

ORDINANCE 19-24

AN ORDINANCE AMENDING TITLE 5, CHAPTER 5.34 "RETAIL TOBACCO SPECIALTY BUSINESSES"; AMENDING TITLE 19, CHAPTER 19.02, SECTION 19.02.020, "DEFINITIONS"; AND AMENDING TITLE 19, CHAPTER 19.06, SECTION 19.06.210 "RETAIL TOBACCO SPECIALTY BUSINESS CRITERIA AND CONDITIONS"; PROVIDING FOR REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE

WHEREAS, §10-8-41.6 of Utah Code Annotated (as amended) authorizes municipalities to regulate retail tobacco specialty businesses; and

WHEREAS, in a review of Title 5, Chapter 5.34; Title 19, Chapter 19.02, Section 19.02.020, and Chapter 19.06, Section 19.06.210 of Layton Municipal Code (LMC), respectively entitled Retail Tobacco Specialty Business, Definitions, and Retail Tobacco Specialty Business Criteria and Conditions, it was determined that an update is needed due to changes in State regulations and terminology; and

WHEREAS, the City desires to keep its business regulations and licenses current with State law requirements to protect both the interests of the City and its residents, and to improve the overall efficiency of the review and approval processes for retail tobacco specialty businesses; and

WHEREAS, the City Council has reviewed the Planning Commission's recommendation and has received pertinent information in the public hearing regarding the proposal; and

WHEREAS, at the conclusion of the public hearing and upon making the necessary reviews, the City Council of Layton City finds it to be in the best interest of the health, safety, and welfare of its citizens to make the proposed amendments to LMC Title 5 and 19;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF LAYTON, UTAH:**

**SECTION I: Repealer.** If any provisions of the City's Code previously adopted are inconsistent herewith they are hereby repealed.

**SECTION II: Enactment.** Title 5, Chapter 5.34, "Retail Tobacco Specialty Businesses" shall be amended to read as follows:

**5.34 Retail Tobacco Specialty Businesses**

5.34.010 Definitions

5.34.020 Licenses Required

5.34.030 Retail Tobacco Specialty Business; Specific Licensing Requirements

5.34.040 License And Permit Application, Submittal, Review And Issuance

5.34.050 Duty To Report Change Of Ownership

5.34.060 Transfer Of Licenses Or Permits

5.34.070 Display of License Or Permit

5.34.080 Discretions; Licenses Revocable

**5.34.010 Definitions**

The following definitions shall apply whenever the terms set forth below are used in this Chapter:

1. **"Applicant"**: An owner, a partner, a managing agent, a manager, an officer, or a director.
2. **"Licensee"**: Any person issued a license by the City to sell and store tobacco products on premises owned or controlled by the person.
3. **"Retail Tobacco Specialty Business"**: A commercial establishment in which: the sale of tobacco products accounts for more than thirty-five percent (35%) of the total quarterly gross receipts for the establishment; twenty percent (20%) or more of the public retail floor space is allocated to the

offer, display, or storage of tobacco products; twenty percent (20%) or more of the total shelf space is allocated to the offer, display, or storage of tobacco products; or the retail space features a self-service display for tobacco products.

4. **"Self-Service Display"**: A display of a cigarette, tobacco, or an electronic cigarette to which the public has access without the intervention of a retailer's employee.
5. **"Tobacco product"**: Any cigar, cigarette, or electronic cigarette as those terms are defined in §76-10-101 of Utah Code (as amended); a tobacco product as that term is defined in §59-14-102 of Utah Code (as amended), including chewing tobacco; or any substitute for a tobacco product, including flavoring or additives to tobacco; and tobacco paraphernalia, as that term is defined in §76-10-104 of Utah Code (as amended).

Ord. No. 12-18, Enacted, 5/17/2012

#### **5.34.020 Licenses Required**

No person shall operate a retail tobacco specialty business in Layton City without first obtaining the appropriate licenses through the City.

#### **5.34.030 Retail Tobacco Specialty Business; Specific Licensing Requirements**

1. All retail tobacco specialty businesses shall meet the zoning requirements outlined in LMC 19.06.210.
2. Beginning July 1, 2018, the City shall not issue or renew a business license for an applicant to conduct business as a retail tobacco specialty business until the applicant provides the City with proof that the retail tobacco specialty business has:
  - a. A valid permit for a retail tobacco specialty business issued under Title 26, Chapter 62, Tobacco Retail Permit of Utah Code (as amended), by the Davis County Health Department; and
  - b. A valid license to sell tobacco products from the Utah State Tax Commission.
  - c. An applicant that was licensed to conduct business as a retail tobacco specialty business in the City before July 1, 2018, shall obtain a permit from the Davis County Health Department under Title 26, Chapter 62, Tobacco Retail Permit of Utah Code (as amended), on or before January 1, 2019.
3. In addition to the Business License requirements of this Title, the City shall require a criminal background check for any applicant of a retail tobacco specialty business license.
  - a. The City shall not issue a retail tobacco specialty business license to any applicant who has been convicted of:
    - i. a felony or a crime of moral turpitude within the last seven (7) years;
    - ii. a class A misdemeanor or a crime involving controlled substances within the last five (5) years; or
    - iii. a class B misdemeanor within the last three (3) years, related to the sale of a tobacco or alcohol product.

