

ORDINANCE NO. 20-OR0562-1

AN ORDINANCE OF THE CITY OF OCEANSIDE CREATING A
PROGRAM TO REGULATE AND LICENSE TOBACCO
RETAILERS WITHIN THE CITY OF OCEANSIDE.

The City Council of the City of Oceanside finds as follows:

SECTION 1. Findings.

The City Council of Oceanside hereby finds and declares as follows:

WHEREAS, California Penal Code section 308 prohibits the sale or furnishing of tobacco, cigarette, or cigarette papers, or blunt wraps, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco, tobacco products, or any controlled substance to persons under the age of 21.

WHEREAS, California Business and Professions Code section 22956 requires tobacco retailers to check the identification of tobacco purchasers who reasonably appear to be under 21 years of age.

WHEREAS, California Business and Professions Code section 22962 prohibits the sale or display of cigarettes through a self-service display.

WHEREAS, California Business and Professions Code section 22971.3 specifically permits cities and counties to enact local tobacco retail licensing program.

WHEREAS, the City Council finds the public health, safety, and welfare of the youth in Oceanside are threatened when tobacco retailers fail to comply with all tobacco control laws as evidenced by 2018 statewide statistics:

1. One in eight California high school students currently use a tobacco product;
2. 84.3% of all California high school students who use tobacco products use an electronic smoking device;
3. Tobacco sales to youth under 21 years of age occurred 19.1% of the time; and

1 4. One out of three tobacco or vape shops sell to minors under 21 years of age.¹

2 WHEREAS, the City Council finds that a local licensing program for tobacco retailers
3 will ensure tobacco retailers will comply with tobacco control laws and reduce youth access to
4 tobacco products;

5 WHEREAS, the City Council finds a tobacco retailer license will not unduly burden
6 legitimate business activities of tobacco retailers who comply with all current tobacco control
7 laws; and

8 WHEREAS, the City Council finds a substantial interest in promoting responsible
9 business practices in compliance with all federal, state, and local tobacco control laws and to
10 discourage youth access to tobacco products.

11
12 **NOW THEREFORE**, the City Council does ordain as follows:

13 SECTION 2. Sections 7.91, 7.92, 7.92.1, and 7.92.2 in Chapter 7, Article X of the
14 Oceanside City Code is amended as follows:

15 **Sec. 7.91 – Definitions of words and phrases.**

16 [For the purposes of this article, certain terms shall have the meanings ascribed to them in
17 this section, unless the context clearly indicates otherwise.]

18 *Advertising* means printed matter that calls the public's attention to things for sale.

19 *Advertising display* means a sign, sign-board, poster, or banner that is temporarily or
20 permanently affixed to the ground, sidewalk, a pole or post, or a building, or is displayed in the
21 windows of a commercial establishment, and that is used to advertise or promote products.

22 *Applicant* means the Person or entity applying for a tobacco retail license pursuant to this
23 Article.

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28 <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CATobaccoFactsandFigures2019.pdf>

1 *Arcade* is any establishment within the city (other than a pool hall, billiard hall or
2 cardroom) open to the public with six (6) or more games of skill or amusement installed on the
3 premises.

4 *Business* means any sole proprietorship, joint venture, corporation or other business entity
5 formed for profit making purposes, including retail establishments where goods or services are
6 sold as well as professional corporations and other entities where legal, medical, dental,
7 engineering, architectural or other professional services are delivered.

8 *City* shall mean the City of Oceanside.

9 *Employee* means any person who is employed by any employer consideration for direct or
10 indirect wages or profit, and any person who volunteers his or her services for a non-profit
11 entity.

12 *Licensee* means any proprietor holding a tobacco retail license issued by the City pursuant
13 to the provisions of this Article.

14 *Minor, for the purposes of this Article, shall* means any individual who is less than ~~eighteen~~
15 ~~(18)~~ twenty-one (21) years old. of age.

16 *Non-profit entity* means any corporation, unincorporated association or other entity created
17 for charitable, philanthropic, educational character, building, political, social or other similar
18 purpose, the net proceeds from the operations of which are committed to the promotion of the
19 objectives or purposes of the entity and not to private gain. A public agency is not a non-profit
20 entity within the meaning of this section.

