

ORDINANCE NO. 2008-232

AN ORDINANCE OF THE TOWN OF WINDSOR REPEALING EXISTING, TITLE 3, CHAPTER 11, "REGULATING THE SALE OF TOBACCO AND SMOKING" IN ITS ENTIRETY AND ADDING A NEW TITLE 3, CHAPTER 11, "REGULATING THE SALE OF TOBACCO PRODUCTS AND PARAPHERNALIA," TO THE MUNICIPAL CODE.

WHEREAS, each year many people in the United States die from tobacco-related diseases;

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a highly priority, as evidenced by the following:

- The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950); and
- State law prohibits 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 (Cal. Pen. Code § 308); and
- State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using persons under 18 years of age to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952); and,

WHEREAS, in order to reduce addiction to tobacco products by children and teens and reduce shoplifting of tobacco products by underage consumers, it is in the public interest to: (i) prohibit self-service sales and to self-service displays, racks and shelves of tobacco products; (ii) promote the posting of warning signs at the point of purchase stating the legal age and that identification is required to purchase tobacco, and (iii) prohibit tobacco retailing by a vending machine.

NOW, THEREFORE, the Town Council of the Town of Windsor does ordain as follows:

Section 1. The Town Council adopts the above recitations.

Section 2. Title III, Chapter 11, "Regulating the Sale of Tobacco and Smoking," of the Town of Windsor Municipal Code is repealed in its entirety.

Section 3. Title III, Chapter 11 entitled “Regulating the Sale of Tobacco Products and Paraphernalia” is hereby added to the Town of Windsor Municipal Code to read as follows:

3-11-100 Purpose.

This Chapter is adopted for the purpose of regulating the sale of tobacco products and paraphernalia to children and teens, and therefore, discouraging smoking among minors. Title III, Chapter 20, entitled “Prohibition of Smoking,” is intended to regulate smoking in identified places within the Town of Windsor.

3-11-105 Definitions.

The following words and phrases, whenever used in this Chapter, shall be construed as defined in this section:

- a) “**Business**” means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an Employee, as defined in this section.
- b) “**Employee**” means any person who is employed; retained as an independent contractor by an Employer, as defined in this section; or any person who volunteers his or her services for an Employer, association, nonprofit, or volunteer entity.
- c) “**Employer**” means any person, partnership, corporation, association, nonprofit or other entity who employs or retains the services of one or more persons, or supervises volunteers.
- d) “**Self-service display**” means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer.
- e) “**Tobacco Paraphernalia**” means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the California Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.
- f) “**Tobacco Product**” means any product containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing, tobacco, dipping tobacco, bidis, or any other preparation of tobacco.
- g) “**Tobacco store**” means a retail business that meets all of the following requirements: (i) primarily sells tobacco products; (ii) generates more than 60% of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia; (iii) does not permit any person under 18 years of age to be present

or enter the premises at any time, unless accompanied by the person's parent or legal guardian, as defined in Section 6903 of the California Family code; and, (iv) does not sell alcoholic beverages or food for consumption on the premises.

- h) **"Vending Machine"** means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

3-11-110.1 Regulations of the Manner of Sale of Tobacco Products and Paraphernalia.

- a) Any person, business, or other establishment which sells tobacco products for consumption shall post plainly visible signs at each point of purchase of tobacco products which shall comply with Title 17, Section 6902(a) of the California Code of Regulations.
- b) No person, business, or owner, manager, operator, or employee of any establishment shall sell, offer to sell or permit to be sold, any tobacco product to any individual without requesting and examining identification establishing the purchaser's age as eighteen (18) years or greater unless the seller has some reasonable basis for determining the buyer's age.
- c) No person, business or owner, manager, operator or employee of any establishment shall sell, offer for sale, or distribute any cigarette or other tobacco product by or from a vending machine or other appliance, or any other device designed or used for vending purposes.
- d) It shall be unlawful for any person to engage in the retail sale of tobacco products to sell, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by self-service display.
- e) It shall be unlawful for a person engaged in the retail sale of blunt wraps to place or maintain, or to cause to be placed or maintained, any blunt wraps advertising display within two feet of candy, snack, or nonalcoholic beverage displayed inside any store or business. Any blunt wrap advertising display must be no less than four feet above the floor.
- f) Subdivision (d) and (e) shall not apply to the display in a tobacco store of cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco, provided that in the case of cigars they are generally not sold or offered for sale in a sealed package of the manufacturer or importer containing less than six cigars. In any enforcement action brought pursuant to this division, the retail business that displays any of the items described in this subdivision in a self-service display shall have the burden of proving that it qualifies for the exemption established in the subdivision.

3-11-115 Enforcement.

- a) Any owner, manager, operator, or employer of any establishment subject to this Chapter shall have the responsibility to inform any person violating the provisions of this Chapter, whether public or employee, about any tobacco sale restrictions in the establishment.
- b) Enforcement of this Chapter shall be the responsibility of the Town Manager or his/her designee, herein described as “Administrative Authority.”
- c) Any citizen who desires to register a complaint under this Chapter may initiate the complaint with the Administrative Authority.
- d) The Town Manager shall require, while an establishment is undergoing otherwise mandated inspections, a self-certification from the owner, manager, operator, or other persons having control of such establishment that the establishment is in compliance with all requirements of this Chapter.

3-11-120 Violations and Penalties.

- a) Any violation of any provision of this Chapter may be prosecuted as a misdemeanor punishable by a fine of not more than one thousand dollars or by imprisonment for a period not to exceed six months, or by both fine and imprisonment. At the discretion of the charging officer and/or Town attorney, violations of this Chapter may also be charged as infractions as defined in Section 19(c) of the California Penal Code. Violations charged as infractions shall not be subject to imprisonment and shall be subject to a fine not exceeding five hundred dollars for each offense.

3-11-125 Nonretaliation.

- a) No person or employer shall discharge, refuse to hire, or in any manner, retaliate against any employee or applicant for employment because such employee or applicant has exercised any rights afforded by this Chapter.

3-11-130 Liberal Construction.

- a) It is the intention of the Town Council that this Chapter shall be liberally construed to be compatible with federal and state laws and regulations and in the furtherance of the public purpose which those laws and regulations express.

Section 4. California Environmental Quality Act (“CEQA”).

The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the Ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) for it has no potential for resulting in physical change in the environment, directly or ultimately, the Ordinance is categorically exempt from CEQA under Section 15308 as a regulatory action taken by the City pursuant to its police power authorized in Article XI, Section 7 of the California Constitution to assure the health, safety, and welfare of the City, and the Ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, either directly or indirectly.

Section 5. Statutory Severability.

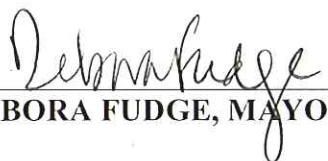
If any section, subsection, sentence, clause or phrase or word in this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions may be declared unconstitutional, unlawful or otherwise invalid.

Section 6. Effective Date and Publication.

This Ordinance shall take effect thirty (30) days from its passage. Before the expiration of fifteen (15) days after its passage, this Ordinance, or a summary thereof, as provided in California Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the Town of Windsor.

PASSED, APPROVED AND ADOPTED this 2nd day of April 2008 by the following vote:

**AYES: COUNCILMEMBERS ALLEN, PARKER, SALMON AND
 MAYOR FUDGE**
NOES: NONE
ABSTAIN: NONE
ABSENT: VICE MAYOR GOBLE



DEBORA FUDGE, MAYOR

ATTEST:



MARIA DE LA O, TOWN CLERK

