

## ORDINANCE NO. 1917

### AN ORDINANCE AMENDING TITLE 4 (BUSINESS REGULATIONS AND LICENSES) OF THE GOLDEN MUNICIPAL CODE BY THE ADDITION OF A NEW CHAPTER 4.96 ENTITLED "NON-CIGARETTE TOBACCO PRODUCT RETAILERS" ESTABLISHING PROCEDURES FOR LICENSING AND REGULATING THE SALE OF NON-CIGARETTE TOBACCO PRODUCTS

WHEREAS, the City of Golden recognizes the dangers associated with youth access to tobacco products; and

WHEREAS, a local licensing system for retailers who sell non-cigarette tobacco products is appropriate to protect the health, safety and welfare of young people in Golden; and

WHEREAS, the requirement for a tobacco retailer license to sell non-cigarette tobacco products will not unduly burden legitimate business activities of retailers who sell non-cigarette tobacco products to adults.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

**Section 1.** Title 4 (Business Regulations and Licenses) of the Golden Municipal Code is amended by the enactment of Chapter 4.96 entitled Non-Cigarette Tobacco Product Retailers as follows:

#### CHAPTER 4.96

#### NON-CIGARETTE TOBACCO PRODUCT RETAILERS

**4.96.010 Legislative Intent.** It is the intent of the City Council of Golden in enacting this Chapter to prohibit sales of non-cigarette tobacco products to youth, to encourage responsible tobacco retailing and to reduce the impact of tobacco product use by young people in Golden.

**4.96.020 Definitions.** The following words and phrases, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

*"Cigarette"* means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco or wrapped in paper or in any substance not containing tobacco; or (2) tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1) above. The term includes all "roll-your-own", i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by consumers as tobacco for making cigarettes.

*"Department"* means the City of Golden Police Department, and any agency or person designated by the Department to enforce or administer the provisions of this Chapter.

*"License"* refers to the Non-Cigarette Tobacco Product Retailer License.

*"Licensee"* means to the owner or holder of a Non-Cigarette Tobacco Product Retailer License and shall include the employees, agents and officers thereof as appropriate.

*"Licensed Premises"* means any area of the premises where non-cigarette tobacco products are authorized to be sold or distributed to a consumer including, but not limited to, the grounds occupied by a retailer and any store, stand, outlet, location, vending machine or structure where non-cigarette tobacco products are sold, as designated in the approved License application.

*"Non-Cigarette Tobacco Product"* includes (1) any product, other than a cigarette, that contains tobacco or nicotine or is made or derived from tobacco that is intended or expected to be ingested, smoked, inhaled, placed in oral or nasal cavities, or applied to the skin of an individual, or (2) any electronic device that can be used to deliver nicotine or tobacco to the person using the device, including but not limited to an electronic cigarette, cigar, cigarillo or pipe. The term "Non-Cigarette Tobacco Product" does not include any product specifically approved by the United States Food and Drug Administration for use in reducing, treating or eliminating nicotine or tobacco dependence, or for other medical purposes, when such product(s) is being marketed and sold solely for such an approved purpose.

*"Non-Cigarette Tobacco Product Retailer"* means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, a non-cigarette tobacco product.

*"Non-Cigarette Tobacco Product Retailing"* means the selling, offering for sale, or exchanging for any form of consideration a non-cigarette tobacco product.

*"Retail Tobacco Business"* means a person engaged primarily in the sale, manufacture, or promotion of tobacco, tobacco products, smoking devices or accessories, either at wholesale or retail, and in which the sale, manufacture or promotion of other products is less than 25% of gross sales receipts. For purposes of enforcement of this Chapter, a retail tobacco business shall also include, but is not limited to, a person engaged primarily in the sale or manufacture of hookah or shisha products and related smoking products, including but not limited to, any plant, or other organic matter packaged for smoking or held out as a smoking product, or any person, engaged in the promotion of hookah or shisha smoking, sometimes referred to as a hookah bar, lounge or café.

*"Youth-Oriented Facility"* means any public or private elementary school, middle school, high school.

**4.96.030 License Required. (a) Non-Cigarette Tobacco Product Retailer License Required.**

1. It shall be unlawful for any person to act as a non-cigarette tobacco product retailer in the City of Golden without first obtaining and maintaining a valid License pursuant to this Chapter for each location where non-cigarette tobacco product retailing occurs.

