

Introduced by Councilmember _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA AMENDING TITLE 8 OF THE PASADENA MUNICIPAL CODE TO ESTABLISH TOBACCO-FREE AND SMOKE-FREE CITY PARKS AND PROHIBIT MOBILE VENDING OF CIGARETTES; AMENDING TITLE 5 TO ADD CHAPTER 5.74 TO REQUIRE LICENSING OF TOBACCO RETAILERS; AND AMENDING TITLE 17 TO REQUIRE A CONDITIONAL USE PERMIT FOR SIGNIFICANT TOBACCO RETAILERS IN THE CG, IG, AND CD ZONING DISTRICTS

The People of the City of Pasadena ordain as follows:

SECTION 1. This ordinance, due to its length and the corresponding costs of publication, will be published by title and summary as permitted by Section 508 of the City Charter. The approved summary of this ordinance reads as follows:

“SUMMARY

The subject ordinance, Ordinance No. _____, adds two new sections to the Tobacco Use Prevention Ordinance in Title 8 to prohibit smoking in city parks and mobile vending of cigarettes; adds a new chapter to the Business License and Regulations Code, Title 5, to require tobacco retailers to obtain regulatory licenses; and amends various sections in Title 17 of the Zoning Code to require that “significant tobacco retailers” obtain conditional use permits.

The Brookside Park Golf Course and Clubhouse patio would be exempt from this ordinance.

Violation of the provisions in Title 8 (Sections 8.78.051 and 8.78.052) would be punished as infractions. Violations of the new provisions in Title 5 (Chapter 5.74) would be punished as misdemeanors, or infractions in the discretion of the City Prosecutor. Alternatively, the City Attorney’s Office could initiate a civil action to remedy a violation. Violation of the provisions

in Title 17 (Section 17.28.020) of the Zoning Code would be punished as misdemeanors or by injunctive action.

Ordinance No. _____ shall take effect thirty (30) days after its publication.”

SECTION 2. The Pasadena Municipal Code is amended to add new Sections 8.78.051 and 8.78.052 to read:

“8.78.051 Prohibition of smoking in public parks.

A. It is unlawful for any person to possess a burning tobacco or tobacco-related product, including but not limited to cigars and cigarettes, to chew tobacco or tobacco-related products, to dispose of lighted or unlighted cigars or cigarettes or cigarette butts, or any other tobacco-related waste, in or upon any dedicated city park, playground or recreation center.

B. The Brookside Park Golf Course and Clubhouse patio shall be exempt from this restriction.

8.78.052 Prohibition of mobile vending of cigarettes.

It is unlawful for a person to engage in retail tobacco sales at other than a fixed location. Itinerant tobacco retailing and tobacco retailing from vehicles are both expressly prohibited.”

SECTION 3. The Pasadena Municipal Code is amended to add a new Chapter 5.74 to read:

“Chapter 5.74

LICENSURE OF TOBACCO RETAILERS

Sections:

5.74.010 Short title.

- 5.74.020 Findings and purpose.**
 - 5.74.030 Definitions.**
 - 5.74.040 Requirement for tobacco retail licensure.**
 - 5.74.050 Application process.**
 - 5.74.060 Issuance and renewal of license.**
 - 5.74.070 Display of license.**
 - 5.74.080 License and reinspection fees.**
 - 5.74.090 License nontransferable.**
 - 5.74.100 Suspension or revocation of license.**
 - 5.74.110 Enforcement.**
 - 5.74.120 Grace period.**
- 5.74.010 Short title.**

This chapter shall be known as the “tobacco retailer license” ordinance.

5.74.020 Findings and purpose.

The city council finds that despite existing federal, state and local laws intended to regulate tobacco sales and use, local laws need to be enhanced to ensure compliance and maximize their effectiveness in protecting the public’s health, especially that of the more vulnerable youth. Regulating the quantity and location of tobacco retailers is equally important in reducing a youth’s easy access to tobacco products. A March 2003 Pasadena Merchant Survey of 82 tobacco retailers indicated that 50% of business owners, 63% of managers and 76% of clerks agreed that retailers should be licensed. Additionally, almost 50% of the parties surveyed stated that the proposed license should be renewed annually. The purpose of this ordinance is to

discourage violations of laws which prohibit or discourage sale or distribution of tobacco products to minors in the city. It is not the purpose of this ordinance to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed, or to alter the penalty provided therefore.

