

7-8.3. Requirements and Prohibitions

- (a) Tobacco Retailer's License Required. 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 license pursuant to this section for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law.
- (b) Lawful Business Operation. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this section for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to tobacco products, or tobacco retailing.
- (c) Display of License. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- (d) Positive Identification Required. No person engaged in tobacco retailing shall sell or transfer a tobacco product to another person who appears to be under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco product or tobacco paraphernalia.
- (e) Minimum Age for Persons Selling Tobacco. ~~No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in tobacco retailing.~~ No Person who is younger than 18 years of age shall engage in Tobacco Retailing.
- (f) Self-Service Displays Prohibited. Tobacco retailing by means of a self-service display is prohibited.
- (g) False and Misleading Advertising Prohibited. A tobacco retailer without a valid tobacco retailer license or a proprietor without a valid tobacco retailer license, including, for example, a person whose license has been suspended or revoked:
 - (1) Shall keep all tobacco products out of public view. The public display of tobacco products in violation of this provision shall constitute tobacco Retailing without a license under Section 7-8.12; and
 - (2) Shall not display any advertisement relating to tobacco products that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

- (h) Flavored Tobacco Products. No tobacco retailer shall sell a tobacco product containing, as a constituent or additive, an artificial or natural flavor (other than tobacco or menthol) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or smoke produced by the tobacco product unless (1) the tobacco product consists of a package of cigars containing at least five cigars or more, or (2) the tobacco product consists of a single cigar for which the retail price exceeds five dollars (\$5.00), or (3) the tobacco product consists of pipe tobacco, or (4) the tobacco product consists of a package of chewing tobacco or snuff containing at least five units or more.
- (i) Minimum Pack Size for Cigars. Notwithstanding any other provision of this section, it shall be a violation of this section for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:
- (1) Any single cigar, whether or not packaged for individual sale;
 - (2) any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer; or
 - (3) Any package of cigars containing fewer than five Cigars.

This subsection (i) does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars (\$5.00).

- (j) Pharmacies Cannot Sell Tobacco Products. ~~No license may be issued to authorize tobacco retailing in a pharmacy.~~ No license may be issued to authorize tobacco retailing in a pharmacy and no pharmacy shall engage in tobacco retailing at any time.

7-8.4. Application Procedure.

- (a) Application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct or conducting retail tobacco sales, and shall be signed by each proprietor or an authorized agent thereof.

It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retailer's license. No proprietor may rely on the issuance of a license as a determination by the city that the proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this section, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to subsection 7-8.12 of this section. Nothing in this section shall be construed to vest in any person obtaining and maintaining a tobacco retailer's

license any status or right to act as a tobacco retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the department and shall contain the following information:

- (1) The name, address, and telephone number of each proprietor of the business seeking a license.
 - (2) The business name, address, and telephone number of the single fixed location for which a license is sought.
 - (3) A single name and mailing address authorized by each proprietor to receive all communications and notices (the "authorized Person and address") required by, authorized by, or convenient to the enforcement of this section. If an authorized person and address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.
 - (4) Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
 - (5) Such other information as the department deems necessary for the administration or enforcement of this section as specified on the application form required by this section.
- (b) A licensed tobacco retailer shall inform the department in writing of any change in the information submitted on an application for a tobacco retailer's license within ten business days of a change.
 - (c) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code §6250 et seq.) or any other applicable law, subject to the laws' exemptions.
 - (d) ~~Tobacco retailers in existence on the enforcement date specified in subsection 7-8.14 shall apply for a license within 90 days of said enforcement date.~~ Tobacco retailers in existence on the enforcement date specified in section 7-8.14 shall apply for a license during the 2019 business license renewal process which will be due on or before January 1, 2019. Existing tobacco retailers will then apply annually during the business license renewal process.

7-8.5. Issuance of License.

(a) Bases for Denial. Upon the receipt of a complete application for a tobacco retailer's license and the license fee required by this section, the department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

(1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this section.

(2) The application seeks authorization for tobacco retailing at a location for which this section prohibits issuance of tobacco retailer licenses. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the city with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an arm's length transaction.

(3) The application seeks authorization for tobacco retailing for a proprietor to whom this section prohibits a license to be issued.

(4) The application seeks authorization for tobacco retailing at a location, that is unlawful pursuant to this Code, including without limitation, zoning ordinance and building code, or that is unlawful pursuant to any other law.

(b) Appeal of Denial.

Subject to Section 7-8.11(c), a decision of the department to deny a license is appealable to the city council and any such appeal must be filed in writing with the city clerk within 15 days of the department's denial of the issuance of the license and the applicable appeal fee must be paid.

7-8.6. License Renewal and Expiration.

(a) Renewal of License. ~~A tobacco retailer's license is invalid if the appropriate license fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is one calendar year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than November 30 of each year, commencing November 30, 2018, and annually thereafter.~~ A tobacco retailer's license is invalid if the appropriate license fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is one calendar year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than January 1st of each year and annually thereafter.

(b) Expiration of License. A tobacco retailer's license that is not timely renewed shall expire on December 31 of each year. To renew a license not timely renewed pursuant to subparagraph (a), above, the Proprietor must:

- (1) Submit the license fee and the renewal form; and
- (2) Submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed.

