



Jesse Arreguín
City Councilmember, District 4

CONSENT CALENDAR
September 15, 2015

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Prohibit Sales of Tobacco Products to Persons Under the Age of 21

RECOMMENDATION

Direct the City Manager and Community Health Commission to draft an ordinance amending Berkeley Municipal Code Chapter 9.80 "Tobacco Retailers" to prohibit the sales of tobacco products and smoking paraphernalia to persons under the age of 21.

BACKGROUND

A 2014 report by the U.S. Surgeon General states that 88% of adults started smoking before they were 18. While the use of tobacco has reduced dramatically over the past 50 years, there has been a slowdown in that decline due to the proliferation of alternative tobacco and nicotine products such as e-cigarettes (the percentage of middle and high school students using e-cigarettes doubled between 2011-2012).

Healdsburg became the first city in California to raise the age to buy tobacco products from 18 years old to 21 years old, passing the groundbreaking law in October 2014. Other cities across the country, most notably New York City in 2013, have also passed similar ordinances. In June 2015, the State of Hawaii passed a law increasing the age to buy and use tobacco products to 21 years old. Cities and regions that passed such laws have seen a decrease in the use of tobacco products, especially among minors.

Berkeley has long been a leader in tobacco control and in improving the health of its residents. Berkeley was one of the first cities to ban the use of tobacco products in public spaces, well before the statewide ban. It has also passed laws to prohibit the sale of tobacco products in pharmacies (BMC Section 9.80.035), protecting the health and air quality of tenants of multi-unit apartments (BMC Section 12.70.035) and more recently banning the use of e-cigarettes in public spaces. Prohibiting the sales of tobacco products to persons under the age of 21 will significantly improve the health of our residents, especially Berkeley's youth.

ENVIRONMENTAL SUSTAINABILITY

Increasing the age at which tobacco products can be sold to 21 will reduce the amount of tobacco waste. This will reduce the amount of toxic litter entering storm drains and into the San Francisco Bay, helping improve water quality and wildlife in the Bay.

FINANCIAL IMPLICATIONS

Staff time

CONTACT PERSON

Jesse Arreguin, Councilmember, District 4 (510) 981-7140

Attachments:

- 1: October 20, 2014 Report to Healdsburg City Council on Tobacco Ordinance
2. City of Healdsburg Ordinance



Meeting Date: October 20, 2014

Agenda Item No: 8.B.

Prepared By: Marjie Pettus, City Manager

REQUEST FOR CITY COUNCIL ACTION

SUBJECT:

Discussion and consideration of an ordinance to require a Tobacco Retailer License for the sale of tobacco and tobacco-related products and changing the age to purchase tobacco products to twenty one.

STRATEGIC INITIATIVE:

Quality of Life

RECOMMENDED ACTION(S):

Consider waiving full reading of the text and introducing for first reading an Ordinance revising the Healdsburg Municipal Code to amend Chapter 8.24, "Public Smoking and Tobacco Sales," and add Chapter 8.26 titled "Tobacco Retailers" requiring licensure of tobacco retailers and changing the age to purchase tobacco products to twenty one

BACKGROUND:

On October 7, 2013, the City Council received public comment about the negative health effects of tobacco smoking and the addictive nature of electronic cigarettes. Dr. David Anderson asked the Council to consider passing more restrictive rules pertaining to tobacco and tobacco related products. It was the Council's consensus to agendize the matter for further discussion at an upcoming meeting. On December 2, 2013, the City Council discussed possible amendments to the Healdsburg Municipal Code pertaining to the sale of tobacco products, e-cigarettes, and smoking. The City Attorney was asked to research if any other cities in California have adopted regulations that prohibit sales of tobacco products including e-cigarettes to anyone under the age of 21. Staff was directed to prepare an ordinance amending the City's ban on the smoking of tobacco products in public places (and certain places of employment) to include a ban on the use of e-cigarettes. The City Council adopted two smoking-related ordinances on April 21, 2014. One ordinance amended the municipal code to prohibit electronic smoking devices in public and places of employment. The second ordinance established a temporary moratorium for e-cigarette lounges and vapor bars. Subsequent to these actions the City Council, on a 4-1 vote, directed staff to return with an ordinance that would require a retail license to sell tobacco products and increase the age to acquire tobacco products.