2. No License may be issued to authorize non-cigarette tobacco product retailing

anywhere other than at a fixed location that is designated in the License application and approved License. Non-cigarette tobacco product retailing from vehicles is prohibited.

3. Except as provided in this subparagraph, no License shall be issued to authorize non-cigarette product retailing within five-hundred (500) feet of a youth-oriented facility, as measured by a straight line from the nearest point of the property line of the site of the youth-oriented facility to the nearest point of the property line of the site of the business premises proposed for licensure. The foregoing notwithstanding, a non-cigarette tobacco product retailer operating lawfully on April 26, 2012 shall be exempt from the five-hundred (500) foot prohibition set forth in this Section, provided that a License for such location is issued, within thirty (30) days of the effective date of this ordinance, and continuously maintained.

4. A Licensed Premise may only have one active License at one time.

5. Non-cigarette tobacco retailing without a valid License is a nuisance as a matter of law.

(b) Display of License. Each License shall be prominently displayed in a publicly visible location at the Licensed Premises.

(c) A person may not apply for a new License for a one year period after a License held by such person has been revoked.

(d) No License shall be issued to any natural person under eighteen (18) years of age.

**4.96.040 Regulations.** (a) Requirements of positive identification.

No Licensee shall sell or transfer a non-cigarette tobacco product without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state and local law to purchase and possess the non-cigarette tobacco product.

(b) Minimum age for persons handling non-cigarette tobacco products.

Licensees shall not allow, permit or require any person who is younger than the age of 18 years to sell, stock, retrieve or otherwise handle said non-cigarette tobacco products during the course of operation of the business.

(c) No unaccompanied minors permitted in retail tobacco businesses.

Licensee shall not allow or permit a person who is younger than age 18 years to be admitted or remain upon the licensed premises of a retail tobacco business, unless such person is accompanied by his or her parent or guardian. The Licensee of a retail tobacco business shall post and keep at all times visible to the public in a conspicuous place on the Licensed Premises, a sign to be provided by the City Clerk's office which shall read as follows:

**WARNING:** It is a violation of the Golden Municipal Code for any person under eighteen (18) years of age to be on the premises of this business unless accompanied by their parent or guardian.

**4.96.050 Application Procedure.** (a) An application for a License shall be submitted and signed by an individual authorized by the person making application for the License.

(b) An application for a License for an operation for which there is a reasonable expectation that it will meet the definition of Retail Tobacco Business shall so indicate in the application. For any License that is granted pursuant to an application indicating that a Retail Tobacco Business is anticipated on the licensed premises, there shall be a rebuttal presumption that in fact the business is a Retail Tobacco Business.

(c) All License applications shall be submitted on a form supplied by the City Clerk.

(d) All License applications shall be accompanied by the payment in full of all fees as required in this Chapter.

(e) Applicants and Licensees shall inform the City Clerk in writing of any change to the information submitted on an application for a License within thirty (30) calendar days of a change, including, without limitation, a change that indicates that the Licensee is operating as a Retail Tobacco Business.

**4.96.060 Issuance of a Non-Cigarette Tobacco Product License.** (a) Upon the receipt of a completed application for a License and all required fees, the City Clerk shall issue a License within thirty (30) days, which period may be extended by the City Clerk for good cause, unless credible evidence indicates that one or more of the following bases for denial exists:

1. The information presented in the application is incomplete, inaccurate or false.
2. The applicant seeks a License for a location where this Chapter prohibits the issuance of a License;
3. The applicant seeks a License for a location that is not appropriately zoned for the use; or
4. The proposed location for the requested License is not otherwise in compliance with all City, state or federal laws that pertain to the proposed use.
5. The applicant is not qualified to hold the requested License under the provisions of this Chapter.

(b) If the City Clerk denies the application for issuance of the License, the City clerk shall notify the applicant in writing by regular mail, postage prepaid, to the address shown in the application. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.

**4.96.070 Appeal of Denial of Issuance of License.** (a) An applicant has the right to appeal the City Clerk's denial of an application to a "Hearing Officer" that shall be appointed by the City Council by resolution. Such appeal shall be initiated by filing a written request with the City Clerk within twenty (20) days of the date of the notice of denial of the issuance of a License.

