter, which is also located within one thousand feet of the same school as their existing tobacco retailer's business, then the tobacco retailer may transfer his or her tobacco retailer license to that property owned by the tobacco retailer.~~
- (c) All distances shall be measured in a straight line from the nearest point on the parcel boundary of an existing or proposed tobacco retailer to the nearest point on the parcel boundary of the nearest school.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-11. - Positive identification requirements for sale of tobacco products and tobacco paraphernalia.

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-seventhirty, 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 tobacco products or tobacco paraphernalia.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-12. - Minimum age for persons selling tobacco products and tobacco paraphernalia.

No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products or tobacco paraphernalia shall engage in tobacco retailing.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-13. - False and misleading advertising prohibited.

A tobacco retailer without a valid tobacco retailer license, including for example, a tobacco retailer license that has been suspended or revoked, shall not display any advertisement promoting the sale or distribution of tobacco products or tobacco paraphernalia at the tobacco retailer's location and shall keep all such products out of public view.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-14. - Compliance monitoring.

- (a) Compliance with this chapter shall be primarily enforced by the Santa Barbara County sheriff, in conjunction with the public health department. However, any peace officer may enforce the penal provisions of this chapter.
- (b) The sheriff will check the compliance of each tobacco retailer one to three times per twelve-month period. However, the sheriff may check the compliance of a tobacco retailer more or less often, depending on a tobacco retailer's compliance history. Nothing in this paragraph shall create a right of action for any tobacco retailer or other person, against the county or its agents.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-15. - Revocation or suspension of tobacco retailer license; and appeals.

(a) Grounds for Revocation or Suspension.

- (1) A tobacco retailer license shall be revoked if the public health department finds that one or more of the basis for denial of a license under section 37A-5 of this chapter 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, unless the public health department finds that missing information was intentionally withheld, or inaccurate information was intentionally provided.
- (2) A tobacco retailer license shall be suspended under this section, if the public health 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 308a, or Business and Professions Code Sections 22950 et seq. (Stop Tobacco Access to Kids Enforcement Act "STAKE Act") or sections 37-7 and 37-8 of this code, or Business and Professions Code [Section] 25612.5(c)(7).
- (3) The public health 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 public health 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 of Tobacco Retailer License. If the public health department finds that there are grounds for suspension of a tobacco retailer license, the following sanctions shall be imposed:

- (1) Upon a first finding by the public health 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.

- (2) Upon the second finding by the public health 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.
 - (3) Upon the third or subsequent finding by the public health 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 37A-10 of this chapter, upon the third finding by the public health 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~~ permanently revoked.
- (c) Appeal of Denial, Revocation and/or Suspension. The decision of the licensing agent to deny the issuance of a tobacco retailer license or the decision of the public health department to revoke or suspend a license can be appealed to the health officer or his designee. All appeals must be in writing and filed with the health officer, Santa Barbara County Public Health Department, 300 North San Antonio Road, Santa Barbara, CA 93110-1316 within ten days of receipt of notice of denial, or within ten days of the effective date of the notice of revocation or suspension of a tobacco retailer license. The health officer shall set an appeal hearing at the earliest practicable time and shall give written notice of the hearing to the parties at least ten days before the date of the hearing. At the hearing any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. Within a reasonable time after the conclusion of the hearing, the health officer shall make a written decision. An appeal shall stay all proceedings until the appeal is resolved. Any decision rendered by the health officer shall be a final administrative decision.
- (d) Settlement in Lieu of Appeal Hearing. For a first or second alleged violation of this chapter within any five-year period, the health officer or his designee 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.
- (1) 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 public health 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.
 - (2) 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 payment to the public health 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.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-16. - Penalties—Enforcement.

- (a) Any violation of the provisions of this chapter by any person is a misdemeanor and is punishable as provided in chapter 1, section 1-7 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 county counsel, including, but not limited to, administrative or 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.

(Ord. No. 4767, § 1, 11-9-2010)

Sec. 37A-17. - Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this chapter or the rules adopted hereby. The board of supervisors of the County of Santa Barbara hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

(Ord. No. 4767, § 1, 11-9-2010)

~~Sec. 37A-18. - Grace period.~~

~~Any retailer who is selling tobacco products as of the effective date of the ordinance from which this chapter is derived, shall obtain a tobacco retailer license within sixty days of the effective date of the ordinance.~~

~~(Ord. No. 4767, § 1, 11-9-2010)~~