DISCUSSION/ANALYSIS:

Approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death. In California, the legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority. Nonprofit organizations and business groups have also called for more restrictions related to tobacco products. For example, the Tobacco Education and Research Oversight Committee for California, as well as the American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for the adoption of state and local prohibitions of tobacco sales in drug stores and pharmacies. The City has a substantial interest in discouraging the illegal purchase of tobacco products by minors and protecting children from being lured into illegal activity through the misconduct of adults. Studies have shown that young adults aged 18 to 20 are more likely than adults over age 21 to purchase tobacco for minors. In addition, at least one study demonstrated that tobacco use among California youth and young adults would significantly decline over the next 50 years if the minimum purchase age were raised to 21. State law explicitly permits cities and counties to enact local tobacco retail licensing ordinances. It also allows for the suspension or revocation of the license for violation of any state tobacco control

law. Currently there are over 100 cities and counties in California that have passed tobacco retailer licensing ordinances. These ordinances have dramatically reduced youth access to cigarettes.

The City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City, to protect the health, safety, and welfare of our residents. It is believed that requiring Healdsburg retailers to acquire a tobacco retailer license to discourage violations of federal, state, and local tobacco-related laws will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults.

Chapter 8.24 of the Healdsburg Municipal Code details the rules and regulations for public smoking and tobacco sales. To accomplish Council's intent to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, the following revisions to the Healdsburg Municipal Code are proposed:

1. Amend Chapter 8.24 to only address public smoking; and
2. Add Chapter 8.26, entitled "Tobacco Retailers", which would include all the provisions regarding sale of tobacco products.

As proposed, this ordinance amendment:

- Requires all tobacco retailers to obtain and maintain a valid Tobacco Retailers License.
- States that a violation of the license will occur if any local, state, or federal law applicable to tobacco products, smoking paraphernalia, or tobacco retailing is violated.
- Prohibits licensees to sell, give, or in any way furnish tobacco products and smoking paraphernalia to another person who is under the age of 21. Prohibits self-service display for tobacco products.
- Prohibits the sale of tobacco products in any retail establishment with a pharmacy. Requires monitoring of this Chapter.
- Allows the City to establish a fee for the Tobacco Retailers License.
- Authorizes the suspension or revocation of the Tobacco Retailers License for violations of this Chapter.

ENVIRONMENTAL ANALYSIS:

The ordinance requiring a retail license to sell tobacco products and increasing the age to purchase products to 21 is a matter of general policy making and has no potential for resulting in either a direct physical change in the environment, or a reasonably indirect physical change in the environment, and is therefore not a project for purposes of the California Environmental Quality Act and Title 14 of the California Code of Regulations and no further CEQA or environmental review is required.

FISCAL IMPACT:

The licensing process and annual inspection of businesses selling tobacco products is estimated to cost \$450 per business. These costs may be recovered in full by establishing a Tobacco Retailer License fee.

ALTERNATIVES:

The City Council could request additional information and continue the consideration of the ordinance to a later date or decide not to adopt the ordinance.

