

ORDINANCE NO. _____

**AN ORDINANCE AMENDING SECTIONS 8.23.140, 8.23.200, 8.23.210 and 8.23.220
OF THE COUNTY CODE**

The Board of Supervisors of the County of San Luis Obispo, State of California, does ordain as follows:

SECTION I. Section 8.23.140 of the County Code shall be amended as follows:

8.23.140 Grounds for denial of the issuance of license.

Upon the receipt of an application for a tobacco retailer's license and the license fee required by this chapter, the tax collector shall process and issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exist.

- (a) The application has incomplete, inaccurate, or false statements on a material matter in the application. Intentionally supplying inaccurate or false information shall be a violation of this chapter.
- (b) The application seeks authorization for tobacco retailing by a proprietor for which or whom a suspension is in effect pursuant to Section 8.23.200 of this chapter.
- (c) The application seeks authorization for tobacco retailing at a location which has had a license revoked pursuant to Section 8.23.200 of this chapter, provided, however, this subsection shall not constitute a basis for denial of a license if the applicant provides the County with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the premises or business in an arm's length transaction.
- (d) The application seeks authorization for tobacco retailing that is prohibited pursuant to Section 8.23.180 of this chapter, that is unlawful pursuant to Title 22 of this code, or that is unlawful pursuant to any other local, state, or federal law.

SECTION II. Section 8.23.200 of the County Code shall be amended as follows:

8.23.200 Suspension and/or revocation of license.

- (a) Suspension and/or Revocation of License for Violation. In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended and/or revoked if the Health Officer finds, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter.
 - (1) Upon a finding by the Health Officer of a first license violation within any five-year period, the license shall be suspended for thirty days, and the tobacco retailer shall also pay an administrative fine in accordance with Section 8.23.220(c) of this chapter. The Health Officer may rescind the license suspension if the tobacco retailer successfully completes the Tobacco Retailer First Offender Diversion Program, consisting of an onsite employee education program administered by the Public Health Department's Tobacco Control Program. Completion of the Diversion Program does not expunge the violation, which will be counted for purposes of any future finding that a second or subsequent violation has occurred.

- (2) Upon a finding by the Health Officer of a second license violation within any five-year period, the license shall be suspended for sixty days, and the tobacco retailer shall also pay an administrative fine in accordance with Section 8.23.220(c) of this chapter. The Health Officer may reduce the term of the license suspension to fifteen days if the tobacco retailer successfully completes the Tobacco Retailer Second Offender Diversion Program, consisting of an onsite employee education program administered by the Public Health Department's Tobacco Control Program and the installation of approved electronic point-of-sale equipment designed to prevent sales of tobacco products to minors. Completion of the Diversion Program does not expunge the violation, which will be counted for purposes of any future finding that a third or subsequent violation has occurred.
 - (3) Upon a finding by the Health Officer of a third license violation within any five-year period, the license shall be suspended for ninety days, and the tobacco retailer shall also pay an administrative fine in accordance with Section 8.23.220(c) of this chapter.
 - (4) Upon a finding by the Health Officer of a fourth license violation within any five-year period, the license shall be revoked, and the tobacco retailer shall also pay an administrative fine in accordance with Section 8.23.220(c) of this chapter. No new license shall be issued for one year from the date of revocation.
- (b) Appeal of Suspension and/or Revocation. A decision of the Health Officer to suspend and/or revoke a license is appealable to the Health Agency Director or designated hearing officer and must be filed with the health agency within ten days of mailing of the Health Officer's notice of suspension/revocation. If such an appeal is made, it shall stay enforcement of the appealed action. An appeal to the Health Agency Director is not available for a revocation made pursuant to subsection (c) below.
- (c) Revocation of License Issued in Error. A tobacco retailer's license shall be revoked if the Health Officer finds, after the licensee is afforded reasonable notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 8.23.140 existed at the time application was made or at any time before the license issued. The decision by the Health Officer shall be the final decision of the county. The revocation shall be without prejudice to the filing of a new license application.

SECTION III. Section 8.23.210 of the County Code shall be amended as follows:

8.23.210 Tobacco retailing without a license.

- (a) In addition to any other penalty authorized by law, if the Health Officer finds, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for or be issued a tobacco retailing license for that location as follows:
- (1) After a first violation at a location within any sixty-month period, no new license may issue for the person at the location until sixty days have passed from the date of the violation.
 - (2) After a second violation at a location within any sixty-month period, no new license may issue for the person at the location until one hundred and eighty days have passed from the date of the violation.
 - (3) After of a third or subsequent violation at a location within any sixty-month period, no new license may issue for the person at the location until five years have passed from the date of the violation.

- (b) For the purposes of the civil remedies provided in this chapter:
 - (1) Each day on which a tobacco product or tobacco paraphernalia is offered for sale in violation of this chapter; or
 - (2) Each individual retail tobacco product and each individual retail item of tobacco paraphernalia that is distributed, sold, or offered for sale in violation of this chapter;
 Whichever is greater shall constitute a separate violation of this chapter.
- (c) Persons found engaging in tobacco retailing without a valid tobacco retailer's license may appeal this finding in accordance with section 8.23.200(b).

SECTION IV. Section 8.23.220 of the County Code shall be amended as follows:

8.23.220 Enforcement.

- (a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- (b) Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (c) Violations of this chapter are subject to the imposition of an administrative fine of one thousand dollars per violation. Any continuing violation shall constitute a separate offense for each day of the violation. Failure to pay a fine or failure to appear at a hearing convened pursuant to this chapter shall result in immediate suspension or revocation of the license, in accordance with the penalties set forth in Section 8.23.200.
- (d) Violations of this chapter may, in the discretion of the district attorney, be prosecuted as infractions or misdemeanors.
- (e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- (f) 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 code enforcement officer, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

SECTION V. This ordinance shall take effect and be in full force and effect thirty (30) days after its passage and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance in The Tribune, a newspaper of general circulation published in the County of San Luis Obispo, State of California.

INTRODUCED at a regular meeting of the Board of Supervisors held on the _____ day of _____, 2014 and passed and adopted by the Board of Supervisors of the County of San Luis Obispo, State of California, on the _____ day of _____, 2014, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

Chairperson of the Board of Supervisors of
the County of San Luis Obispo, State of
California

ATTEST:

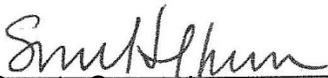
County Clerk and Ex-Officio Clerk of the Board
of Supervisors, County of San Luis Obispo,
State of California

By: _____

(SEAL)

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Dated: March 14, 2014