

Attachment D

Amendments to Title 5
(Business Licenses and
Regulations), Proposed Redlined
Code Changes

Chapter 5.55 **Tobacco Retailer Businesses**

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5.55.005 Findings and Purpose.

It is the purpose and intent of this chapter to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, particularly those that prohibit or discourage the sale or distribution of tobacco products to minors. This chapter is not intended to expand or limit the scope of conduct regulated by federal or state law, nor to alter any penalties provided under such laws.

The restrictions and requirements of this chapter are further intended to reduce the burden on the Police Department and to allow for the more effective deployment of law enforcement resources toward the prevention of more serious crimes.

5.55.010 Definitions.

“Control” means the ability, directly or indirectly, to influence the management, policies, or operations of a business, whether through ownership, contract, financial arrangement, lease, employment relationship, or otherwise.

“Electronic smoking device” means any electronic or battery-operated device that simulates smoking and can be used to deliver an inhaled dose of nicotine or any other substance in aerosolized or vaporized form, including any component, part, or accessory used in the preparation or operation of such device. This term includes, but is not limited to, electronic cigarettes, cigars, cigarillos, pipes, vape pens, hookahs, vaporizers, and atomizers. It does not include nicotine replacement or cessation products approved by the United States Food and Drug Administration.

“Flavored tobacco product” shall have the same meaning as set forth in Section 6.30.010.

“Nitrous oxide” shall have the same meaning as set forth in Section 6.040.010.

“Permittee” means any person or proprietor who holds a valid tobacco retailer’s permit issued pursuant to this chapter.

“Proprietor” means any person with an ownership or managerial interest in a business. An ownership interest exists if a person, directly or indirectly, holds ten percent (10%) or more of the business’s stock, equity, or right to share in profits or residual distributions, excluding any security or debt interest. A managerial interest exists if a person exercises, or shares, control over the business’s day-to-day operations.

“Sell” or “sale” shall have the same meaning as set forth in Section 6.30.010.

“Smoke” or “Smoking” shall have the same meaning as set forth in Section 6.25.010.

“Tobacco paraphernalia” means cigarette papers or wrappers, blunt wraps as defined in California Penal Code Section 308, pipes, holders of smoking materials of all types, cigarette rolling machines, or any other instruments or items designed or marketed for the consumption, preparation, storing, use, smoking or ingestion of tobacco products.

“Tobacco product” shall have the same meaning as set forth in Section 6.30.010. Notwithstanding anything to the contrary in Section 6.30.010, “tobacco product” includes any component, part, or accessory intended to be used with a tobacco product, whether or not sold separately.

“Tobacco product flavor enhancer” has the meaning set forth in California Health and Safety Code Section 104559.5(a)(18).

“Tobacco retailer business” shall have the same meaning as set forth in Section 20.70.020.

“Tobacco retailing” shall mean the doing of any of the activities associated with a “tobacco retailer business” as defined in Section 20.70.020. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

“Tobacco retailer’s permit” means a permit issued by the Chief of Police authorizing a specific location to engage in tobacco retailing. Issuance of a permit does not constitute a determination of compliance with all applicable laws. A permit may be suspended or revoked pursuant to this chapter.

5.55.015 Requirements of Operation.

A. Tobacco Retailer's Permit Requirement. Except as provided in subsection (E), no person shall own, operate, or otherwise conduct a tobacco retailer business within the City without first obtaining and maintaining a valid tobacco retailer's permit for each location at which such business operates.

B. Zoning and Land Use Restrictions. Permits shall not be issued for locations that violate Title 20 or Title 21 of this Code and shall only be located in zoning districts where retail sales are a permitted use.

C. Prohibited Business Types. A tobacco retailer's permit shall not be issued or renewed for any premises licensed by the state for on-site alcohol consumption, or for any restaurant or business that offers food for on-site consumption.

D. Location Requirements. Tobacco retailer businesses shall comply with the following minimum separation requirements:

1. One thousand (1,000) feet from another permitted tobacco retailer business;
2. Five hundred (500) feet from any public or private school, day care center, park, playground, hospital, or youth center; and
3. Five hundred (500) feet from any residential zoning district.

Distances required by this subsection shall be measured in a straight line, without regard to intervening structures, from the closest property line of the parcel on which the tobacco retailer business is located to the closest property line of the zoning district, property, or use.