21 *Person* shall mean any individual, partnership, cooperative association, private corporation,
22 personal representative, receiver, trustee, assignee, or any other legal entity.

23 *Playground* means any outdoor premises or grounds owned or operated by the city, a
24 public or private school, child care center, youth or recreational center, that contains any play or
25 athletic equipment used or intended to be used by minors.

26 *Self-service merchandising* means open display of tobacco products and point-of-sale
27 tobacco-related promotional products that the public has access to without the intervention of
28 an employee.

1 *Tobacco product* means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco,
2 snuff or any other form of tobacco which may be utilized for smoking, chewing, inhaling or
3 other manner of ingestion including electronic devices used to deliver nicotine or other
4 vaporized liquids to the person inhaling from the device.

5 *Tobacco retailer* shall mean any person or governmental entity that operates a store, stand,
6 booth, concession, or other place at which sales of tobacco products are made to purchasers for
7 consumption or use.

8 *Tobacco retail license* means a license permitting the sale of any tobacco product pursuant
9 to the provisions of this Article.

10 *Tobacco vending machine* means any electronic or mechanical device or appliance the
11 operation of which depends upon the insertion of money, whether in coin or paper currency, or
12 other things representative of value, which dispenses or releases a tobacco product.

13 *Vendor-assisted* means only a store employee has access to the tobacco product and assists
14 the customer by supplying the product. The customer does not take possession of the product
15 until it is purchased.

16 **Sec. 7.92 – Prohibitions.**

17
18 (a) No person or business shall engage in the sale of tobacco products without first
19 posting a plainly visible sign at ~~the~~ each point of purchase of tobacco products which has
20 wording similar to:

21 "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER ~~18~~ 21 YEARS OF
22 AGE IS PROHIBITED BY LAW AND SUBJECT TO PENALTIES. PHOTO
23 IDENTIFICATION IS REQUIRED OF PURCHASERS APPEARING TO BE ~~27~~26
24 AND YOUNGER."

25 The letters of the sign shall be at least one-quarter (¼) inch high.

26
27 (b) No person, business, tobacco retailer, or owner, manager or operator of any
28 establishment subject to this article shall sell, offer to sell or permit to be sold any tobacco
product to an individual without requesting and examining identification of customers

1 appearing to be twenty-seven (27)~~twenty-six (26)~~ and younger for the purpose of establishing
2 the purchaser's age as ~~eighteen (18)~~ twenty-one (21) years or greater, unless the seller has some
3 other reasonable basis for determining the buyer's age.

4
5 (c) No person, business, tobacco retailer or other establishment shall sell or offer for
6 sale cigarettes or other tobacco or smoking products not in the original packaging provided by
7 the manufacturer and with all required health warnings.

8 (d) It shall be unlawful for any person, business or tobacco retailer to sell, permit to be
9 sold, offer for sale or display for sale any tobacco product by means of self-service
10 merchandising or by means other than vendor-assisted sales.

11 (e) No person, business or tobacco retailer shall locate, install, keep, maintain or use,
12 or permit the location, installation, keeping, maintenance or use on his, her or its premises any
13 tobacco vending machine for the purpose of selling or distributing any tobacco product.

14 (f) No person, business or tobacco retailer shall engage in the sale of any tobacco
15 product at other than a fixed location. The sale of any tobacco product by persons on foot or
16 from vehicles is prohibited.

17 (g) No person, business, or tobacco retailer shall impede or prevent a reasonable
18 annual inspection or other compliance check by the City to ensure compliance with each
19 provision of this Article.

20 **Sec. 7.92.1—Reserved.**

21 **Editor's note**—Ord. No. 01-OR650-1, § 1, adopted Dec. 5, 2001, repealed § 7.92.1 in
22 its entirety. Formerly, said section pertained to location of tobacco products and
23 advertising inside retail establishments, as adopted by Ord. No. 99-13, § 2, adopted June,
24 16, 1999.