(b) The applicant's failure to timely appeal the decision of the City Clerk is a waiver the applicant's right to contest the denial of the issuance of the License.

(c) The appeal, including any right to further appeals, shall be conducted and controlled by the provisions of Chapter 2.35 of the Golden Municipal Code.

**4.96.080 License Terms; Renewal; Expiration.** (a) Term. A License shall be valid for a term of one (1) year. A License is invalid if the appropriate fee has not been timely paid in full or if the term of the License has expired.

(b) Renewal of License. A Licensee shall apply for the renewal of the License and submit the renewal license fee no later than thirty (30) days prior to expiration of the existing term. The City Clerk shall renew the License prior to the end of the term, provided that the renewal application and fee were timely submitted and the City Clerk is not aware of fact that would have prevented issuance of the original License.

(c) Expiration of License. A License that is not timely renewed shall expire at the end of its term. The failure to timely obtain a renewal of a License requires submission of a new application. There shall be no sale or of any non-cigarette tobacco products after the License expiration date, and before the new License is issued.

**4.96.090 Non-Transferable .** (a) License shall not be transferred from one person to another or from one location to another.

(b) When a License has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new License for the remainder of the term of that license. All rights and privileges granted under the original License shall continue in full force and effect as to such survivors for the balance of the term of the license.

**4.96.100 Fee for License.** The fee to issue or to renew a License shall be established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a license, administering the license program, retailer education and training, retailer inspection, compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the estimated cost of the regulatory program authorized by this Chapter. Fees are nonrefundable except as may be required by law.

**4.96.110 Compliance Monitoring.** (a) Compliance monitoring of this Chapter shall be by the Department, as the Department deems appropriate.

(b) The Department shall have the discretion to consider previous compliance check history of a Licensee in determining how frequently to conduct compliance checks of a Licensee with respect to individual Licensees.

(c) Nothing in this paragraph shall create a right of action in any Licensee or other person against the City, the Department or their agents and officers.

(d) Compliance checks shall be conducted as the Department deems appropriate so as to allow the

Department to determine, at a minimum, if the non-cigarette tobacco product retailer is conducting business in a manner that complies with laws regulating access to non-cigarette tobacco products. When the Department deems appropriate, the compliance checks may determine compliance with other laws applicable to non-cigarette tobacco products.

(e) The Department shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

(1) the youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the Department; or

(2) the youth decoy is acting as an agent of a person designated by the City to monitor compliance with this Chapter; or

(3) the youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the State of Colorado or Jefferson County Department of Health and Environment or the Colorado Department of Health and Environment.

**4.96.120 Suspension or Revocation of License.** (a) The following shall be grounds for suspension or revocation of the licensee's License(s):

(1) A violation by a Licensee or a Licensee's officers, agents, or employees of any of the provisions of this Chapter, or any laws of the State of Colorado or ordinances of the City of Golden relating to the sale or furnishing of tobacco or cigarettes to minors, or the storage or display of cigarettes or tobacco products, including, without limitation, C.R.S. 18-13-121 or C.R.S. 24-35-503, and Section 8.19.040 of the Golden Municipal Code.

(2) Violations of any conditions imposed by the City Clerk or Hearing Officer in connection with the issuance or renewal of the License;

(3) Failure to pay State or local taxes that are related to the operation of the business associated with the License;

(4) Loss of right to possession to the licensed premises;

(5) Fraud, misrepresentation or a false statement of material fact contained in the original or renewal license application.

(b) The City Council shall appoint a Hearing Officer to hear all actions relating to the suspension or revocation of Licenses pursuant to this Chapter. The Hearing Officer shall have the authority to impose remedial sanctions for violations.

(c) The department shall commence suspension or revocation proceedings by petitioning the hearings officer to issue an order to the licensee to show cause why the licensee's license(s) should not be suspended or revoked. The Hearing Officer shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one or more grounds exist pursuant to subsection (a) to suspend or revoke the licensee's License. The order to show cause shall set the matter for a public hearing before the hearings officer.

(d) The City Clerk shall give notice of the public hearing no later than thirty (30) days prior to the hearing by mailing the same in writing to the Licensee at the address contained in the licensee's

License. At the hearing, the Licensee shall have the opportunity to be heard, to present evidence and witnesses, and to cross examine witnesses presented by the department. The Hearing Officer shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the hearing officer is authorized to conduct. The standard of proof at such hearings shall be a preponderance of the evidence. The burden of proof shall be upon the department.