E. Nonconforming Use Exception. A tobacco retailer business lawfully operating as of the effective date of this chapter is exempt from the location and zoning requirements set forth in subsections (B), (C), and (D) of this section and may continue operating under the following conditions:

1. A tobacco retailer's permit application is filed within sixty (60) calendar days of the effective date of this chapter.
2. The tobacco retailer's permit is timely issued and renewed in accordance with Section 5.55.025.

3. After obtaining a permit, the tobacco retailer business does not cease operations for more than sixty (60) consecutive calendar days.

4. After obtaining a permit, the tobacco retailer business complies with Section 20.38.050.

F. Legal non-conforming. Except as otherwise provided in this chapter, a tobacco retailer's permit issued under subsection (E) of this section shall be treated as a legal nonconforming use pursuant to Section 20.38.050 of the Code and subject to its provisions and limitations.

G. Permit is Conditional. A tobacco retailer's permit confers a limited, revocable privilege to operate at the specified location and does not create a vested right or supersede any other applicable law.

5.55.020 Application for Tobacco Retailer's Permit.

A. Application Procedure.

1. Applications shall be submitted on forms provided by the City and include a non-refundable fee as set by City Council resolution.

2. Each application shall include, at minimum, the following:

a. Full legal name, date of birth, government-issued identification number, mailing address, phone number, and email for each proprietor;

b. Business name, address, phone number, and hours of operation;

c. Disclosure of any prior permit suspensions or revocations under this chapter, including dates and reasons;

d. Proof of a valid state tobacco retailer license from the California Department of Tax and Fee Administration;

e. Any other information deemed necessary by the Chief of Police for administration or enforcement purposes; and

f. A signed certification by each proprietor under penalty of perjury affirming the accuracy of the information provided and compliance with this chapter.

B. Change of Information. The applicant/permittee shall notify the Chief of Police in writing of any change to the information submitted in the application within ten (10) calendar days.

C. Non-Transferability. A tobacco retailer's permit is non-transferable and may not be assigned to any other person, proprietor, or location. Any attempted transfer is void. A new application is required for any change in ownership or location.

5.55.025 Tobacco Retailer's Permit Issuance and Renewal.

A. Tobacco Retailer's Permit Review and Issuance. The Chief of Police shall review each completed application and may conduct any investigation necessary to determine compliance with this chapter and applicable laws. A permit may be denied or not renewed upon a determination that any of the following conditions exist:

1. The application is materially incomplete or contains inaccurate, false, fraudulent, or misleading information.
2. Except as provided in Section 5.55.015, the applicant/proprietor seeks authorization for tobacco retailing that is prohibited, unlawful or violates this chapter or other applicable local, state, or federal law or regulation.
3. The applicant/proprietor has unresolved outstanding fines, penalties, fees, or taxes owed to the City in connection with tobacco retailing activities.
4. The applicant/proprietor has had a City tobacco retailer's permit or California tobacco retailer's license revoked in the preceding five (5) years.
5. Except as provided in this subsection, the business location has had a City tobacco retailer's permit or California tobacco retailer's license revoked within the preceding five (5) years.
 - a. The City Manager may waive or modify the restriction upon a determination that the purposes of this chapter would not be undermined, including, but not limited to, where there has been a bona fide change in ownership and adequate safeguards are in place to prevent future violations.
 - b. The applicant bears the burden of demonstrating that any transfer of ownership is bona fide and at arm's length. The City may require disclosure of prior ownership interests, management control, financial arrangements, and any other information necessary to determine whether a genuine change in control has occurred. A transfer shall not be deemed bona fide where the prior owner retains any direct or indirect ownership interest, financial interest, management role, or control over the business or its operations.

6. Issuance or renewal of the permit would be contrary to the public health, safety, or welfare, based on specific, articulable facts demonstrating a reasonable nexus to increased risk of unlawful tobacco sales, youth access, or prior violations.

Any approved permit may be subject to reasonable conditions that are related to ensuring compliance with this chapter and protecting public health, safety, and welfare.

B. Tobacco Retailer's Permit Term and Renewal.

1. A permit is valid for one (1) year from the date of issuance and shall be renewed annually to continue operation as a tobacco retailer business.