5.74.030 Definitions.

As used in this chapter, the following terms have the meanings set forth below:

A. "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 can or does share, ultimate control over the day-to-day operations of a business.

B. "Tobacco product" shall mean the same as set forth in Section 8.78.040 (K) of the City's Tobacco Use Prevention Ordinance.

C. "Tobacco paraphernalia" shall include cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco or products prepared from tobacco.

D. "Tobacco retailer" shall mean any person or business that operates a store, stand, booth, concession or other place at which the sales of tobacco products are made to purchasers for personal consumption or use.

5.74.040 Requirement for tobacco retail licensure.

A. It shall be unlawful for any person to act as a tobacco retailer 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.

B. It shall be a violation of a tobacco retailer's license for a licensee or his or her agent or employee to violate any local, state, or federal tobacco-related law.

5.74.050 Application process.

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 of the laws affecting the issuance of a tobacco retailer's license.

C. A license that is issued in error or on the basis of false or misleading information supplied by a proprietor may be revoked pursuant to 5.74.100. 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.
2. The business name, address, and telephone number of the fixed location for which a tobacco retailer's license is sought.
3. The name and mailing address authorized by each applicant to receive all license-related communications and notices (the "authorized address"). Failure to supply an authorized address shall be understood to consent to the provision of notice at the business address specified in paragraph 2 above.
4. Whether any applicant has previously been issued a license pursuant to this chapter that is or was at any time suspended or revoked and, if so, the dates of the suspension period or the date of revocation.

5. Such other information as the City deems necessary for the administration or enforcement of this chapter.

5.74.060 Issuance and renewal of license.

A. Upon receipt of an application for a tobacco retailer's license and the license fee, the City shall issue a license unless:

1. The application is incomplete or inaccurate; or

2. The application seeks authorization for tobacco retailing by a proprietor for which or whom a suspension is in effect or by a proprietor which or who has had a license revoked, pursuant to Section 5.74.100; or

3. The application seeks authorization for tobacco retailing that is unlawful pursuant to this code, or that is unlawful pursuant to any other local, state or federal law.

4. The City has information that the proprietor or his or her agent or employee has violated any local, state or federal tobacco control law within the preceding thirty (30) day period.

B. A license shall be valid for one year and must be renewed no later than thirty (30) days prior to the expiration of the payment term.

C. If the information required in the license application pursuant to Section 5.74.050 (C), paragraphs 1, 2 or 3 changes, a new tobacco retailer's license is required before the business may continue to act as a tobacco retailer. For example, if a proprietor to whom a license has been issued changes business location, that proprietor must apply for a new license prior to acting as a tobacco retailer at the new location. If the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer.

5.74.070 Display of license.

Each license shall be prominently displayed in a publicly visible location at the licensed premises.

5.74.080 License and reinspection fees.

The City Council may by resolution establish fees for the administration of this chapter.

5.74.090 Licenses nontransferable.

A tobacco retailer's license is nontransferable and is valid only for the person and location of license issued for the period indicated, unless it is suspended or revoked for cause.

5.74.100 Suspension or revocation of license.

A. In addition to any other penalty authorized by law, a tobacco retailer's license may be suspended or revoked if the City finds, after notice to the licensee and opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to Section 5.74.040 above.

1. Upon a finding by the City of a first license violation, the license may be suspended for up to thirty (30) days.
2. Upon a finding by the City of a second license violation within a five-year period of the first violation, the license may be suspended for up to ninety (90) days.
3. Upon a finding by the City of a third violation within five years of the first violation, the license may be revoked.

B. A tobacco retailer's license may be revoked if the City finds, after notice and opportunity to be heard, that one of the following conditions exist. The revocation shall be

without prejudice to the filing of a new application for a license.

1. The application is incomplete for failure to provide the information required by Section 5.74.050.

2. The information contained in the application, including supplemental information, if any, is found to be false in any material respect.

3. The application seeks authorization for a license that is unlawful as specified in Section 5.74.060 (A)(3).

C. A decision of the City to revoke or suspend a license is appealable to a Hearing Officer and any appeal must be filed with the City's Environmental Health Division Manager at least ten (10) working days prior to the commencement date of the license suspension or revocation. An appeal shall stay all proceedings in furtherance of the appealed action. Following appeal, the decision of the Hearing Officer may be appealed to the City Manager or his/her designee. A decision of the City Manager or his/her designee shall be the final decision of the City.

D. During a period of license suspension or revocation, the tobacco retailer must remove from public view all tobacco products and tobacco-related advertising.

