

ORDINANCE NO. 2010-272

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALABASAS AMENDING TITLES 5 AND 17 OF THE CALABASAS MUNICIPAL CODE TO PROHIBIT THE SALE OF TOBACCO PRODUCTS WITHIN 500 FEET OF SCHOOLS LOCATED IN THE CITY OF CALABASAS.

THE CITY COUNCIL OF THE CITY OF CALABASAS DOES ORDAIN AS FOLLOWS:

SECTION I. The City Council of the City of Calabasas hereby finds and declares as follows:

WHEREAS, tobacco use causes death and disease and imposes great social and economic costs, as evidenced by the following:

- more than 440,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;¹ and
- the medical and economic costs to nonsmokers suffering from lung cancer or heart disease caused by secondhand smoke are nearly \$6 billion per year in the United States;² and
- the total annual cost of smoking in California was estimated at \$475 per resident or \$3,331 per smoker per year, for a total of nearly \$15.8 billion in smoking-related costs in 1999 alone;³ and

WHEREAS, in California, 13.3% of the adult population and 15.4 % of high school students⁴ smoke; and

¹ U.S. Dep't of Health and Human Servs., Centers for Disease Control and Prevention, *Annual Smoking – Attributable Mortality, Years of Potential Life Lost, and Economic Costs – United States 1995-1999* MORBIDITY AND MORTALITY WEEKLY REPORT, 51(14), at 300-303 (2002), available at <http://www.cdc.gov/mmwr/PDF/wk/mm5114.pdf> (last accessed October 11, 2006).

² American Academy of Actuaries, *Costs Associated with Secondhand Smoke*, October, 2006, available at http://www.actuary.org/pdf/health/smoking_oct06.pdf (last accessed October 11, 2006).

³ Wendy Max, Dorothy P. Rice, Xiulan Zhang, Hai-Yen Sung, Leonard Miller, Cal. Dept. of Health Servs., *The Cost of Smoking in California, 1999*, at 76 (2002), available at <http://www.dhs.ca.gov/tobacco/documents/pubs/CostOfSmoking1999.pdf> (last accessed October 18, 2006).

⁴ Cal. Dep't Health Servs, Tobacco Control Sec., 30-Day Smoking Prevalence Among California Youth (March 2006).

WHEREAS, local zoning controls allow local governments to regulate the operation of lawful businesses to avoid circumstances which facilitate violations of state, federal, and local laws; and

WHEREAS, although it is unlawful to sell tobacco products to minors,⁵ 8.6 % of California retailers surveyed do sell to minors.⁶ In fact, despite laws in every state making it illegal to sell tobacco to minors, each year an estimated 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry \$480 million in profits from underage smokers;⁷ and

WHEREAS, the City has a substantial interest in ensuring that any person selling or exchanging tobacco products should be at least of a legal age to purchase such products; and

WHEREAS, the City has a substantial interest in promoting compliance with state laws prohibiting the sales of tobacco products to minors; in promoting compliance with federal, state and local laws intended to discourage the purchase of tobacco products by minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal.3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App.4th 383 (1993), have affirmed the power of local governments to regulate business activity in order to discourage violations of state law; and

WHEREAS, the California Constitution, Article XI, section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens; and

WHEREAS, a recent study found that 33% of tobacco underage sales took place within 1000 feet of a school⁸; and

⁵ Cal. Penal Code § 308 (West 1999).

⁶ Cal. Dep't Public Health, Tobacco Control Sec., Youth Tobacco Purchase Survey 2009 (survey results are available at <http://www.cdph.ca.gov/Documents/PH09-85-Tobacco-Sales-to-Minors-2009-Chart.pdf>). Note that the youth sale rate cited above is a statewide average. Youth sales rates for a particular city or county may be significantly higher. Check with your local tobacco prevention project, usually located in the county Health Department, to see if local figures are available.

⁷ Joseph R. DiFranza, MD & John J. Librett, MPH, *State and Federal Revenues from Tobacco Consumed by Minors*, 89(7) Am. J. Pub. Health 1106 (July 1999).

⁸Robert Lipton, Ph.D, *The Spatial Distribution of Underage Tobacco Sales and School Proximity in Los Angeles*, 43(11) *Substance Use & Misuse* (September 2008).

