

**MEETING DATE:** 07/13/09  
**AGENDA ITEM:** Adoption of an Ordinance Amending Title 11, Business Regulations, of the Culver City Municipal Code Relating to Add a New Chapter 11.15 Relating to the Licensing of Tobacco Retailers

**ATTACHMENTS**

|                       | <u>Pages</u> |
|-----------------------|--------------|
| 1. Proposed Ordinance | 1-14         |

## ORDINANCE NO. 2009-\_\_\_\_\_

AN ORDINANCE OF THE CITY OF CULVER CITY,  
CALIFORNIA, AMENDING TITLE 11, BUSINESS  
REGULATIONS, OF THE CULVER CITY MUNICIPAL CODE  
TO ADD A NEW CHAPTER 11.15 RELATING TO THE  
LICENSING OF TOBACCO RETAILERS.

**WHEREAS**, the U.S. Department of Health and Human Services estimates that approximately 438,000 people die in the United States from tobacco-related diseases each year, and the World Health Organization (WHO) estimates that by 2030, tobacco will account for 8.3 million deaths per year or 10% of all deaths worldwide; and

**WHEREAS**, the City Council of the City of Culver City finds the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents a threat to the community's public health, safety and welfare; and

**WHEREAS**, the California Legislature has recognized the dangers of tobacco use and the access to tobacco products by underage youth and has enacted legislation including:

1. Legislative declaration that smoking is the single most important source of preventable disease and premature death in California (California Health & Safety Code § 118950); and
2. State law prohibitions on the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (California Penal Code § 308); and
3. State law requirements that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (California Business & Professions Code § 22956) and sanction

1 the use of underage decoys to conduct onsite compliance checks of tobacco  
2 retailers (California Business & Professions Code § 22952); and

3 4. State law prohibitions on the sale of tobacco products and  
4 paraphernalia through self-services displays with limited exceptions for  
5 tobacco stores; and "bidis" (hand-rolled filterless cigarettes imported primarily  
6 from India and Southeast Asian countries) except in adult-only  
7 establishments (California Business & Professions Code §§ 22960, 22962;  
8 Penal Code § 308.1); and

9 5. State law prohibitions on the manufacture, distribution, or sale  
10 of cigarettes in packages of less than 20 and "roll-your-own" tobacco in  
11 packages containing less than 0.60 ounces of tobacco (California Penal  
12 Code § 308.3); and

13 6. State law requires all tobacco retailers to be licensed by the  
14 Board of Equalization in order to curb the illegal sale and distribution of  
15 cigarettes (California Business and Professions Code §§ 22970.1, 22972);  
16 and

17 7. State law permits cities and counties to enact local tobacco  
18 retail licensing ordinances and allows for the suspension or revocation of a  
19 local license for a violation of any state tobacco control law (California  
20 Business & Professions Code § 22971.3); and

21 **WHEREAS**, according to research conducted by the U.S. Department of  
22 Health and Human Services, despite state tobacco control laws, retailers continue to sell  
23 tobacco to underage consumers, as evidenced by the following:

24 1. Each day, nearly 4,000 children under 18 years of age smoke  
25 their first cigarette, and almost 1,500 children under 18 years of age begin  
26 smoking daily;

1                   2.     More than 75% of all current smokers in 2001 began smoking  
2 before the age of 18; and

3                   3.     Among middle school students who were current cigarette users  
4 in 2004, 70.6% were not asked to show proof of age when they purchased or  
5 attempted to purchase cigarettes from a store, and 66.4% were not refused  
6 purchase because of their age; and

7                   4.     In 2002, youth smoked approximately 540 million packs of  
8 cigarettes, generating nearly \$1.2 billion in tobacco industry revenue; and

9                   **WHEREAS**, research conducted by the American Lung Association of  
10 California demonstrates that local tobacco retail ordinances can and have dramatically  
11 reduced youth access to cigarettes by as much as 68%; and

12                   **WHEREAS**, a requirement for a tobacco retailer license will assist in  
13 discouraging violations of federal, state and local tobacco-related laws and will not unduly  
14 burden legitimate business activities of retailers who sell or distribute cigarettes or other  
15 tobacco products to adults; and

16                   **WHEREAS**, the City Council desires to encourage responsible tobacco  
17 retailing and to discourage violations of tobacco-related laws, especially those which  
18 prohibit or discourage the sale or distribution of tobacco products to minors; and

19                   **WHEREAS**, the City Council finds a local licensing system for tobacco  
20 retailers is appropriate to ensure that retailers comply with tobacco control laws and  
21 business standards of the City, to protect the community's public health, safety and  
22 welfare; and

23                   **WHEREAS**, the City Council hereby declares that the intent and purpose of  
24 requiring tobacco retailers to be licensed by the City is to protect the public health, safety,  
25 and welfare by discouraging the sale of tobacco products to minors.