ATTACHMENTS:

- | Description |
|--------------------------------------|
| ▫ Proposed Ordinance |

CITY OF HEALDSBURG

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG REVISING THE HEALDSBURG MUNICIPAL CODE TO AMEND CHAPTER 8.24, "PUBLIC SMOKING AND TOBACCO SALES" AND TO ADD CHAPTER 8.26 TITLED "TOBACCO RETAILERS" REQUIRING THE LICENSURE OF TOBACCO RETAILERS

WHEREAS, based in part on the information contained in this section, the City Council finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the City of Healdsburg; and

WHEREAS, the City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City, to protect the health, safety, and welfare of our residents; and

WHEREAS, approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death; and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority; and

WHEREAS, State law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and

WHEREAS, California courts have affirmed the power of the City to regulate business activity to discourage violations of law. See, e.g., *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010); and

WHEREAS, despite the State's and City's efforts to limit youth access to tobacco, minors are still able to access cigarettes; and

WHEREAS, over 100 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from using tobacco and such ordinances have dramatically reduced youth access to cigarettes; and

WHEREAS, a requirement for a tobacco retailer license will allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws and will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults; and

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

WHEREAS, studies have shown that young adults aged 18 to 20 are more likely than adults over age 21 to purchase tobacco for minors; and

WHEREAS, at least one study demonstrated that tobacco use among California youth and young adults would significantly decline over the next 50 years if the minimum purchase age were raised to 21; and

WHEREAS, The Tobacco Education and Research Oversight Committee for California, as well as the American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for the adoption of state and local prohibitions of tobacco sales in drug stores and pharmacies; and

WHEREAS, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City, to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

NOW, THEREFORE, the City Council of the City of Healdsburg does ordain as follows:

SECTION 1. Text of Amendment. Title 8 of the Healdsburg Municipal Code is hereby revised to amend Chapter 8.24, “Public Smoking and Tobacco Sales” and add Chapter 8.26, “Tobacco Retailers,” as shown in Exhibit A attached hereto and incorporated herein by reference.

SECTION 2. Findings. The above recitals are hereby declared to be true and correct findings of the City Council of the City of Healdsburg.

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state legislation, such decision or legislation shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Healdsburg hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to any such decision or preemptive legislation.

SECTION 4. Compliance with the California Environmental Quality Act. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”)

pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) because it has no potential for resulting in physical change to the environment, either directly or indirectly.

SECTION 5. Effective date: This Ordinance of the City of Healdsburg shall be effective thirty (30) days after the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance or a summary thereof as provided in Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the City of Healdsburg, along with the names of the City Council voting for and against its passage.

INTRODUCED by the City Council of the City of Healdsburg on the 20th day of October, 2014 and PASSED and APPROVED on the ____ day of _____, 2014 by the following vote:

AYES: Councilmembers: ()

NOES: Councilmembers: ()

ABSENT: Councilmembers: ()

ABSTAINING: Councilmembers: ()

SO ORDERED

ATTEST

James D. Wood, Mayor

Maria Curiel, City Clerk

Exhibit A

Added text shown with underlining; deleted text shown with ~~strikeout~~

1. The title of Chapter 8.24 is amended as follows:

Chapter 8.24, Public Smoking ~~and Tobacco Sales~~

2. Section 8.24.020 is amended as follows:

8.24.020 Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning.

A. “Bar” means a separate establishment which is devoted to the serving of alcoholic beverages and in which the serving of food is incidental to the consumption of such beverages, including cocktail lounge or tavern. A bar, cocktail lounge, or tavern which is in the same building as and part of a restaurant is not considered under this definition of a bar, except if physically separated by full walls from the remaining room(s) of the restaurant and in which no person under the age of 18 years is allowed to enter, except to travel to restroom facilities or a nonbar portion of the restaurant.

B. “Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold, as well as professional corporations and other entities under which professional services are delivered.

C. “City” shall mean the City of Healdsburg.

D. “Electronic smoking device” means a device that can provide an inhalable dose of nicotine or other substances by delivering a vaporized solution.

E. “Employee” means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, including those employed full-time, part-time, temporarily or contracted for from a third party.

F. “Employer” means any person, partnership, corporation, or nonprofit entity who employs the services of four or more persons and includes the City of Healdsburg.

G. “Enclosed” means closed in by a roof and four or more connected, floor-to-ceiling walls with appropriate openings for ingress and egress. If an enclosed area is divided by

internal partial walls or other “office landscaping,” it is still, in its entirety, enclosed.