25 **Sec. 7.92.2—Reserved.**

26 **Editor's note**—Ord. No. 01-OR650-1, § 2, adopted Dec. 5, 2001, repealed § 7.92.2 in
27 its entirety. Formerly, said section pertained to exceptions to location of tobacco
28 products and advertising inside retail establishments as adopted by Ord. No. 99-13, § 2,

1 ~~adopted June, 16, 1999.~~

2 **Sec. 7.92.1 – Tobacco Retail License Required.**

3 (a) It shall be unlawful for any tobacco retailer to engage in the sale of any tobacco
4 product without first obtaining and maintaining:

5 (1) An annual tobacco retail license for each location at which the advertisement
6 or sale of any tobacco product occurs;

7 (2) A City-issued business license pursuant to section 15.2 of the Code, and;

8 (3) Any and all required state or County of San Diego permits or licenses.

9 **Sec. 7.92.2 – Application; Denial; Suspension and Revocation.**

10 (a) Application; Issuance; Denial.

11 (1) Application for a tobacco retail license shall be submitted in the name of each
12 proprietor proposing to conduct retail tobacco sales and shall be signed by
13 each proprietor or an authorized agent thereof. All applications shall be
14 submitted on a form supplied by the City and shall include, but not be limited
15 to, the following information:

16 a. The name, address, telephone number, and email address of each
17 proprietor of the business seeking a tobacco retailer license;

18 b. The business name, address, telephone number, and email address of
19 each proposed tobacco retailer location;

20 c. A single name and mailing address authorized by the Applicant to
21 receive all communications and notices (the “authorized address”)
22 required by, authorized by, or convenient to the enforcement of this
23 Article. If an authorized address is not supplied, the Applicant shall be
24 understood to consent to the provision of notice at the address specified
25 in subparagraph (b) above;

26 d. Whether the Applicant has ever had any license or permit by any
27 agency or board, or any city, county, state, or federal agency suspended
28

1 or revoked, or has had any professional or vocational license or permit
2 suspended or revoked within five years immediately preceding the
3 application, and the reason for the suspension or revocation;

4 e. The name and address of the current owner and lessor of the real
5 property upon which the proposed tobacco retail sales are to be
6 conducted, and a copy of the lease or rental agreement; and

7 f. Such other information as the City deems necessary for the
8 administration and enforcement of this Article.

9 g. An Applicant shall inform the City in writing of any change in the
10 information submitted on an application for a tobacco retail license
11 within ten (10) business days of the change.

12 (2) Upon receipt of a completed application for a tobacco retail license and the
13 applicable fee, the City shall issue the license unless:

14 a. The application is incomplete or inaccurate;

15 b. The application contains a false, misleading, or fraudulent statement, or
16 omission of fact in the application or application process;

17 c. The application seeks authorization for tobacco retailing at an address
18 that appears on a license that is suspended, has been revoked, or is
19 subject to suspension or revocation proceedings for violation of any of
20 the provisions of this Article. However, this subparagraph shall not
21 constitute a reason for denial of a license if either or both of the
22 following apply:

23 i. The Applicant provides the City with sufficient documentation
24 demonstrating that the Applicant has acquired or is acquiring the
25 premises or business in an arm's length transaction; and

26 ii. It has been more than five years since the most recent license for
27 that location was suspended or revoked.
28

- 1 d. The application seeks to engage in tobacco retailing in a manner that is
2 unlawful pursuant to any City Code, City Zoning Ordinance, or any
3 other local, state, or federal law; or
4 e. The Applicant has, within five years immediately preceding the date of
5 the filing of the application, been convicted of, suffered a civil penalty,
6 or faced administrative action for violations of any tobacco control law,
7 including but not limited to: Penal Code section 308, Business and
8 Professions Code section 22950, et seq., Business and Professions
9 Code section 22970, et seq., or a charge of violating a lesser-included
10 or related offense in satisfaction of, or substitute form, an original
11 charge of any of the offenses listed in this subdivision or violation; or
12 has been convicted of, suffered a civil penalty, or faced administrative
13 action for furnishing alcohol to a minor including, but not limited to, a
14 violation of Business and Professions Code section 25658.