26                   **NOW THEREFORE**, the City Council of the City of Culver City, California,  
27 **DOES HEREBY ORDAIN** as follows:  
28

1           **SECTION 1.** Title 11 of the Culver City Municipal Code is hereby amended  
2 to add a new Chapter 11.15 relating to the licensing of tobacco retailers as follows:

3                   **CHAPTER 11.15: TOBACCO RETAILER LICENSING**

- 4           § 11.15.005 Purpose  
5           § 11.15.010 Definitions  
6           § 11.15.015 License Requirements and Prohibitions  
7           § 11.15.020 Application Procedure  
8           § 11.15.025 License Fee  
9           § 11.15.030 Issuance of License  
10          § 11.15.035 License Renewal and Expiration  
11          § 11.15.040 Compliance Monitoring and Enforcement  
12          § 11.15.045 Violations Unlawful; Penalties  
13          § 11.15.050 Suspension and Revocation; Administrative Fines

14           **§ 11.15.005 PURPOSE.**

15           It is the intent of the City Council of the City of Culver City, in enacting  
16 this ordinance, to encourage responsible tobacco retailing and to discourage  
17 violations of tobacco-related laws, especially those which prohibit or discourage the  
18 sale or distribution of tobacco and nicotine product to minors.

19           **§ 11.15.010 DEFINITIONS.**

20           For the purposes of this Chapter, the following definitions shall  
21 apply unless the context clearly indicates or requires a different meaning.

22           **Department** shall mean the Finance Department of the City of Culver  
23 City.

24           **Proprietor** shall mean a person with an ownership or managerial  
25 interest in a business. An ownership interest shall be deemed to exist when  
26 a person has a ten percent (10%) or greater interest in the stock, assets, or  
27 income of a business other than the sole interest of security for debt. A  
28 managerial interest shall be deemed to exist when a person can or does have  
or share ultimate control over the day-to-day operations of a business.

1                   **Self-Service Display** shall mean the open display of Tobacco  
2 Products or Tobacco Paraphernalia in a manner that is physically accessible  
3 in any way to the general public without the assistance of the Tobacco  
4 Retailer or employee of the Tobacco Retailer and a direct person-to-person  
5 transfer between the purchaser and the Tobacco Retailer or employee of the  
6 Tobacco Retailer. A Vending Machine is a form of Self-Service Display.

7                   **Tobacco Paraphernalia** shall mean cigarette papers or wrappers,  
8 pipes, holders of Smoking materials of all types, cigarette rolling machines,  
9 and any other instrument or paraphernalia designed for the smoking,  
10 preparation, storing, ingestion or consumption of Tobacco Products.

11                   **Tobacco Product** shall mean any substance containing tobacco leaf,  
12 including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco,  
13 snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of  
14 tobacco; and any product or formulation of matter containing biologically  
15 active amounts of nicotine that is manufactured, sold, offered for sale, or  
16 otherwise distributed with the expectation that the product or matter will be  
17 introduced into the human body, but does not include any product specifically  
18 approved by the United States Food and Drug Administration for use in  
19 treating nicotine or tobacco dependence.

20                   **Tobacco Retailer** shall mean any person who sells, offers for sale, or  
21 exchanges or offers to exchange for any form of consideration, in public view,  
22 tobacco, Tobacco Products or Tobacco Paraphernalia. "Tobacco Retailing"  
23 shall mean the selling, offering for sale, or exchanging or offering to  
24 exchange for any form of consideration, in public view, tobacco, Tobacco  
25 Products or Tobacco Paraphernalia. Any person who distributes free or low  
26 cost samples of tobacco, Tobacco Products or Tobacco Paraphernalia shall  
27 be deemed to be a Tobacco Retailer under this Chapter.  
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1                    ***Tobacco Retail Establishment*** shall mean a fixed location at which  
2 tobacco, Tobacco Products and/or Tobacco Paraphernalia is sold, offered for  
3 sale, exchanged or offered for exchange for any form of consideration.

