

**ORDINANCE NO.1072**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA VERNE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AMENDING THE MUNICIPAL CODE BY REQUIRING A CITY LICENSE FOR TOBACCO RETAILERS**

**THE CITY COUNCIL OF THE CITY OF LA VERNE DOES ORDAIN AS FOLLOWS:**

**Section 1.** A new Chapter 5.37 – TOBACCO RETAILERS is hereby added to the La Verne Municipal Code to read as follows:

Chapter 5.37 – TOBACCO RETAILERS

5.37.010 SHORT TITLE.

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

5.37.020 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. The purpose of this chapter is to discourage violations of law which prohibit or discourage sale or distribution of tobacco products to persons less than 21 years of age in the city. It is not the purpose of this chapter to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed, or to alter the penalty therefore.

5.37.030 DEFINITIONS.

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

- A. “Proprietor” means 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” means:
  - (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; and
  - (2) any Electronic Smoking Device.
  - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

- C. "Electronic Smoking Device" means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
- D. "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 person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.
- E. "Tobacco Paraphernalia" means any item designed for the consumption, use, or preparation of Tobacco Products.
- F. "Tobacco Retailer" means any person or business that 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. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchange, or offered for exchange.

#### 5.37.040 REQUIREMENTS 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. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license is 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.
- 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 section 5.37.090. 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 subsection 2 of this section;
  - (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 the revocation.
  - (5) Such other information as the City deems necessary for the administration or enforcement of this chapter.

#### 5.37.050 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; 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; or
  - (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, other than selling tobacco products without the license required by this Chapter, within the preceding thirty (30) day period.
  - (5) The City has information that the proprietor or his or her agent or employee has sold tobacco products without the required tobacco retailer's license, within the previous ninety (90) day period.
- B. A license shall be valid for one (1) 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 5.37.040 C, subsections 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.

#### 5.37.060 DISPLAY OF LICENSE

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

#### 5.37.070 LICENSE AND REINSPECTION FEES

The City Council shall, by resolution, establish fees for the administration, enforcement and implementation of this chapter.

#### 5.37.80 LICENSE NON-TRANSFERABLE

A tobacco retailer's license is non-transferable and is valid only for the person and location of license issued for the period indicated.

#### 5.37.90 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 an opportunity to be heard, that the licensee or his or her agent or employee has violated the conditions of the license or the regulations of this chapter.

- (1) Upon finding by the City of a first license violation, the license shall be suspended for thirty (30) days;
  - (2) Upon finding by the City of a second license violation within five-year period of the first violation, the license shall be suspended for ninety (90) days;
  - (3) Upon finding by the City of a third violation within a five-year period of the first violation, the license shall be revoked.
- B. A tobacco retailer's license may be revoked if the City finds, after notice and an opportunity to be heard, that the information contained in the application, including supplemental information, if any, is found to be false or misleading in any material respect.
  - C. A decision of the City to revoke or suspend a license is appealable, in writing, within ten (10) day to the City Manager, who may assign a designee to serve as hearing officer. An appeal shall stay all proceedings in furtherance of the appealed action. The decision of the City Manager 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. Failure to so remove such products and advertising shall constitute tobacco retailing without a license.

#### 5.37.100 INITIAL COMPLIANCE PERIOD

Any tobacco retailer, who is selling tobacco products as of the effective date of the ordinance codified in this chapter, shall obtain a tobacco retailer's license by no later than July 1, 2017.

#### 5.37.110 TOBACCO SALES RESTRICTIONS

- A. It is unlawful for a person to engage in retail tobacco retailing at other than a fixed location. Itinerant tobacco retailing and tobacco retailing from vehicles are both expressly prohibited.
- B. 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 thirty (30) years without first examining the identification of the recipient to confirm that the tobacco retailer is selling or transferring the product to a recipient who is at least the minimum age under state law.
- C. No person who is younger than 21 years of age shall engage in tobacco retailing.
- D. Tobacco retailing by means of a self-service display or vending machine is prohibited.

#### 5.37.120 ENFORCEMENT AND PENALTIES

- A. Enforcement of this chapter shall be by the police department.
- B. Violations of this chapter may be charged as a misdemeanor or infraction in the discretion of the city prosecutor. Citations and warning notices may be utilized as determined appropriate to the circumstances by the enforcing personnel.
- C. In addition to the above remedy, a violation of this chapter may be remedied by civil action initiated by the city attorney.
- D. Violations of this chapter are hereby declared to be public nuisances.

**Section 2.** This ordinance has been determined to be exempt from the California Environmental Quality Act pursuant to State Guidelines §15061 (b) (3) as a project that has no potential for causing a significant effect on the environment.

**Section 3.** Severability. If any section, subsection, subdivision, paragraph, sentence clause or phrase of this Ordinance, or its application to any person or circumstance, 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 ordinance, or its application to another person or circumstance. The City Council of the City of La Verne 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.

**Section 4.** Certification. The Assistant City Clerk shall certify the passage of this ordinance and shall cause the same to be processed as required by law.

**APPROVED, AND ADOPTED** this **day** of January, 2017

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Don Kendrick Mayor

ATTEST:

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Lupe Gaeta Estrella, CMC  
Assistant City Clerk

The foregoing **Ordinance No. 1072** was introduced at a regular meeting of the City Council of said City duly held on **day** of **January, 2017** and was thereafter, at a regular meeting of said Council duly held on **day** of **January, 2017** duly passed and adopted by the said City Council and thereupon duly signed by the Mayor of said City, attested by the City Clerk of said City, and passed and adopted by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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Lupe Gaeta Estrella, CMC  
Assistant City Clerk