2. To maintain continuity, renewal applications should be submitted at least thirty (30) days before expiration.

Unless the City Manager determines there is good cause to grant an extension, a permit that is not timely renewed shall expire automatically at midnight on the expiration date. Upon expiration, all tobacco retailing shall immediately cease, and a new application shall be required.

5.55.030 Prohibitions and Requirements.

A. Compliance with Laws. Except as provided in Section 5.15.015 (E), a tobacco retailer business shall comply with all applicable local, state, and federal laws, including those relating to zoning, building, fire, public health, safety, and tobacco control.

B. Fixed Location Required. Tobacco retailing shall occur only from a fixed, permanent location. Retailing from vehicles, temporary structures, or mobile operations is prohibited.

C. Prohibited Products and Activities. The following items shall not be sold, distributed, displayed, furnished, administered, exchanged, given away, or possessed with the intent to sell or offered for sale by any tobacco retailer's business:

1. Nitrous oxide or any device used to dispense it as defined by local, state or federal law;

2. Cannabis, cannabis products, or edible cannabis products as defined in Chapter 10.70;

3. Flavored tobacco products and tobacco product flavor enhancers, as prohibited under local, state or federal law, including Chapter 6.30;

4. Imitation tobacco products, including, but not limited to, candy cigarettes and bubble gum cigars;

5. Disguised vape or electronic smoking devices, including, but not limited to, those made to look like USB drives, pens, markers, phone cases, watches, lipstick, remote keys or other non-tobacco items; and/or

6. Any product, device, or item that is designed, marketed, or intended to evade or circumvent the prohibitions set forth in this chapter.

D. Minimum Age of Employees. No person under the minimum legal age determined by the stricter of state or federal law for purchasing or possessing tobacco products may engage in or assist with tobacco retailing.

E. Government Identification. No tobacco product or tobacco paraphernalia shall be sold unless the tobacco retailer business first verifies, by examining valid government-issued photo identification, that the purchaser meets the minimum legal age, under the stricter of state or federal law, for purchasing or possessing tobacco products.

F. Storage. All tobacco products shall be stored in a manner that prevents direct customer access without employee assistance.

G. Packaging, Labeling, and Pricing.

1. Tobacco products shall be sold in the original manufacturer's packaging, compliant with all federal and state labeling, tax, and child-resistant packaging laws.

2. Prices shall be clearly displayed on the product or nearby shelf or signage.

H. Display of Licenses and Permits. The tobacco retailer's permit and all required state or federal licenses shall be prominently displayed within five (5) feet of the point of sale.

I. Premises Regulations.

1. A tobacco retailer business shall maintain a clearly designated front entrance for customers. All non-emergency public access shall occur through this entrance.

2. Front entrance doors of a tobacco retailer business shall remain unlocked during regular business hours.

J. Signage Compliance. A tobacco retailer business shall comply with all signage requirements in Title 20 of the Code and all applicable state and federal laws related to tobacco warnings, age restrictions, and advertising. No more than twenty (20) percent of the total transparent area of a tobacco retailer business storefront windows and doors may be covered by signage. All signage shall be placed to maintain a clear and unobstructed view of the interior of the premises including, but not limited to, the point-of-sale area, from the exterior.

5.55.035 Compliance Monitoring and Right of Entry.

The City may enter any permitted tobacco retailer during regular business hours, or at any other reasonable time, to conduct reasonable inspections to ensure compliance with this chapter and applicable laws. Inspections shall be limited to areas open to the public or reasonably necessary to verify compliance and may be routine, unannounced, or complaint based. Refusal to permit entry, or any act that delays or interferes with an inspection, constitutes a violation of this chapter.

5.55.040 Violations – Suspension, Revocation, and Seizure.

A. Grounds for Enforcement. In addition to any other remedies provided by law, the Chief of Police or City Manager may suspend or revoke a tobacco retailer’s permit upon a finding, by a preponderance of the evidence, that one or more of the following has occurred:

1. The permittee or proprietor submitted a tobacco retailer permit application that contained inaccurate, false, fraudulent, or misleading information;
2. The permittee, proprietor, or any employee has violated any provision of this chapter or any condition of the permit;
3. The permittee, proprietor, or any employee has violated any local, state, or federal law governing tobacco products or tobacco retailing; or
4. The permittee, proprietor, or any employee has been convicted of, or has pled guilty or no contest to, a violation of local, state, or federal law constituting a felony, and the violation is directly and substantially related to the operation of the tobacco retailer business.