4                    ***Tobacco Retailer License*** shall mean a license issued by the  
5 Department authorizing a Proprietor to engage in Tobacco Retailing.

6                    ***Vending Machine*** shall mean a machine, appliance, or other  
7 mechanical device operated by currency, token, debit card, credit card, or  
8 any other form of payment that is designed or used for vending purposes,  
9 including, but not limited to, machines or devices that use remote control  
10 locking mechanisms.

11                    **§ 11.15.015 LICENSE REQUIREMENTS AND PROHIBITIONS.**

12                    A.        No person shall operate as a Tobacco Retailer or engage in  
13 Tobacco Retailing without first obtaining and maintaining a valid Tobacco  
14 Retailer License pursuant to this Chapter for each Tobacco Retail  
15 Establishment.

16                    B.        Each Tobacco Retailer license shall be conspicuously displayed  
17 at all times in a publicly visible location within the licensed Tobacco Retail  
18 Establishment.

19                    C.        Tobacco Retailing by means of a Self-Service Display is  
20 prohibited.

21                    D.        No Tobacco Retailer shall sell or transfer tobacco, a Tobacco  
22 Product or Tobacco Paraphernalia, to another person who appears to be  
23 under the age of 27 years, without first examining the identification of the  
24 recipient to confirm that the recipient is at least the minimum age under state  
25 law to purchase and possess the tobacco, Tobacco Product or Tobacco  
26 Paraphernalia.

1                   E.     No Tobacco Retailer shall permit any person who is younger  
2                   than the minimum age established by state law for the purchase or  
3                   possession of tobacco, Tobacco Products or Tobacco Paraphernalia, to  
4                   participate in the sale of tobacco, Tobacco Products or Tobacco  
5                   Paraphernalia.

6                   F.     A Tobacco Retailer without a valid Tobacco Retail License:

7                   1.     Shall keep all tobacco, Tobacco Products and Tobacco  
8                   Paraphernalia out of public view. The public display of tobacco,  
9                   Tobacco Products and Tobacco Paraphernalia in violation of this  
10                  Section shall constitute Tobacco Retailing without a Tobacco Retail  
11                  License and a violation of Section 11.15.015.A of this Chapter.

12                 2.     Shall not display any advertisement relating to tobacco,  
13                  Tobacco Products or Tobacco Paraphernalia that promotes the sale or  
14                  distribution of such products from the Tobacco Retail Establishment or  
15                  that could lead a reasonable consumer to believe such products can  
16                  be obtained at the Tobacco Retail Establishment without the Tobacco  
17                  Retailer first obtaining and maintaining a valid Tobacco Retailer  
18                  License pursuant to this Chapter for each Tobacco Retail  
19                  Establishment at which the advertisement is displayed.

20                 G.     The sale of tobacco, Tobacco Products or Tobacco  
21                  Paraphernalia from other than a fixed location, including but not limited to  
22                  Tobacco Retailing by persons on foot or from vehicles is prohibited and no  
23                  Tobacco Retailer License shall be issued under this Chapter to any such  
24                  activity.

25                 H.     Nothing in this Chapter shall be construed to grant any person  
26                  obtaining and maintaining a Tobacco Retailer License any status or right  
27                  other than the right to act as a Tobacco Retailer at the licensed Tobacco  
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1 Retail Establishment in the City of Culver City. Nothing in this Chapter is  
2 intended to be construed to render inapplicable, supersede, or affect any  
3 other provision of applicable state or federal law.

4 **§ 11.15.020 APPLICATION PROCEDURE.**

5 A. All applications shall be completed on a form prepared and  
6 supplied by the Department. The application shall be signed under penalty of  
7 perjury. The following information shall be included, without limitation, on the  
8 application:

9 1. The name, address and telephone number of the  
10 Proprietor, including, for non-corporate Proprietors, the names of all  
11 principles. Corporate Proprietors shall include the name of the  
12 designated agent for service of process.

13 2. A single name and mailing address authorized by each  
14 Proprietor to receive all communications and notices (the "Authorized  
15 Address") required by, authorized by, or convenient to the enforcement  
16 of this Chapter. If an Authorized Address is not supplied, each  
17 Proprietor shall be understood to consent to the provision of notice at  
18 the business address specified on the application.

19 3. The business name, address and telephone number of  
20 the Tobacco Retail Establishment, for which the application is  
21 submitted.

22 4. Proof that the Tobacco Retail Establishment for which  
23 the application is submitted has been issued a valid state tobacco  
24 retailer license by the California Board of Equalization.