Ord. No. 12-18, Enacted, 5/17/2012

#### **5.34.040 License And Permit Application, Submittal, Review And Issuance**

Persons seeking to obtain a license under this Chapter shall first file written application(s) with the Community and Economic Development Department, along with the applicable fees as outlined in the City's currently adopted Consolidated Fee Schedule. The fees shall be non-refundable.

Upon receipt of the application(s) and applicable fees, the Community and Economic Development Department shall review the application(s) for completeness before distributing copies of the application to the appropriate departments for subsequent review.

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1. **Recommendation By Chief Of Police/Legal Department.** Applicants seeking a retail tobacco specialty business license from the City shall submit an original or certified copy of a BCI background check dated within the last one hundred eighty (180) days to the Community and Economic Development Department. The BCI background check shall remain a confidential, protected, private record not available for public inspection. The Community and Economic Development Department shall refer the application and BCI background check to the Chief of Police or Legal Department for inspection and report, including a local records check. The Chief of Police or Legal Department shall, after receiving such application, report in writing to the Community and Economic Development Department a recommendation as to the granting or denying of such application with such further information or findings as deemed to be pertinent to the application.
2. **Recommendation By Fire Chief.** After receiving such application, the Fire Chief, or designee, shall report in writing to the Community and Economic Development Department whether the proposed licensed premises complies with the applicable laws, ordinances, and regulations relating to safety in the event of fire or panic, and whether the same are reasonably safe for use as licensed premises for the type of license or permit applied for. The Fire Chief, or designee, shall add such further information as deemed to be pertinent. The Fire Chief, or designee, shall add thereto in writing a recommendation as to the granting or denying of such application.
3. **Recommendation By Davis County Health Department.** The Community and Economic Development Department shall refer retail tobacco specialty business license applications to the Davis County Health Department for review and recommendation. The Community and Economic Development Department may request that the Davis County Health Department investigate and inspect the proposed licensed premises and report their finding to the City in writing. A business license shall not be issued for a retail tobacco specialty business until the Davis County Health Department has issued a valid permit pursuant to §26-62 of Utah Code (as amended).

Upon receipt of the recommendations from the Chief of Police/Legal Department, Fire Chief, and the Davis County Health Department, the Community and Economic Development Director, or designee, shall review the recommendations of the findings and shall make a determination. If the applicant has complied with all applicable laws, ordinances and regulations the Community and Economic Development Director, or designee, may issue the business license for the retail tobacco specialty business.

In the instance of a renewal application for a license, the Community and Economic Development Director, or designee, upon determining the applicant has complied with all applicable requirements, may issue a renewal license to the applicant.

Under this section, a renewal application will only be reviewed if it is for the same applicant and location as the previous license and for the year immediately following a licensed year. Otherwise, an initial application is required.

#### **5.34.050 Duty To Report Change Of Ownership**

If, during the term of the license year, after the license or permit has been granted hereunder, there shall be any change in the personnel of any licensed partnership or of the officers or director of any licensed operation, the licensee or permittee shall immediately report any such changes in personnel to the license office with a new license or permit application. Applications shall be processed under the procedures set forth in LMC 5.34.040. The Community and Economic Development Director, or designee, may suspend or revoke any license issued under this Chapter if the licensee does not notify the City of said change in ownership.

#### **5.34.060 Transfer Of Licenses Or Permits**

Licenses or permits issued under this Chapter shall not be transferable from one person to another, nor from one location to another.

### 5.34.070 Display of License Or Permit

Every license or permit issued hereunder shall be posted and prominently displayed upon the licensed premises.