H. “Minor” shall mean any individual who is less than 18 years of age.

I. “Nonprofit entity” means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operations of which are not for private financial gain. A public agency is not a “nonprofit entity” within the meaning of this chapter.

J. “Place of employment” means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment. A private residence is not a “place of employment” unless it is used as a child care or health care facility.

K. “Private function” means a gathering of persons for the purpose of deliberation, education, instruction, entertainment, amusement, or dining where membership or specific invitation is a prerequisite to entry and where such event is not intended for attendance by the public.

L. “Public place” means any enclosed area to which the public is invited or in which the public is permitted.

M. “Public recreation area” means a public park or other public recreation area within the City of Healdsburg including, but not limited to, the following: Badger Park, Barbieri Brothers Park, Byron Gibbs Park, Carson Warner Memorial Skatepark; Chamber of Commerce turf areas, Foss Creek Trail and Pathway, Giorgi Park, Healdsburg Plaza Park (perimeter sidewalks abutting Plaza Park are not subject to the “smoke-free” designation, except when a “special event” permit has been issued, as described below); the municipal swimming pool, the museum grounds located at 221 Matheson Street, Railroad Park located on Front Street, Recreation Park, including the concession stand and picnic areas, but not including the parking lot, West Plaza Park (but not including the parking lot areas at the West Plaza Park), Villa Chanticleer (but not including the parking lot areas at the Villa Chanticleer), and all athletic fields. With respect to Healdsburg Plaza, when a “special event” permit is issued by the community services department for an event to take place in Plaza Park and the event has fenced areas, the “smoke-free” designation shall extend to and include the entire fenced area, including closed streets and perimeter sidewalks that are within the fenced area.

N. “Restaurant” means any coffee shop, cafeteria, including private and public school cafeteria, sandwich stand, and any other eating establishment and associated outdoor eating area, which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere,

including catering functions, except that the term “restaurant” shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a “bar” as defined in subsection (A) of this section.

~~O. “Self-service merchandising” means open display of tobacco products and point-of-sale tobacco-related promotional products and accessories that the public has access to without the intervention of an employee.~~

OP. “Service line” means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

PQ. “Smoking” means inhaling or exhaling from, or burning or carrying, any lighted cigarette, cigar, pipe, weed, plant, or other combustible substance whose smoke is intended to be inhaled, or inhaling or exhaling from any electronic smoking device.

QR. “Sports arena” means an enclosed sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller and ice rink, bowling alley and other similar places where members of the general public assemble to either engage in physical exercise, participate in athletic competition or witness sports events.

RS. “Tobacco product” means tobacco and any substance containing tobacco, including, but not limited to, cigarettes, cigars, cigarillos, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhaling or other manner of ingestion; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body; but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

SF. “Tobacco retailer” means any person or governmental entity that operates a store, stand, booth, concession, or other place at which sales of tobacco products are made to purchasers for consumption or use.

~~U. “Tobacco vending machine” means any electronic or mechanical device or appliance, the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.~~

~~V. “Vendor-assisted” means that only a store employee has access to the tobacco product and assists the customer by supplying the product. The customer does not take possession of the product until it is purchased.~~

TW. “Work area” or “workplace” means any area of a place of employment enclosed by floor-to-ceiling walls in which one or more employees are assigned to perform work for an employer.