5.74.110 Enforcement.

A. The provisions of this chapter shall be enforced by the city health officer or an authorized designee in the environmental health division. Initial complaints will be investigated by the City's Tobacco Control Program Office and educational warning notices issued.

B. Violations of this chapter may be charged as a misdemeanor or an infraction in the discretion of the City Prosecutor.

C. In addition to the above remedy, a violation of this chapter may be remedied by civil action initiated by the City Attorney.

5.74.120 Grace period.

Any tobacco retailer who is selling tobacco products as of the effective date of this ordinance, shall obtain a tobacco retailer's license within sixty (60) days of the effective date of this ordinance."

SECTION 4. The Pasadena Municipal Code is amended by amending Section 17.16.050 of Title 17, entitled, "**Commercial use classifications**" as follows:

(a) By amending the use classification, "Commercial Recreation" to read as follows:

"L. Commercial Recreation. Provision of participant or spectator recreation for commercial purposes. This classification includes, but is not limited to, sports stadiums and arenas, convention centers, amusement parks, bowling alleys, billiard parlors, ice or roller skating rinks, golf courses, miniature golf courses, swimming pools, hot tubs, fashion shows except when conducted within an enclosed building used primarily for the manufacture or sale of clothing, electronic game centers ~~having more than three game machines, or~~ **game arcades, and internet access studios.**"

(b) By adding the following new use classification:

"TT. Significant Tobacco Retailer. Establishments that devote 20 percent or more of the display area to the sale or exchange of tobacco products and/or tobacco paraphernalia."

SECTION 5. Section 17.28.020 of said code entitled, "**Land use regulations**" is amended as follows:

(a) By amending the schedule entitled, "**CO, CL, AND CG DISTRICTS: LAND USE REGULATIONS**" as shown in Exhibit 1, attached hereto and incorporated by this reference.

(b) By amending the schedule entitled, "**CO, CL, AND CG DISTRICTS: ADDITIONAL LAND USE REGULATIONS**" by adding the following:

"(OO) See Chapter 17.64, Tobacco Retail Sales."

SECTION 6. Section 17.32.020 of said code entitled, "**Land use regulations**" is amended as follows:

(a) By amending the schedule entitled, "**IG DISTRICT: LAND USE REGULATIONS**" as shown in Exhibit 2, attached hereto and incorporated by this reference.

(b) By amending the schedule entitled, "**IG DISTRICT: ADDITIONAL LAND USE REGULATIONS**" by adding the following:

"(BB) See Chapter 17.64, Tobacco Retail Sales."

SECTION 7. The schedule entitled, "**CD DISTRICT: LAND USE REGULATIONS PART I AND PART II**", of Section 17.33.040 of said code is amended as shown in Exhibit 3, attached hereto and incorporated by this reference.

SECTION 8. Table 17.33.050, entitled, "**CD CENTRAL DISTRICT: ADDITIONAL LAND USE REGULATIONS**" is amended by adding the following:

"(HH) See Chapter 17.64, Tobacco Retail Sales."

SECTION 9. Chapter 17.64, entitled, "**Site regulations**" is amended by adding the following:

"17.64.380 – Tobacco Retail Sales

A. 1,000-foot separation required. No significant tobacco retailer shall be located within 1,000 feet of a sensitive land use activity. A sensitive land use shall include the following: game arcade, internet access studio, library, licensed child day care facility [excluding a small or large family day care use], park and recreation facility, or public or private school.

B. How to measure separation. The distance between any structure used as a significant tobacco retailer and another structure used as a sensitive land use activity shall be measured in a straight line, without regard to intervening structures, from the closest property line of the structure used as a significant tobacco retailer to the closest property line of another structure used as a sensitive land use activity.

C. Operation standards.

1. The tobacco retailer shall comply with all applicable local, State, and Federal laws regarding the use, advertising, display, or sales of tobacco products.

2. Only store employees shall have immediate access to the tobacco products and/or tobacco paraphernalia.

3. No person younger than the minimum age designated in federal or state law may distribute, exchange, or sell tobacco products.

4. Sampling of tobacco products by individuals younger than the minimum age designated in federal or state law shall be prohibited.”

SECTION 10. The City Clerk shall certify the adoption of this ordinance and shall cause this ordinance to be published by number, title and summary, and the City Clerk’s certification.

SECTION 11. This ordinance shall take effect upon the expiration of 30 days from its publication by title and summary.

Signed and approved this _____ day of _____ 2004.