WHEREAS, zoning regulations are necessary to control the location and operation of the sale or exchange of tobacco products for the protection of public health, safety and welfare; and

WHEREAS, the City of Calabasas intends to restrict the location of tobacco retailers in the City for the protection of public health, safety, and welfare of children; and

SECTION II: Based on the foregoing, the City Council finds:

1. Notice of the April 14, 2010, City Council public hearing was posted at Juan de Anza Bautista Park, the Calabasas Tennis and Swim Center, Gelson's Market and at the Calabasas City Hall.
2. Notice of the April 14, 2010, City Council public hearing was published in *The Acorn* ten (10) days prior to the hearing.
3. Notice of the April 14, 2010, City Council public hearing included the information set forth in Government Code section 65009(b)(2).

SECTION III. In view of all the evidence and based on the foregoing findings, the City Council concludes as follows:

Section 17.76.050(B) Calabasas Municipal Code allows the Planning Commission to recommend and the City Council to approve a Development Code change provided that the following findings are made:

1. The proposed amendment is consistent with the goals, policies, and actions of the General Plan;

The proposed amendment meets this finding because it maintains and strengthens the policies of the General Plan that are intended to preserve a high quality of life. Specifically, one of the goals of the Land Use section of the General Plan is to "provide a distribution of land uses that maintains, yet also enhances the environmental, social, physical and economic well-being of Calabasas". The purpose of this amendment is to provide an adequate amount of physical separation between incompatible uses, such as tobacco product retailers and schools, which is consistent with the above mentioned goal.

2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City;

The proposed ordinance will not create a safety hazard or any condition that would negatively impact the public interest, health or welfare. In contrast, the

proposed code amendment strengthens the City's ability to preserve a high quality of life for its citizens. Therefore, the proposed amendment meets this finding.

3. The proposed amendment is in compliance with the provisions of the California Environmental Quality Act (CEQA).

The proposed amendment is categorically exempt from environmental review in accordance with section 15061(b)(3) of the CEQA Guidelines, General Rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. A Notice of Exemption has been prepared.

4. The proposed amendment is internally consistent with other applicable provisions of the Development Code.

The proposed amendment adds a new section to the development code, prohibiting the sale of tobacco within 500 feet of schools in the City of Calabasas. The proposed amendment does not conflict with any other provision of the Development Code, therefore, this project meets this finding.

SECTION IV. CODE AMENDMENT. Section 5.18.040 of the Calabasas Municipal Code is hereby amended to add a subsection B to read as follows:

"B. No registration may issue to authorize tobacco retailing within 500 feet of any primary or secondary school located in the City of Calabasas for such retailing is prohibited by section 17.12.225 of this code."

SECTION V. CODE AMENDMENT. A new section 17.12.225 is hereby added to Title 17 of the Calabasas Municipal Code to read as follows:

"17.12.225 Tobacco Retailing

Standards for tobacco retailing:

- A. Cigar and other Tobacco Product Stores, where allowed by section 17.11.010(F), shall be located no closer than 500 feet from any primary or secondary school located in the City of Calabasas.
- B. Tobacco retailing, as defined in section 5.18.020 of the Calabasas Municipal Code, shall not be permitted within 500 feet of any primary or secondary school located in the City of Calabasas.
- C. It shall be unlawful for any Person to act as a tobacco retailer in the City without first obtaining and maintaining a valid tobacco retailer's registration

pursuant to Chapter 5.18 of the Calabasas Municipal Code for each location at which that activity is to occur.

Distance between properties shall be measured from the property line of one property to that of another utilizing a straight line method."

SECTION VI. CODE AMENDMENT. Section 17.11.010 of the Calabasas Municipal Code is hereby amended as follows:

In the section labeled "Retail Stores" of the table entitled "Table 2-2 - Land Use Table", the row entitled "Cigar and other Tobacco Products Stores" shall include "17.12.225" under the column heading "See standards in section".

SECTION VII. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Calabasas hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION VIII. EFFECTIVE DATE. This ordinance shall take effect thirty days after its passage and adoption pursuant to California Government Code section 36937.

SECTION IX. CERTIFICATION. The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published or posted according to law.

PASSED, APPROVED AND ADOPTED, this ____ day of _____ 2010.

Barry Groveman, Mayor

ATTEST:

Gwen Peirce, City Clerk

APPROVED AS TO FORM:

Michael G. Colantuono, City Attorney