3. Section 8.24.090 is deleted in its entirety as follows:

~~8.24.090 Regulating the manner of sale of tobacco products.~~

~~A.— Any person, business, tobacco retailer or other establishment subject to this chapter shall post plainly visible notices at the point of purchase of tobacco products which comply with the provisions of California Penal Code Section 308(e) and California Business and Professions Code Section 22952(b), as either or both of those statutes may be amended from time to time.~~

~~B.— No person, business, tobacco retailer, or owner, manager or operator of any establishment subject to this chapter shall sell, offer to sell or permit to be sold any tobacco product to an individual without requesting and examining identification establishing the purchaser’s age as 18 years or more unless the seller has some reasonable basis for determining the buyer’s age.~~

~~C.— No person, business, or owner, manager, operator or employee of any establishment shall sell, permit to be sold, offer for sale or display for sale any tobacco product by means of self-service merchandising or by means other than vendor-assisted sales. Cartons of cigarettes, multi packaged smokeless tobacco, cigars and pipe tobacco are exempt from this provision so long as these tobacco products are under constant direct sight surveillance of a store employee. These tobacco products shall be deemed to be under constant direct sight surveillance of an employee only if the tobacco products themselves (and not just the displays, racks, shelves, kiosks, etc., where the products are displayed) are in plain and full view of a store employee.~~

~~D.— No person, business, or owner, manager, operator or employee of any establishment shall sell, offer for sale, or distribute any cigarette or other tobacco product by or from a vending machine or appliance, or any other coin-operated mechanical device designed or used for vending purposes.~~

4. A new title, Chapter 8.26 entitled “Tobacco Retailers” is added to Title 8 to read and provide as follows:

8.26.010. DEFINITIONS

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

- A. “Arm’s length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of violations of this chapter is not an arm’s length transaction.
- B. “Department” means the City of Healdsburg Police Department, and any agency or person designated by the department to enforce or administer the provisions of this chapter.
- C. “Electronic smoking device” means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. “Electronic smoking device” includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. “Electronic smoking device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.
- D. “Electronic smoking device paraphernalia” means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices.
- E. “Proprietor” means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.
- F. “Self-service display” means the open display or storage of tobacco products or smoking paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A tobacco vending machine is a form of self-service display.
- G. “Smoking paraphernalia” means tobacco paraphernalia, electronic smoking devices, and electronic smoking device paraphernalia.

- H. “Tobacco paraphernalia” means cigarette papers or wrappers, pipes, cigarette rolling machines, and any other item designed for the consumption or preparation of tobacco products.
- I. “Tobacco product” means any product that contains tobacco, is derived from tobacco, or contains synthetically produced nicotine and is intended for human consumption, including but not limited to, electronic smoking devices, single packaged tobacco products and flavored products. “Tobacco product” does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.
- J. “Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products or smoking paraphernalia. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or smoking paraphernalia sold, offered for sale, exchanged, or offered for exchange.
- K. “Tobacco vending machine” means any electronic or mechanical device or appliance, the operation of which depends upon the insertion of money, whether in coin or paper currency, or other things representative of value, which dispenses or releases a tobacco product.

8.26.020 REQUIREMENTS AND PROHIBITIONS

- A. 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 chapter 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. 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 chapter for a licensee, or any of the licensee’s agents or employees, to violate any local, state, or federal law applicable to tobacco products, smoking paraphernalia, or tobacco retailing.
- C. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- D. A tobacco retailer shall post plainly visible notices at the point of purchase of tobacco products which comply with the provisions of California Penal Code Section 308(c) and California Business and Professions Code Section 22952(b), as either or both of those statutes may be amended from time to time.

- E. It shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to sell, give, or in any way furnish to another person who is under the age of 21 years, any tobacco product or smoking paraphernalia.
- F. No person engaged in tobacco retailing shall sell or transfer a tobacco product or smoking paraphernalia 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 21 years of age.
- G. No person who is younger than the age of 21 years shall engage in tobacco retailing; provided, however, that a person under the age of 21 years may engage in tobacco retailing: (1) if under the continuous supervision of a person 21 years of age or older; and (2) only when directly observable by such person 21 years of age or older.
- H. Tobacco retailing by means of a self-service display is prohibited.
- I. A tobacco retailer or proprietor without a valid tobacco retailer license, including, for example, a person whose license has expired or been suspended or revoked:
1. Shall keep all tobacco products and smoking paraphernalia out of public view. The public display of tobacco products or smoking paraphernalia in violation of this provision shall constitute tobacco retailing without a license in violation of HMC 8.26.020(a); and
 2. Shall not display any advertisement relating to tobacco products or smoking paraphernalia 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.
- J. No license may issue to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles is prohibited.
- K. No license may be issued to authorize tobacco retailing in a pharmacy. For the purposes of this subsection, "pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

