

**CITY OF SANTA CLARA, UTAH  
ORDINANCE NO. 2017-17**

**ADOPTING CERTAIN RESTRICTIONS ON THE SALE OF TOBACCO PRODUCTS AND TOBACCO PARAPHERNALIA, AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, in a work meeting on June 7, 2017, Kye Nordfelt from the Southwest Public Health Department made a presentation to the City Council warning of the dangers and difficulties associated with the presence of tobacco shops, vapor shops, and the products and paraphernalia sold by them in other southern Utah communities; educating the City Council about recent dramatic increases in youth use of e-cigarettes and related vaping products and the potential health dangers of such use; and encouraging the City Council to adopt regulations for the sale of such products and paraphernalia; and

**WHEREAS**, the City Council recognizes that valued businesses in the City already sell, and others may in the future desire to sell, tobacco products and paraphernalia to responsible adults, and the City Council desires to address the issues raised by the Southwest Public Health Department while still permitting businesses to sell such products and paraphernalia to responsible adults, subject to the limitations of Utah law, and to do so while minimally increasing the City’s regulatory burden on such businesses; and

**WHEREAS**, the City Council, finding that it is in the best interests of the health, safety and welfare of the City and its citizens, and particularly the youth of the City, hereby adopts a new regulation of tobacco products and paraphernalia, to be known as Chapter 5.10 of the City Code, as set forth herein.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Santa Clara, Utah, that Chapter 5.10 “Tobacco Products and Tobacco Paraphernalia” be adopted into the Santa Clara Municipal Code as stated below:

**SECTION 1. Adoption:**

The following chapter shall be adopted into and codified with the Santa Clara Municipal Code as set forth below.

**Chapter 5.10 TOBACCO PRODUCTS AND TOBACCO PARAPHERNALIA**

**5.10.010: APPLICABILITY; SALE OF TOBACCO PRODUCTS AND TOBACCO PARAPHERNALIA RESTRICTED:**

No individual, entity or organization shall:

- A. Conduct or operate a retail tobacco specialty business; or
- B. Sell, furnish, or otherwise distribute tobacco products or “tobacco paraphernalia,” as defined in this chapter, unless it satisfies the requirements set forth in this chapter.

**5.10.020: DEFINITIONS:**

RETAIL TOBACCO SPECIALTY BUSINESS: A commercial establishment in which:

- A. The sale of tobacco products and tobacco paraphernalia accounts for more than thirty-five percent (35%) of the total annual gross receipts for the establishment;
- B. The sale of food and beverage products, excluding gasoline sales, accounts for less than forty-five percent (45%) of the total annual gross receipts for the establishment; and
- C. The establishment is not licensed as a pharmacy under Utah Code Title 58, Chapter 17b, Pharmacy Practice Act.

TOBACCO PARAPHERNALIA: Means any equipment, product, or material of any kind, excluding matches and lighters, which is used, intended for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including, but not limited to:

- A. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- B. Water pipes;
- C. Carburetion tubes and devices;
- D. Smoking and carburetion masks;
- E. Roach clips, meaning objects used to hold burning material, such as a cigarette, that has become too small or too short to be held in the hand;
- F. Chamber pipes;
- G. Carburetor pipes;
- H. Electric pipes;
- I. Air driven pipes;
- J. Chillums;
- K. Bongs; and
- L. Ice pipes or chillers.

**TOBACCO PRODUCT:** Any cigar, cigarette, or electronic cigarette as defined in the Utah Code; a tobacco product as defined in the Utah Code, including chewing tobacco; or any substitute for a tobacco product, including flavoring or additives to tobacco.

**TOBACCO SALES BUSINESS LICENSE:** A business license issued by the city which permits the licensee to sell tobacco products and tobacco paraphernalia from its validly licensed business.