15 (3) At the time of submission of application for a tobacco retail license, or
16 renewal of the license, the Applicant shall pay a non-refundable tobacco retail
17 license administration fee in an amount as established by resolution of the
18 City Council. The administration fee shall be calculated to recover the total
19 cost of administration and enforcement, including, but not limited to, issuing a
20 license, administering the tobacco retailer license program, an annual
21 inspection, compliance checks, documenting violations, prosecution, and
22 retailer education, when available.

23 (4) A tobacco retail license is valid for one (1) year from the date of issuance. A
24 license may be valid for less than a year if revoked, suspended, voluntarily
25 surrendered, or otherwise disciplined.

26 (5) A licensee may apply for renewal of the tobacco retail license. At the time of
27 submission of the renewal, the licensee shall pay an administration fee in an
28 amount as established by resolution of the City Council.

1 (6) A tobacco retail license is not transferrable from one person or business to
2 another or from one location to another.

3 (b) Suspension; revocation.

4 (1) In addition to any other remedy available by law, a tobacco retail license may
5 be suspended or revoked for any violation of this Article, City Code, City
6 Zoning Ordinance, or other local, state, or federal law according to following
7 provisions:

8 a. Suspension:

- 9 i. A license shall be suspended for a period of 30 days for any first
10 violation within any five-year period;
11 ii. A license shall be suspended for a period of 90 days for second
12 violation within any five-year period; and
13 iii. A license shall be revoked for any violation upon a third
14 violation within any five-year period.

15 b. Revocation. A license may be immediately revoked if one or more of
16 the bases for denial pursuant to section 7.92.2(a) existed at the time the
17 application was made or at any time before the license was issued.

18 (c) Appeal. An applicant or licensee may appeal a denial, suspension, or revocation
19 pursuant to the provisions set forth in section 15.5(3) of this Code.

20 **SECTION 3.** Section 7.95 of Chapter 7, Article X is amended as follows:

21 **Sec. 7.95 – Violation; enforcement.**

22 Any violation of this Article is a public nuisance. In addition to suspension and/or
23 revocation of a tobacco retail license as set forth in section 7.92.2(b), aAny person, business,
24 licensee, or tobacco retailer who violates any provision of this article shall upon conviction
25 thereof, be guilty of a public offense as defined in section 1.7 of this Code. The owner,
26 operator or manager of any public place or place of employment within the purview of this
27 article shall comply herewith. Such owner, operator or manager shall further post or cause to
28 be posted all signage required by this article. Enforcement of this Article may further be made

1 pursuant to section 1.14 of this Code or any other remedy available by law including the
2 commencement of a civil action to redress or abate any such violation.

3 SECTION 4. The City Clerk of the City of Oceanside is hereby directed to publish this
4 ordinance once within fifteen (15) days after its passage in the San Diego Union Tribune, a
5 newspaper of general circulation published in the City of Oceanside.

6 SECTION 5. This Ordinance shall take effect and be in force on the thirtieth (30th) day
7 from and after its final passage.

8 SECTION 6. Severability.

9 If any section, sentence, clause or phrase of this Ordinance is for any reason held to be
10 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision
11 shall not affect the validity of the remaining portions of this Ordinance. The City Council
12 hereby declares that it would have passed this Ordinance and adopted this Ordinance and each
13 section, sentence, clause or phrase thereof, irrespective of the fact that any one or more
14 sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

15 INTRODUCED at a regular meeting of the City Council of the City of Oceanside,
16 California, held on the 19th day of August, 2020, and, thereafter,

17 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
18 Oceanside, California, held on the 9th day of September, 2020, by the following vote:

19 AYES: WEISS, FELLER, KEIM, RODRIGUEZ SANCHEZ

20 NAYS: NONE

21 ABSENT: NONE

22 ABSTAIN: NONE

23 /s/ Peter Weiss
24 MAYOR OF THE CITY OF OCEANSIDE

25 ATTEST:

APPROVED AS TO FORM:

26 /s/ Vaida Pavolas
27 CITY CLERK

/s/ John Mullen
28 CITY ATTORNEY