(e) In determining whether a License should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the hearing officer shall consider the following factors:

- (1) The nature and circumstances of the violation;
- (2) Corrective action, if any, taken by the licensee;
- (3) Prior violations, if any, by the licensee;
- (4) The likelihood of recurrence of the violation;
- (5) Whether the violation was willful;
- (6) Previous sanctions, if any, imposed on the licensee.

(f) The Hearing Officer shall consider the following non-binding guidelines in determining whether to suspend or revoke a License and, in the case of a suspension, the length of the suspension. The purpose of these guidelines is to provide consistent treatment of violations of this Chapter. The actual sanction imposed upon a licensee for any violation may vary from the guidelines when warranted by the specific facts and circumstances of the case. The decision of the hearing officer with respect to the suspension or revocation of a license shall constitute a final administrative action by the City of Golden, subject to judicial review to the Municipal Court pursuant to Section 2.35.050 of the Golden Municipal Code.

- (1) For a first offense within a one-year period, suspension for seven (7) days.
- (2) For a second offense within a one-year period, suspension for thirty (30) days.
- (2) For a third or subsequent offense within a one-year period, revocation of the license.

**4.96.130 Enforcement** (a) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

(b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter is unlawful and shall cause the offender to be subject to the general penalty provisions of the Golden Municipal Code.

(c) Violations of this Chapter are hereby declared to be public nuisances.

(d) 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 City Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement

proceedings, and suits for injunctive relief.

**4.96.140 Compliance with C.R.S. Section 39-22-623.** This Chapter is not nor shall not be construed in any way as imposing a fee, license, or tax as a condition for engaging in the business of selling cigarettes or imposing a tax on cigarettes. The Non-Cigarette Tobacco Product Retailer License in no way applies to the sale of cigarettes. If any part of this Chapter is found to impose a fee, license, or tax as a condition for engaging in the business of selling cigarettes, then that part shall be deemed void.

Section 2. Neither this ordinance or the adoption of Chapter 4.96 of the Golden Municipal Code shall be construed in any way as imposing a fee, license, or tax as a condition for engaging in the business of selling cigarettes or imposing a tax on cigarettes. The Non-Cigarette Tobacco Product Retailer License in no way applies to the sale of cigarettes. If any part of this Chapter is found to impose a fee, license, or tax as a condition for engaging in the business of selling cigarettes, then that part shall be deemed void.

Section 3. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof is hereby repealed to the extent of such inconsistency or conflict.

Section 5. The repeal or modification of any provision of the Municipal Code of the City of Golden by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 6. This ordinance is deemed necessary for the protection of health, welfare and safety of the community.

Section 7. Violations of this ordinance shall be punishable as set forth in Section 1.01.110 of the Golden Municipal Code.

Introduced, read, passed and ordered published this 12th day of April, 2012.

Passed and adopted upon second reading and ordered published this 26th day of April, 2012.





A handwritten signature in cursive script, reading "Susan M. Brooks", written over a horizontal line.

Susan M. Brooks, MMC  
City Clerk

A handwritten signature in cursive script, reading "Marjorie N. Sloan", written over a horizontal line.

Marjorie N. Sloan  
Mayor

APPROVED AS TO FORM:

A handwritten signature in cursive script, reading "David S. Williamson", written over a horizontal line.

David S. Williamson  
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing ordinance was introduced on first reading and read at a regular business meeting of the City Council of said city, held on the 12<sup>th</sup> day of April, 2012, and was published as a proposed ordinance in the Golden Transcript, legal newspaper, as the law directs seven days or more prior to its passage. A public hearing was held on the 26<sup>th</sup> day of April, 2012, and the said proposed ordinance was read on second reading. The ordinance was passed by the City Council and ordered published in the aforesaid newspaper, as the law directs on the 26<sup>th</sup> day of April, 2012.

Witness my hand and official seal of the City of Golden, Colorado, this 27<sup>th</sup> day of April, 2012.



ATTEST:

A handwritten signature in cursive script, reading "Susan M. Brooks", written over a horizontal line.

Susan M. Brooks, MMC, City Clerk of  
the City of Golden, Colorado