7-8.7. *Transfer Restrictions.*

- (a) A tobacco retailer's license may not be transferred from one location to another.
- (b) A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietor(s).
- (c) Notwithstanding any other provision of this section, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless: the new proprietor(s) provide the department with clear and convincing evidence that the new proprietor(s) have acquired or are acquiring the location in an arm's length transaction.

7-8.8. *License Conveys a Limited, Conditional Privilege.*

Nothing in this section shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the city identified on the face of the license. For example, nothing in this section shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code including without limitation, the zoning ordinance and building codes, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a tobacco retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

7-8.9. *Fee for License.*

The fee to issue or to renew a tobacco retailer's 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 section, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this section. Fees are nonrefundable except as may be required by law.

7-8.10. *Compliance Monitoring.*

- (a) Compliance with this section shall be monitored by the department. In addition, any peace officer may enforce the penal provisions of this section. The department may designate any number of additional persons to monitor compliance with this section.
- (b) The Department will work with Marin County Tobacco Program to inspect each tobacco retailer at least one time per 12-month period. Nothing in this paragraph shall create a right of action in any licensee or other person against the city or its agents.
- (c) 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 an inspection supervised by a peace officer, code enforcement official, or the person designated by the city to monitor compliance with this section;
 - (2) The Youth Decoy is acting as an agent of a person designated by the City to monitor compliance with this section; or
 - (3) The youth Decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the County of Marin Department of Health & Human Services or the California Department of Health Services.

7-8.11. Suspension or Revocation of License.

- (a) Suspension or Revocation of License for Violation. In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended or revoked if any court of competent jurisdiction determines, or the department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this section or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 7-8.3 above.
- (1) Upon a finding by the department of a first violation, ~~of this section at a location within any 60-month period, the license shall be suspended for 30 days.~~ the tobacco retailer will be issued a warning.
- (2) Upon a finding by the department of a second violation of this section at a location within any 60-month period, the license shall be suspended for ~~for 90 days~~ 30 days.
- (3) Upon a finding by the department of a third violation of this section at a location within any 60-month period, the license shall be suspended ~~the license shall be suspended for one year~~ for ninety (90) days.
- (4) Upon a finding by the department of ~~four or more violations of this section at a location within any 60-month period, the license shall be revoked.~~ a fourth violation of this section at a location within any 60-month period, the license shall be suspended for one year.
- (5) Upon a finding by the Department of five or more violations of this section at a location within any sixty 60-month period, the license shall be revoked.
- (b) Appeal of Suspension or Revocation. A decision of the department to suspend or revoke a license is appealable to the city council and any appeal must be filed in writing with the city clerk within 15 days of mailing of the department's decision and the applicable appeal fee must be paid. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to the city council is not available for a revocation made pursuant to subsection (c) below.
- (c) Revocation of License Wrongly Issued. A tobacco retailer's license shall be revoked if the department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 7-8.5 existed at the time application was made or at any time before the license issued. The decision by the department shall be the final decision of the city. Such a

revocation shall be without prejudice to the filing of a new license application.

- (d) **Judicial Action to Challenge.** Any final administrative action to suspend or revoke a tobacco retailer's license under this section shall be subject to judicial review pursuant to California Government Code section 53069.4, which, among other things, requires such a judicial challenge to be brought within 20 days of service of the final decision.

7-8.12. Tobacco Retailing Without a Valid License.

- (a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the city council finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows:

- (1) After a first violation of this section at a location within any 60-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until 30 days have passed from the date of the violation.
- (2) After a second violation of this section at a location within any 60-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until 90 days have passed from the date of the violation.
- (3) After a third or subsequent violation of this section at a location within any 60-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until 60 months have passed from the date of the violation.

- (b) Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this section are subject to seizure by the department or any peace officer and shall be forfeited after the licensee and any other owner of the tobacco products and tobacco paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the tobacco products and tobacco paraphernalia were not offered for sale or exchange in violation of this section. The decision by the department may be appealed pursuant to the procedures set forth in section 7-8.11(b). Forfeited tobacco products and tobacco paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has

expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

- (c) For the purposes of the civil remedies provided in this section, each of the following constitutes a separate violation of this section:
 - (1) Each day on which a tobacco products and tobacco paraphernalia is offered for sale in violation of this section; or
 - (2) Each individual retail tobacco product and each individual retail item of tobacco paraphernalia that is distributed, sold, or offered for sale in violation of this section;

7-8.13. Additional Remedies.

- (a) The remedies provided by this section are cumulative and in addition to any other remedies available at law or in equity.
- (b) Whenever evidence of a violation of this section is obtained in any part through the participation of a person under the age of 21 years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this section and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (c) Violations of this section are subject to a civil action brought by the city attorney, punishable by a civil fine not less than two hundred fifty dollars (\$250.00) and not exceeding one thousand dollars (\$1,000.00) per violation.
- (d) Violations of this section may, in the discretion of the city attorney, may be prosecuted as infractions or misdemeanors when the interests of justice so require.
- (e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this section shall also constitute a violation of this section.
- (f) Violations of this section are hereby declared to be public nuisances.
- (g) In addition to other remedies provided by this section or by other law, any violation of this section 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.

7-8.14. *Enforcement.* ~~This section shall not be enforced by the city until January 1, 2018.~~ This section shall not be enforced by the City until January 1, 2019 with the exception of subsection 7-8.3,j which shall be enforced as of the effective date of this ordinance.