25 5. Whether any other licenses have been issued to the  
26 Proprietor for tobacco retail sales within the City of Culver City, and if  
27  
28

1 so the name and address of each of the Tobacco Retail  
2 Establishments for which these licenses have been issued.

3 6. Whether or not any Proprietor or any agent or employee  
4 of the Proprietor has admitted violating, or has been found to have  
5 violated this Chapter, and, if so, the dates and locations of all such  
6 violations within the previous five years.

7 7. A statement by the Proprietor under penalty of perjury  
8 that the contents of the application are true and correct.

9 8. Such other information as the Department deems  
10 necessary for the administration or enforcement of this Chapter as  
11 specified on the application form required by this Section.

12 B. For Proprietors with multiple Tobacco Retail Establishments  
13 within the City of Culver City, a separate application is required for each  
14 proposed Tobacco Retail Establishment.

15 C. Any change to the information required to be submitted in order  
16 to apply for a Tobacco Retailer License shall be provided to the Department  
17 within 10 business days of such change in information.

18 D. The Proprietor shall be required to disclose any violations of the  
19 state tobacco licensing laws at any Tobacco Retail Establishment within the  
20 five years prior to the application for which the Proprietor's state tobacco  
21 retailer's license was either suspended or revoked.

22 **§ 11.15.025 LICENSE FEE.**

23 The annual fee for a Tobacco Retailer License and the procedures for  
24 the processing and collection of such fee shall be established by resolution of  
25 the City Council.

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1                   **§ 11.15.030 ISSUANCE OF LICENSE.**

2                   A.     Except as otherwise provided herein, and except where a  
3 Tobacco Retailer Establishment would not otherwise be permitted under  
4 local, state or federal laws, a license shall be issued upon receipt of a  
5 complete application in conformity with all requirements set forth in Section  
6 11.15.020 and the payment of the required license fee.

7                   B.     A Tobacco Retailer License shall not be issued where:

8                         1.     Suspension or revocation proceedings are pending  
9 before any local, state or federal agency for violations of local, state or  
10 federal tobacco control laws.

11                        2.     The Proprietor or any person employed by the Proprietor  
12 has been convicted of any violation of any local, state or federal  
13 tobacco control law within six months prior to the date of application.

14                        3.     The Proprietor's Tobacco Retailer License was revoked  
15 for the same Tobacco Retail Establishment within the five years  
16 preceding the date of the application.

17                        4.     The Proprietor has not obtained a valid state tobacco  
18 retailer license from the California Board of Equalization.

19                        5.     The Proprietor does not have a valid Culver City  
20 business tax certificate or is delinquent on the payment of business  
21 tax, late payment penalties or other associated fees.

22                        6.     The information presented on the application is  
23 incomplete, inaccurate, or false.

24                        7.     The application seeks a Tobacco Retailer License for a  
25 Proprietor to whom this Chapter prohibits a license to be issued.  
26  
27  
28

1 C. A Tobacco Retailer License is valid only for the Tobacco Retail  
2 Establishment for which it has been issued and may not be transferred from  
3 one person to another or from one Tobacco Retail Establishment to another.

4 **§ 11.15.035 LICENSE RENEWAL AND EXPIRATION.**

5 A. A Tobacco Retailer license will be valid through the last day of  
6 February of every year and if not renewed, will expire.

7 B. If any material information required for issuance of a Tobacco  
8 Retailer License has changed since the original license was issued, the  
9 Proprietor shall be ineligible for a license renewal, but must apply for a new  
10 Tobacco Retailer License in accordance with the application procedures set  
11 forth in Section 11.15.020 of this Chapter.

12 C. A Tobacco Retailer License that is not timely renewed shall  
13 expire at the end of its term. To reinstate a license that has expired or to  
14 renew a license not timely received pursuant to this Chapter, the Proprietor  
15 must follow the application procedures set forth in Section 11.15.020 of this  
16 Chapter.

17 **§ 11.15.040 COMPLIANCE MONITORING.**

18 Compliance with the provisions of this Chapter shall be monitored by  
19 the Finance Department, Police Department and/or Enforcement Services  
20 Division, including any authorized designee of such Departments and  
21 Division, and/or by any other person or persons so designated by the City  
22 Manager.

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1                   **11.15.045    VIOLATIONS UNLAWFUL; PENALTIES.**

2                   A.     A violation of any provision of this Chapter is unlawful.

3                   B.     The remedies provided by this Chapter are cumulative and in  
4 addition to any other remedies available at law or in equity.