Bill Bogaard
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting of _____, 2004, by the following vote:

AYES:

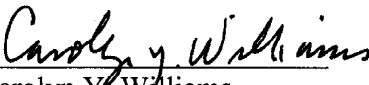
NOES:

ABSENT:

ABSTAIN:

Published:

APPROVED AS TO FORM:



Carolyn Y. Williams
Assistant City Attorney

Jane Rodriguez, CMC
City Clerk

EXHIBIT 1 – Amendment Regarding Tobacco Uses

CO, CL AND CG DISTRICTS: LAND USE REGULATIONS (Continued)					
Use Classifications	CO	CL CL-2	CL-1	CG CG-1	Additional Use Regulations
Personal Improvement Services		P	P	P	
Personal Services		P	P	P	
Professional, Business and Trade					
Schools		P	P	P	
Research and Development – Office	P	P	P	P	(NN)
Research and Development – Non-Office	C	C	C	P	(NN)
Recycling Centers:					(AA)
Small Collection Facilities	MC	MC	MC	MC	
Large Collection Facilities				C	
Restaurants:		P	P	P	(BB)
With Beer and Wine Service		C	C	C	
With Full Alcohol Service		C	C	C	
With Live Entertainment		P	P	P	
Restaurants, Take-Out:		C	C	P	(BB)(CC)
With Beer and Wine Service		C	C	C	
With Full Alcohol Service		C	C	C	
With Live Entertainment		P	P	P	
Retail Sales	C	P	P	P	
Secondhand Clothing and Appliance					
Sales				P	(DD)
Significant Tobacco Retailer				C	(OO)
Single-Room Occupancy				P	(EE)
Swap Meets				C	
Vehicle/Equipment Sales, Leasing					
and Services:					
Automobile Rentals		C	C	P	
Commercial Off-Street Parking	P	P	P	P	
Service Stations		C	C	C	(Q)(FF)
Vehicle/Equipment Repair				P	(GG)
Vehicle/Equipment Sales,					
Leasing and Rentals				P	(GG)
Vehicle Storage		C	C	C	
Visitor Accommodations:					
Bed and Breakfast Inns	C	P	P	P	(G)
Hotels and Motels				P	(G)(HH)
Warehousing and Storage:			C	C	
Small-Scale		P	P	P	
Wireless Telecommunications					
Antenna Facility:					
Minor	MC	MC	MC	MC	(II)
Major	C	C	C	C	(II)
Industrial					(D)(F)(L)(M)(N)
Industry, Restricted:			C	C	

Underlined language added.

EXHIBIT 2 – Amendment Regarding Tobacco Uses

IG DISTRICT: LAND USE REGULATIONS (Continued)	IG	Additional Use Regulations
Commercial		
Communications Facilities:	P	
Small Scale	P	
Drive-Thru Businesses	C	(A)
Emergency Shelters	MC	
Firearms Sales	C	
Food Sales:	P	
With Beer and Wine Sales	C	
With Full Alcohol Sales	C	
Horticulture, Limited	P	
Laboratories	P	
Maintenance and Repair Services		
Mini-Mall	C	(Q)
Mortuaries	P	
Nurseries	C	
Offices:		
Business and Professional	P	
Medical	P	
Personal Improvement Services	P	
Personal Services	P	
Professional, Business and Trade		
Research and Development – Office	P	(AA)
Research and Development – Non-Office	P	(AA)
Recycling Centers:		(R)
Small Collection Facilities	MC	
Large Collection Facilities	C	
Restaurants:	P	(J)
With Beer and Wine Service	C	
With Full Alcohol Service	C	
With Live Entertainment	P	
Restaurants, Take-Out:	P	(J)(O)
With Beer and Wine Service	C	
With Full Alcohol Service	C	
With Live Entertainment	P	
Retail Sales	P	
Secondhand Clothing and Appliance Sales	P	
<u>Significant Tobacco Retailer</u>	C	(BB)
Swap Meets	C	
Vehicle/Equipment Sales, Leasing and Services:		
Automobile Rentals	P	
Commercial Off-Street Parking	C	
Service Stations	C	(K)(P)
Vehicle/Equipment Repair	P	
Vehicle/Equipment Sales, Leasing and Rentals	P	

Underlined language added.