Any decision to suspend or revoke a tobacco retailer’s permit may be appealed pursuant to Section 5.55.045.

B. Conditions During Suspension or Revocation. During a suspension or revocation period:

1. All tobacco products and related items shall be removed from customer view and stored in a secure, non-public area; and
2. A City-issued notice shall be posted at all public entrances and points of sale, stating the reason and duration of the enforcement action.

C. Seizure. Tobacco products and tobacco paraphernalia offered for sale are subject to immediate seizure by the Chief of Police if there is probable cause to believe that a violation of this chapter or any permit condition has occurred. The permittee and any other owner of the seized items shall be provided written notice of the seizure and informed of the right to appeal in accordance with Section 5.55.045. Seized items shall be forfeited unless the permittee or owner of the seized items successfully demonstrates, through the appeal process, that the items were not offered for sale in violation of this chapter.

Forfeited tobacco products and tobacco paraphernalia shall be destroyed after all administrative appeals have been exhausted and the time to seek judicial review pursuant to Chapter 1.10 or other applicable law has expired without the filing of a lawsuit, or, if such a lawsuit is filed, after final judgment is entered.

D. Attribution of Employee Conduct. For purposes of this section, violations by employees shall be attributed to the permittee.

5.55.045 Suspension, Revocation, Denial, Seizure, and Appeal.

A. Notice of Action. Fifteen (15) calendar days prior to the effective date of a denial, suspension, or revocation of a tobacco retailer's permit, or fifteen (15) calendar days following the seizure of items under this chapter, the Chief of Police shall provide written notice to the applicant or permittee. The notice shall include:

1. The specific grounds for the action;
2. A summary of the supporting facts and applicable code provisions; and
3. Instructions for requesting an administrative review pursuant to this section.

B. Appeal.

1. The applicant or permittee may request an administrative review by the City Manager within fifteen (15) calendar days of service of the notice, in accordance with Section 1.08.080, by filing an appeal with the City Clerk.

2. The City Manager may affirm, modify, or reverse the decision, or impose conditions or alternative remedies, based on the record and any additional information deemed relevant to the purposes of this chapter.

3. Decisions under this section shall be upheld if supported by substantial evidence in the record.

4. The City Manager may consider the totality of the circumstances and the purposes of this chapter in making determinations.

5. The City Manager may consider any relevant evidence, whether or not it would be admissible in a court of law.

6. The decision of the City Manager shall be final as to the City but subject to judicial review pursuant to California Code of Civil Procedure Section 1094.5.

C. Failure to Participate. Failure of the appellant to appear at the appeal hearing shall be deemed a withdrawal of the appeal and a waiver of the right to exhaust administrative remedies.

5.55.050 Enforcement.

A. Suspension or Revocation of Tobacco Retailer's Permit. A violation of, or failure to comply with, any provision of this chapter may result in one or more of the following administrative actions, as determined by the Chief of Police or City Manager based on the severity and circumstances of the violation:

1. For the first violation within a five (5) year period, the tobacco retailer's permit may be suspended for up to thirty (30) calendar days.

2. For the second violation within a five (5) year period, the tobacco retailer's permit may be suspended for up to ninety (90) calendar days.

3. For a third or subsequent violation within a five (5) year period, the permit may be suspended for up to one hundred and eighty (180) days or revoked.

B. Aggregation of Violations. For purposes of enforcement, violations occurring at multiple locations that have a common permittee, or proprietor may be aggregated and treated as violations of a single permittee where there is common ownership or control and a demonstrated pattern of noncompliance.

C. Remedies. The remedies provided in this chapter are in addition to any other remedies available under local, state, or federal law. Nothing in this chapter limits the City's authority to pursue any available legal remedy, including, but not limited to, nuisance abatement or, permit suspension or revocation, or enforcement under Chapter 20.68 of the Code.

D. City Manager Authority. The City Manager shall have authority to interpret, implement, and enforce this chapter, including the authority to impose conditions, grant

modifications, and make determinations necessary to carry out its purposes. The City Manager shall determine the extent to which any provision of this chapter is preempted by state or federal law and may modify or suspend enforcement accordingly.