5                   C.     A violation of any provision of this Chapter is subject to a civil  
6 action brought by the City Attorney, punishable by a civil fine not less than  
7 one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000)  
8 per violation.

9                   D.     A violation of any provision of this Chapter may, in the discretion  
10 of the City Attorney, be prosecuted as an infraction or misdemeanor.

11                  E.     The City Council shall, by resolution, establish the penalties for  
12 a violation of this Chapter, but in no event shall such penalties exceed the  
13 maximum penalties permitted under State law.

14                  F.     Causing, permitting, aiding, abetting, or concealing a violation of  
15 any provision of this Chapter shall also constitute a violation of this Chapter.

16                  G.     In addition to the criminal penalties attached to violations of this  
17 Chapter, any violation of this Chapter is hereby declared a public nuisance.

18  
19                   **11.15.050    SUSPENSION AND REVOCATION; ADMINISTRATIVE**  
20                   **FINES.**

21                  A.     In addition to any criminal or other penalty authorized by this  
22 Code and other applicable law, a Tobacco Retailer License may be  
23 suspended or revoked by the Committee on Permits and Licenses, as set  
24 forth in Section 11.15.050, based on one or more of the following findings:

- 25                   1.     The Tobacco Retailer, or his or her agents or employees,  
26 has violated any provision of this Chapter, or any other local, state or  
27 federal tobacco related law; or  
28

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

4                   3.     The Tobacco Retailer License was issued in error or on  
5                   the basis of false or misleading information supplied by the Proprietor;  
6                   or

7                   4.     The Tobacco Retailer License fee is unpaid; or

8                   5.     The Tobacco Retailer License has been transferred in  
9                   violation of this Chapter.

10                B.     Upon a finding of a first license violation, the Tobacco Retailer  
11                License shall be suspended for 30 days; upon a finding of a second license  
12                violation within five years of the first violation, the Tobacco Retailer License  
13                shall be suspended for 90 days; and upon a finding of a third license violation  
14                within five years of the first violation, the Tobacco Retailer License shall be  
15                revoked.

16                C.     In addition to any criminal or other penalty authorized by this  
17                Code and other applicable law, an administrative fine may be imposed on a  
18                Tobacco Retailer for a violation of any provision of this Chapter, in  
19                accordance with the procedures set forth in Sections 11.01.600, et seq. of  
20                this Code.

21                D.     The procedure used for appealing a revocation or suspension  
22                shall be in accordance with the procedures set forth in Sections 11.01.500, et  
23                seq. of this Code.

24                E.     A Tobacco Retailer, whose license has been revoked, may not  
25                apply for a new Tobacco Retailer License for a period of five years after the  
26                effective date of the revocation.

F. During any period of license suspension or revocation, the Tobacco Retailer must remove from public view all tobacco, Tobacco Products, Tobacco Paraphernalia, and Tobacco-related advertising.

**SECTION 2.** Pursuant to Section 619 of the City Charter, this Ordinance shall take effect thirty (30) days after the date of its adoption. Pursuant to Sections 616 and 621 of the City Charter, prior to the expiration of fifteen (15) days after the adoption, the City Clerk shall cause this Ordinance, or a summary thereof, to be published in the Culver City News and shall post this Ordinance or a summary thereof in at least three places within the City.

**SECTION 3.** The City Council hereby declares that, if any provision, section, subsection, paragraph, sentence, phrase or word of this ordinance is rendered or declared invalid or unconstitutional by any final action in a court of competent jurisdiction or by reason of any preemptive legislation, then the City Council would have independently adopted the remaining provisions, sections, subsections, paragraphs, sentences, phrases or words of this ordinance and as such they shall remain in full force and effect.

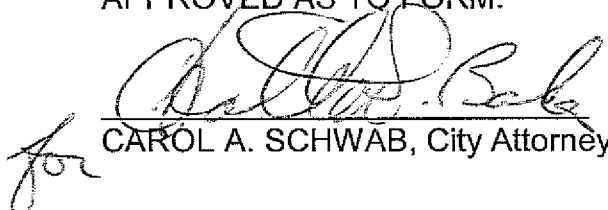
**APPROVED AND ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
ANDREW WEISSMAN, Mayor  
City of Culver City, California

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
MARTIN R. COLE, City Clerk  
A09-00236

  
for CAROL A. SCHWAB, City Attorney