

ORDINANCE NO. 2693

AN ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
CHAPTER 5.56 "TOBACCO AND WEED SALES AND SMOKING"
OF THE CHULA VISTA MUNICIPAL CODE TO PROHIBIT SELF-
SERVICE SALES OF CIGARETTES, TOBACCO, AND WEED
PRODUCTS

The City Council of the City of Chula Vista does ordain as follows:

SECTION I: That Chapter 5.56 of the Chula Vista Municipal Code is amended to read as follows:

5.56.010 Intent and purpose of provisions.

It is the intent of this chapter to provide regulatory measures for the use, sale or possession of tobacco and tobacco products, as well as other weed, plant, vegetable or other non-tobacco products used for the purpose of smoking, to protect the health, safety and general welfare of all citizens from the problems and discomfort of air pollution by the smoking of pipes, cigars or cigarettes in certain places of public assemblage and to reinforce the prohibition on the use of tobacco, tobacco products and weed, plant, vegetable or other non-tobacco products used for the purpose of smoking, by youths under the age of eighteen, in the interest of reducing the demonstrated hazards to health resulting in the use of such products, especially cigarettes. It is the purpose of the city council to eliminate the easy availability of such products to minors, particularly by means of the unsupervised or poorly supervised vending machines, by imposing strict standards of responsibility upon the owners or lessees of the premises where said vending machines are located.

5.56.020 Definitions.

For the purposes of Section 5.56, the following words are defined as follows, unless otherwise set forth:

- A. "Business" means any sole proprietorship, joint venture, corporation or other business entity formed for profit making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural or other professional services are delivered.
- B. "Effective Date" means January 16, 1997, the date this Ordinance becomes effective.
- C. "Employee" means any person who is employed by any employer in consideration for direct or indirect wages or profit, and any person who volunteers his or her services for a non-profit entity.
- D. "Minor" means any individual who is less than eighteen years old.
- E. "Non-profit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a "non-profit entity" within the meaning of this section.

- F. "Person" shall mean any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- G. "Self-service merchandising" means open display of tobacco products and point-of-sale tobacco-related promotional products that the public has access to without the intervention of an employee.
- H. "Tobacco Product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco which may be utilized for smoking, chewing, inhaling or other manner of ingestion.
- I. "Tobacco retailer" shall mean any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use.
- J. "Tobacco vending machine" means any electronic or mechanical device or appliance the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.
- K. "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.

5.56.030. Signage Required.

No person or business shall engage in the sale of a tobacco product without first posting a plainly visible sign at the point of purchase of tobacco products which states "The SALE OF TOBACCO PRODUCTS TO PERSONS UNDER EIGHTEEN YEARS OF AGE IS PROHIBITED BY LAW. PHOTO ID IS REQUIRED TO PURCHASE TOBACCO". The letters of the sign shall be at least one quarter inch (1/4") high.

5.56.040. Examining Identification.

No person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this ordinance shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser's age as eighteen years or greater unless the seller has some reasonable basis for determining the buyer's age.

5.56.050. Original packaging required.

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

5.56.060. No Self-Service Sale.

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

5.56.070. Purchase, use or possession by minors prohibited.

It is unlawful for any person under the age of eighteen years to buy, smoke or have in their possession with intent to use for smoking purposes upon any street or in any public place within the city any tobacco, tobacco products, cigarettes, cigarette papers, or any weed, plant, vegetable or other non-tobacco substitute cigarettes.

5.56.075. No Vending Machine Sale.

Except as provided in Section 5.56.400, no person, business, or tobacco retailer shall locate, install, keep maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises any vending machine for the purposes of selling or distributing any tobacco product.