### 5.34.080 Discretions; Licenses Revocable

1. Every police officer is an ex-officio inspector of licenses issued under this Chapter. Every such officer is authorized and empowered in their discretion and in addition to their enforcement powers, may inspect all licensed premises for compliance with state law and the Layton Municipal Code, reporting any violations of this Chapter to the Community and Economic Development Department.
2. The Community and Economic Development Director, or designee, may, when in the interest of public health, safety, and welfare, suspend or revoke a business license, as well as recommend denial to the Davis County Health Department or Utah State Tax Commission for a licensee's renewal of their licensure for any violation of this Chapter.
3. Pursuant to §10-8-41.6 of Utah Code (as amended) the City may suspend or revoke a retail tobacco specialty business license issued under this Title:
  - a. If a licensee engages in a pattern of activity under Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act of Utah Code (as amended);
  - b. If a licensee violates the regulations restricting the sale and distribution of cigarettes and smokeless tobacco to protect children and adolescents issued by the United States Food and Drug Administration, 21 C.F.R. Part 1140;
  - c. Upon the recommendation of the Davis County Health Department under Title 26, Chapter 62, Tobacco Retail Permit of Utah Code (as amended); or
  - d. Under any other provision of state law or local ordinance.
4. Any appeal of a decision of the Community and Economic Development Director, or designee, in administering and interpreting this Chapter shall be appealed in accordance with LMC 5.04.050 and 5.04.140.

**SECTION III: Enactment.** Title 19, Chapter 19.02, Section 19.02.020 "Definitions" shall be amended to read as follows:

#### **19.02.020 Definitions**

...

**"Homeless Shelter"**: a facility that is or is proposed to be located within the City; provides or is proposed to provide temporary shelter to homeless individuals; and has or is proposed to have the capacity to provide temporary shelter to at least fifty (50) individuals per night.

...

**"Retail Tobacco Specialty Business"**: a commercial establishment in which: the sale of tobacco products accounts for more than thirty-five percent (35%) of the total quarterly gross receipts for the establishment; twenty percent (20%) or more of the public retail floor space is allocated to the offer, display, or storage of tobacco products; twenty percent (20%) or more of the total shelf space is allocated to the offer, display, or storage of tobacco products; or the retail space features a self-service display for tobacco products.

...

**"Self-Service Display"**: a display of a cigarette, tobacco, or an electronic cigarette to which the public has access without the intervention of a retailer or retailer's employee.

...

**"Tobacco Product"**: any cigar, cigarette, or electronic cigarette as those terms are defined in §76-10-101 of Utah Code (as amended); a tobacco product as that term is defined in §59-14-102 of Utah Code (as amended), including chewing tobacco; any substitute for a tobacco product, including flavoring or additives to tobacco; and tobacco paraphernalia, as that term is defined in §76-10-104.1 of Utah Code (as amended).

...

**SECTION IV: Enactment.** Title 19, Chapter 19.06, Section 19.06.210 "Retail Tobacco Specialty Business Criteria And Conditions" shall be amended to read as follows:

**19.06.210 Retail Tobacco Specialty Business Criteria And Conditions**

1. **General.** Retail tobacco specialty businesses shall be located and maintained in accordance with the following standards and conditions:
  - a. Retail tobacco specialty businesses shall only be allowed as a conditional use in areas zoned C-H (Planned Highway Commercial) and shall not be allowed as a temporary or seasonal use.
  - b. Retail tobacco specialty businesses shall not be located within one thousand feet (1,000') of a community location or homeless shelter.
  - c. Retail tobacco specialty businesses shall not be located within six hundred feet (600') of another retail tobacco specialty business within or outside of Layton City boundaries.
  - d. Retail tobacco specialty businesses shall not be located within six hundred feet (600') of property used or zoned for agricultural or residential use.
  - e. The proximity requirements shall be measured in a straight line from the nearest entrance of the retail tobacco specialty business to the nearest property boundary of a location described in LMC 19.06.210 (2)(b) through (d), without regard to intervening structures or zoning districts.
2. Any retail tobacco specialty business that had an active business license and is operating in the City in accordance with all applicable laws before December 31, 2015, maintains the right to operate as a non-conforming use.
3. **Termination of Business.** If any retail tobacco specialty business fails to renew its Layton City Business License, vacates the premises, suspends the sale of tobacco products for more than sixty (60) consecutive days, or substantially changes the business premises or business operations, then the business and use is deemed terminated. All retail tobacco specialty businesses that do not meet the zoning and separation requirements shall be considered non-conforming and will be subject to the provisions of LMC 19.15.030.
4. **Relocation of Existing Business.** Any retail tobacco specialty business existing before November 17, 2011, shall be allowed to relocate to a new site that meets the zoning and separation requirements outlined in this ordinance. The non-conforming status of the prior site is deemed to have been terminated.

Ord. No. 12-16, Enacted, 5/17/2012

**SECTION V: Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, said portion shall be severed and such declaration shall not affect the validity of the remainder of this ordinance.

**SECTION VI: Effective Date.** This ordinance shall become effective immediately upon publication or posting.

**PASSED AND ADOPTED** by the City Council of Layton, Utah, this 5<sup>th</sup> day of September, 2019.

ATTEST:

  
KIMBERLY S READ, City Recorder



  
SCOTT FREITAG, Mayor