8.26.030. APPLICATION PROCEDURE.

- A. Application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to engage in tobacco retailing and shall be signed by each proprietor or an authorized agent thereof. 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 address") required by, authorized by, or convenient to the enforcement of this chapter. If an authorized 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. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this chapter or any other local, state or federal law governing tobacco products or tobacco retailers and, if so, the dates and locations of all such violations within the previous five years.
 6. Whether or not any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended or revoked, and if so, the dates of the suspension period or the date of revocation.
 7. Such other information as the department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.
- B. 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 chapter, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to HMC 8.26.100. Nothing in this chapter 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.
- C. 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 (10)

business days of a change.

8.26.040. ISSUANCE OF LICENSE.

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

- A. The application is incomplete or the information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.
- B. The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this chapter; provided, however, this subparagraph shall not constitute a basis for denial of a license if either or both of the following apply:
 - 1. The applicant provides the department with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction.
 - 2. It has been more than five years since the most recent license for that location was revoked.
- C. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter (e.g., mobile vending), that is unlawful pursuant to this code, or other local, state or federal law.

8.26.050. LICENSE RENEWAL AND EXPIRATION.

- A. A tobacco retailer's license is invalid if the appropriate 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 year. Each tobacco retailer shall submit an application for the renewal of his or her tobacco retailer's license and the license fee no later than thirty (30) days prior to expiration of the term of the license.
- B. A tobacco retailer's license that is not timely renewed shall expire at the end of its term. To reinstate a license that has expired, or to renew a license not timely renewed pursuant to subparagraph (a), the proprietor must

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

8.26.060. LICENSES NONTRANSFERABLE.

A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietor(s) or a tobacco retailer changes its business location.

8.26.070. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this chapter 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 permit. For example, nothing in this chapter 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 , 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.

8.26.080. FEE FOR LICENSE.

The fee to issue or to renew a tobacco retailer's license shall be established by resolution of the City. 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, 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 chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

8.26.090. COMPLIANCE MONITORING.

- A. Compliance with this chapter shall be monitored by the department . The City may designate any number of additional persons to monitor compliance with this chapter.
- B. The department or other person designated to enforce the provisions of this chapter shall have the power and authority to enter any location engaging in tobacco retailing during regular business hours to inspect the premises and determine compliance with the provisions of this chapter.

8.26.100. SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION.

A. In addition to any other remedies authorized by law, a tobacco retailer's license may be suspended or revoked by the department upon any of the following grounds:

1. One or more of the grounds for denial of a license under HMC Section 8.26.040 existed at the time the license application was made or at any time before the license was issued;
2. The tobacco retailer's license fee is unpaid;
3. The tobacco retailer's license has been transferred in violation of HMC 8.26.060;
4. The tobacco retailer has violated any provision of this chapter or any other local, state or federal tobacco-related law.

B. Time period of suspension of license.

1. Upon a finding by the department of a first violation of this chapter at a location within any sixty-month (60) period, the license shall be suspended for thirty (30) days.
2. Upon a finding by the department of a second violation of this chapter at a location within any sixty-month (60) period, the license shall be suspended for sixty (60) days.
3. Upon a finding by the department of a third violation of this chapter at a location within any sixty-month (60) period, the license shall be suspended for one-hundred and eighty (180) days.
4. Upon a finding by the department of four or more violations of this chapter at a location within any sixty-month (60) period, the license shall be revoked and no new license may be issued for the location or person until five years have passed from the date of revocation.

C. A decision of the department to deny, suspend or revoke a license is appealable in accordance with HMC 5.04.220.