5.56.080 Vending machines-Supervision and control required.

Every person, firm or corporation which owns or leases premises where a vending machine dispensing tobacco, tobacco products, particularly cigarettes, or tobacco substitutes, is allowed to be maintained, pursuant to Section 5.56.400, shall locate said vending machine at least fifteen (15) feet away from the entrance of the premises and in a place or position within said premises clearly visible from the place or position where the owner or lessee or the employee or agent of the owner or lesser normally or customarily conducts the business being operated on said premises, so as to afford a clear and unobstructed view of said vending machine and the person or persons purchasing the products dispensed by said machine by said owner or lessee or the employee or agent of the owner or lessee. Further, strict supervision and control of the use of said vending machine shall be maintained throughout the hours of the operation of the business and the failure to do so, resulting in the purchase of tobacco, tobacco products, especially cigarettes, or tobacco substitutes, by a minor from any such vending machine shall be presumed to be a violation of this chapter and Section 308 of the Penal Code of the state of California by the owner or lessee or the employee or agent of the owner or lessee charged with the responsibility for such control and supervision.

5.56.090. Other Applicable Laws.

Chapter 5.56 shall not be interpreted or construed to permit tobacco vending machines and distribution of tobacco product samples where they are otherwise restricted by other applicable laws.

5.56.100. Violation, Enforcement and Penalties.

- A. Any person, business or tobacco retailer who violates any provision of this Section shall upon conviction thereof be punished as specified in Chapter 1.20 of this Code.
- B. The owner, operator or manager of any public place or place of employment within the purview of this chapter shall comply herewith. Such owner, operator or manager shall post or cause to be posted all signage required by Chapter 5.56.
- C. It shall be the responsibility of employers to disseminate information concerning the provisions of Chapter 5.56 to its employees.

5.56.200. Severability.

If any provision of Chapter 5.56 or the application thereof to any person or circumstances is held invalid that invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of Chapter 5.56 are severable.

5.56.300. Compliance Period.

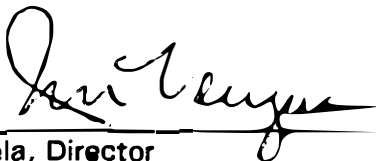
- A. Any business that only sells tobacco products and only by means of self-service merchandising, pursuant to a valid business license issued by the City prior to the Effective Date, shall be allowed to continue to sell its products by such means for a period of ninety (90) days from the Effective Date and shall thereafter be subject forthwith to make the modifications necessary to comply with Chapter 5.56. Any business owner may apply to the City Manager or designee for an extension of time in which to comply with Chapter 5.56. The extension may be granted for a reasonable period of time, in no event to exceed one year from the Effective Date, in order to prevent the business owner from suffering unreasonable financial hardship or disruption in business operations.
- B. Businesses, other than those described by 5.56.300 (A), which need to make modifications to the business premises to comply with Section 5.56.060 must comply within 60 days after the Effective Date. Any business owner may apply to the City Manager or designee for an extension in which to comply with Chapter 5.56. The extension may be granted for a reasonable period of time, in no event to exceed one year from the Effective Date, in order to prevent the business owner from suffering unreasonable financial hardship or disruption in business operations.

5.56.400. Exceptions.

Any business which sells tobacco-related products is exempt from Chapter 5.56 if persons under the age of 18 years are excluded from entering the business premises (as premises is defined by California Business and Professions Code Section 23039) in accordance with other applicable laws. In such instances, the business shall comply with the provisions of Section 5.56.080.

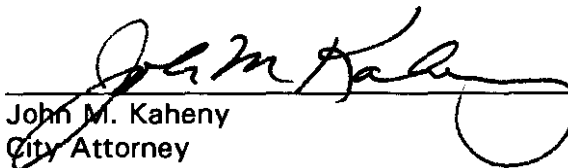
SECTION II: This ordinance shall take effect and be in full force on the thirtieth day from and after its second reading and adoption.

Presented by



Jess Valenzuela, Director
Parks and Recreation

Approved as to form by



John M. Kaheny
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 17th day of December, 1996, by the following vote:

AYES: Councilmembers: Moot, Padilla, Rindone, Salas, Horton
NAYS: Councilmembers: None
ABSENT: Councilmembers: None
ABSTAIN: Councilmembers: None



Shirley Horton, Mayor

ATTEST:



Beverly A. Authelet, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, Beverly A. Authelet, City Clerk of the City of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2693 had its first reading at a regular meeting held on the 10th day of December, 1996 and its second reading and adoption at a regular meeting of said City Council held on the 17th day of December, 1996.

Executed this 17th day of December, 1996.



Beverly A. Authelet, City Clerk