**5.10.030: TOBACCO SALES BUSINESS LICENSE REQUIRED:**

A. Tobacco Products And Tobacco Paraphernalia: No individual, entity, organization, or business shall sell tobacco products or tobacco paraphernalia unless it has obtained a tobacco sales business license. A tobacco sales business license shall only be issued as a secondary license to a business license for one of the following:

1. A business that is primarily engaged in the sale of food and beverage products and is located in a building which is ten thousand (10,000) square feet or larger;
2. A business that is primarily engaged in the sale of gasoline or diesel fuel and is located in a building which is two thousand (2,000) square feet or larger;
3. A business licensed as a pharmacy under Utah Code and located in a building which is ten thousand (10,000) square feet or larger; or
4. A business license for any business that was lawfully selling tobacco products and tobacco paraphernalia under that license prior to July 12, 2017. A business qualifying for a tobacco sales business license under this subsection A.4. shall not be required to submit an initial application for the tobacco sales business license until the next renewal date of its primary business license.

B. Application For License: An application for a license shall be made in writing on the form provided by the licensing officer. The form must be completed in its entirety. The application must be accompanied by:

1. The primary business license required in this chapter (or a completed application for such primary business license, if being sought in conjunction with the tobacco sales business license);
2. The required licensing fee as may be determined by the city council from time to time;
3. Proof of Utah State Tax Commission license and state bond (if required by Utah Code);
4. Documentation showing the square footage of the building;

5. Proof of the operation of a business specified in subsection A.1. or A.2. of this section, if the application is to qualify as such a business; and
6. If seeking to qualify under subsection A.4. of this section, proof of:
  - a. The lawful sales of tobacco products and tobacco paraphernalia prior to July 12, 2017; and
  - b. The percentage of tobacco products and tobacco paraphernalia sold as compared to the total annual gross receipts for the business.

C. Issuance and Renewal of License:

1. Upon receipt of a completed application as set forth in subsection B. above, and qualification for issuance of the appropriate primary business license described in subsection A. above, the licensing officer shall issue the tobacco sales business license to the applicant.
2. The tobacco sales business license may be issued as a separate certificate, or may be indicated by an appropriate notation on the primary business license certificate, in the discretion of the licensing officer.
3. The tobacco sales business license shall be renewed annually in conjunction with the applicant's primary business license, provided the business license or tobacco sales business license is not otherwise suspended, revoked, or terminated.

**5.10.040: RETAIL TOBACCO SPECIALTY BUSINESS NOT PERMITTED:**

The operation of a retail tobacco specialty business is prohibited.

**5.10.050: REVOCATION OF A TOBACCO SALES BUSINESS LICENSE:**

A. The city may suspend, revoke, or terminate the business license of a business which is operating as a tobacco sales business if:

1. The licensee, owner, or operator:
  - a. Engages in a pattern of unlawful activity as outlined in Utah Code section 76-10-1601 et seq., or its amendment; or
  - b. Violates any alcohol or drug related offenses, regulations restricting the sale and distribution of tobacco products or tobacco paraphernalia, or any felony offenses under any provision of federal, state, or local law.

2. While on the business premises, an employee violates:
  - a. Any laws or regulations related to alcohol or controlled substances;
  - b. Any laws or regulations restricting the sale and distribution of tobacco products or tobacco paraphernalia; or
  - c. Any provision of federal, state, or local law which would be a felony level offense.
3. The tobacco sales business does not maintain the right to operate under the terms of other applicable laws, including zoning ordinances, building codes, and the primary business license.

B. In addition to the provisions outlined in subsection A of this section, a business licensed under subsection 5.10.030 of this chapter may have their tobacco sales business license permanently revoked if:

1. The tobacco sales business license is not renewed continuously without lapse or revocation;
2. The tobacco sales business is closed for business or otherwise suspends the sale of tobacco products or tobacco paraphernalia for more than sixty (60) consecutive days; or
3. The tobacco sales business substantially changes the character of its business premises or business operation.

**5.10.060: PENALTY:**

Any violation of this chapter is a class B misdemeanor and punishable by a fine of one thousand dollars (\$1,000.00), not including any mandatory fees and surcharges imposed by law or a court of competent jurisdiction.

**SECTION 2. Effective date:**

This Ordinance shall become effective immediately upon adoption, recording and posting in the manner prescribed by law.

**ADOPTED** and approved by a duly constituted quorum of the City Council of the City of Santa Clara, Utah, this 12<sup>th</sup> day of July, 2017.

**IN WITNESS THERETO:**

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RICK ROSENBERG, Mayor

**ATTEST:**

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CHRIS SHELLEY, City Recorder