Exhibit 3 – Amendment regarding Tobacco Uses

CD DISTRICT: LAND USE REGULATIONS
PART I (Continued)

(1) (2) (3) (4)

(5)

SOUTH LAKE AVENUE

Use Classifications	OLD PASADENA		COLORADO BOULEVARD		CIVIC CENTER		LAKE/CORDOVA		SOUTH LAKE AVENUE				ADP'L LAND USE REG. (V)	
	1	2	3	4	5	6	7	8	9	10	11	12		
Business and Professional	P	P	P	P	P	P	P	P	P	P	P	P	P	(V)
Medical	P	P	P	P	P	P	P	P	P	P	P	P	P	(V)
Pawnshops	C													
Personal Improvement Services	P	P	P	P	P	P	P	P	P	P	P	P	P	
Personal Services	P	P	P	P	P	P	P	P	P	P	P	P	P	
Professional, Business and Trade Schools	P	P	P	P	P	P	P	P	P	P	P	P	P	(FF)
Research and Development – Office	P	P	P	P	P	P	P	P	P	P	P	P	P	(FF)
Research and Development – Non-Office	P	P	P	P	P	P	P	P	P	P	P	P	P	(FF)
Recycling Centers:														
Small Collection Facilities	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	(T)
Restaurants:	P	P	P	P	P	P	P	P	P	P	P	P	P	(G)
With Beer and Wine Service	C	C	C	C	C	C	C	C	C	C	C	C	C	(G)
With Full Alcohol Service	C	C	C	C	C	C	C	C	C	C	C	C	C	(G)
With Live Entertainment	P	P	P	P	P	P	P	P	P	P	P	P	P	(G)
Restaurants, Take-Out	P	P	P	P	P	P	P	P	P	P	P	P	P	(G)
With Beer and Wine Service	C	C	C	C	C	C	C	C	C	C	C	C	C	(G)
With Full Alcohol Service	C	C	C	C	C	C	C	C	C	C	C	C	C	(G)
With Live Entertainment	P	P	P	P	P	P	P	P	P	P	P	P	P	(G)
Retail Sales	P	P	P	P	P	P	P	P	P	P	P	P	P	
Secondhand Appliance and Clothing Sales	C													
Significant Tobacco Retailers	C													(HH)

Underlined language added.

Exhibit 3 – Amendment regarding Tobacco Uses

	(6)	(7)	(7A)	(8)	(9)	(10)	(11)	(12)	(13)	(13A)	(14)	(15)	(16)	
	GREEN STREET	PASADENA TOWN	BELLEVEUE PLEASANT	LOS ROBLES-CORDOVA	ARROYO PARKWAY	CENTRAL PARK	WEST DOWNTOWN	CALIFORNIA FAIR OAKS	WALNUT STREET	NORTH OAKLAND	NORTH LAKE AVENUE	MEMORIAL PARK	COLORADO-LOS ROBLES	ADP.L LAND USE RECS.
Use Classifications	P	C(2)	C(1)	P	P	P	P	P(1)	P	P	P	P	P	(V)
Business and Professional	P			P	P	P	P	P(1)	P	P	P	P	P	
Medical	P			P	P	P	P	P(1)	P	P	P	P	P	
Personal Improvement Services	P			P	P	P	P	P	P	P	P	P	P	
Personal Services	P			P	P	P	P	P	P	P	P	P	P	
Professional, Business and Trade Schools	P			P	P	P	P	P	P	P	P	P	P	
Research and Development – Office	P			P	P	P	P	P	P	P	P	P	P	(FF)
Research and Development – Non-Office	P			P	P	P	P	P	P	P	P	P	P	(FF)
Recycling Centers														
Small Collection Facilities	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	(T)
Restaurants:	P			P	P	P	P	P	P	P	P	P	P	
With Beer and Wine Service	C			C	C	C	C	C	C	C	C	C	C	
With Full Alcohol Service	C			C	C	C	C	C	C	C	C	C	C	
With Live Entertainment	P			P	P	P	P	P	P	P	P	P	P	
Restaurants, Take-Out:	P			P	P	P	P	P	P	P	P	P	P	
With Beer and Wine Service	C			C	C	C	C	C	C	C	C	C	C	
With Full Alcohol Service	C			C	C	C	C	C	C	C	C	C	C	
With Live Entertainment	P			P	P	P	P	P	P	P	P	P	P	
Retail Sales	P			P	P	P	P	P	P	P	P	P	P	
Secondhand Appliance and Clothing Sales				P	P	P	P	P	P	P	P	P	P	
Significant Tobacco Retailer	C			C	C	C	C	C	C	C	C	C	C	(HH)

Underlined language added.