

Chapter 6.24
LICENSURE OF TOBACCO RETAILERS

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Section 6.24.010 **Statement of Purpose and Intent.**

The purpose and intent of this Chapter is to encourage responsible tobacco retailing and discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or provision of tobacco and nicotine products to minors. There is no intent, however, 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. (Ord. 6878 § 1, 2006)

Section 6.24.020 **Definitions.**

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 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 the violations of this chapter is not an Arms Length Transaction.

B. "Business" means any sole proprietorship, 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 where legal, medical, dental, engineering, architectural, or other professional services are delivered.

C. "Department" refers to any City department designated to administer and/or enforce the provisions of this chapter or, if so designated by the City Manager, the Riverside County Department of Health and Human Services or other County department.

D. "Person" shall mean: any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

E. "Proprietor" shall mean: 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. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories, and in which at least 80 percent (80%) of the square footage of the available retail floor and shelf space is devoted to the sale of tobacco-related products and accessories.

G. "Self-Service Display" means an open display of Tobacco Products or Tobacco Paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A Vending Machine is a form of Self-Service Display.

H. "Smoking" means possessing a lighted Tobacco Product, lighted Tobacco Paraphernalia, or any other weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind), or the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).

I. "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of Tobacco Products.

J. "Tobacco Product" means:

1. Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and

2. 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 product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

K. "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 Tobacco Paraphernalia, or who distributes free or low-cost samples of Tobacco Products or Tobacco 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 Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

L. "Vendor-Assisted" means that only a store or Tobacco Retailer has access to the Tobacco Product or Tobacco Paraphernalia and assists the customer by supplying the Tobacco Product or Tobacco Paraphernalia. The customer does not take legal possession of the Tobacco Product or Tobacco Paraphernalia until it is purchased.

M. "Vending Machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designated or used for vending purposes including, but not limited to, machines or devices that use remote control locking mechanisms. (Ord. 6878 § 1, 2006)

Section 6.24.030 Sale and Distribution of Tobacco Products; Tobacco Retailer License Required.

A. It shall be unlawful for any person, business, or tobacco retailer, except for a Retail Tobacco Store, to sell, permit to be sold, offer for sale, or display for sale any Tobacco Product or Tobacco Paraphernalia by any means other than Vendor-Assisted Sales. A Vending Machine, as defined in Section 6.24.020(M) above, is not a Vendor-Assisted Sale.

B. It shall be unlawful for any Person, Business, or Tobacco Retailer to engage in the sale of Tobacco Products or Tobacco Paraphernalia without first posting a plainly visible sign at the point of purchase of Tobacco Products or Tobacco Paraphernalia which states: "THE SALE OF TOBACCO PRODUCTS OR TOBACCO PARAPHERNALIA TO PERSONS UNDER EIGHTEEN (18) YEARS OF AGE IS PROHIBITED BY LAW AND SUBJECT TO PENALTIES. PHOTO IDENTIFICATION IS REQUIRED." The letters of the sign shall be at least one-quarter inch (1/4") high.

C. It shall be unlawful for any person, business, or tobacco retailer to sell any Tobacco Product or Tobacco Paraphernalia to any individual who appears younger than eighteen (18) years old, without first verifying, by means of photographic identification containing the bearer's date of birth, that the purchaser is at least eighteen (18) years old, unless the Person,

Business, or Tobacco Retailer has some other reliable basis for determining the purchaser's age.

D. It shall be unlawful for any Person to act as a Tobacco Retailer 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 public nuisance.

E. A Tobacco Retailer or Proprietor without a valid Tobacco Retailer license, including, for example, a revoked license:

1. Shall keep all Tobacco Products and Tobacco Paraphernalia from public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this provision shall constitute an "offer for sale" for the purposes of Section 6.24.120 of this Chapter.

2. Shall not display any advertisement relating to Tobacco Products or Tobacco 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.

F. 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 right 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, supercede, 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 license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code Section 6404.5

G. In the event of any conflict with any other provision of the Riverside Municipal Code relating to tobacco, this Chapter shall control subject to its enforcement by the County Counsel and the District Attorney for the purposes for which this Chapter is enacted. (Ord. 6878 § 1, 2006)

Section 6.24.040 Tobacco Retailer License Application Process.

A. Application for a Tobacco Retailer's license shall be submitted in the name of each Proprietor proposing to conduct 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.

B. 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 section 6.24.100 of this chapter. 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. 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 that is seeking a license;

2. The business name, address, and telephone number of the single fixed location for which a Tobacco Retailer's license is sought;

3. The name and mailing address authorized by each Proprietor to receive all license-related communications and notices (the "Authorized Address"). 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 a valid state tobacco retailer's license by the California Board of Equalization;

5. Whether or not any Proprietor is a Person who has been determined to have violated this chapter or whose proprietorship has admitted violating, or has been found to have violated, this chapter, and, if so, the dates and locations of all such violations within the past six years; and

6. Such other information as the Department deems necessary for the administration or enforcement of this ordinance.

7. All information required to be submitted to apply for a Tobacco Retailer's license shall be updated with the Department whenever the information changes. A Tobacco Retailer shall provide the Department with any updates within ten (10) business days of a change. (Ord. 6878 § 1, 2006)

Section 6.24.050 License Issuance; Standards.

A. No license may issue to authorize Tobacco Retailing at other than a fixed location. For example, Tobacco Retailing by Persons on foot and Tobacco Retailing from vehicles are prohibited.

B. Upon the receipt of an 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 of the following bases for denial exists:

1. The application is incomplete, inaccurate, or false. Intentionally supplying inaccurate or false information shall be a violation of this Chapter.

2. The application seeks authorization for Tobacco Retailing at a location for which this Chapter prohibits issuance of Tobacco Retailer's licenses. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the Department 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. Clear and convincing evidence can be oral or written and must be the kind of evidence upon which a responsible person would rely in making an important business, personal, or other decision.

3. The application seeks authorization for Tobacco Retailing for a Proprietor to whom this Chapter prohibits a license to be issued.

4. The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this Chapter, that is unlawful pursuant to this Code, or that is unlawful pursuant to any other law. (Ord. 6878 § 1, 2006)

Section 6.24.060 Licenses Nontransferable.

A. A Tobacco Retailer's license may not be transferred from one Person to another or from one location to another. Whenever a Tobacco Retailing location has a change in Proprietors, a new Tobacco Retailer's license is required.

B. Notwithstanding any other provision of this Chapter, 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:

1. The location has been fully transferred to a new Proprietor or fully transferred to entirely new Proprietors; and

2. 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. (Ord. 6878 § 1, 2006)

Section 6.24.070 Fees for License Renewal and Expiration.

A. License Fees. The fee to issue or to renew a Tobacco Retailer's license shall be established by resolution of the City Council. The fee shall be calculated as to recover the total cost of both license administration and license enforcement including, for example, issuing the license, administrating 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 shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

B. License Renewal. A Tobacco Retailer license is invalid unless the appropriate fee has been paid in full and the term of the license has not expired. The term of a Tobacco Retailer license is one (1) 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 thirty (30) days prior to expiration of the term.

C. License Expiration. 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 (B) above, the Proprietor must:

1. Submit the license fee plus a reinstatement fee of ten percent (10%) of the license fee.
2. Submit a signed affidavit affirming that the Proprietor:
 - a. Has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed, or
 - b. Has waited the appropriate ineligibility period established for Tobacco Retailing without a license, as set forth in section 6.24.110 of this Chapter, before seeking renewal of the license. (Ord. 6878 § 1, 2006)

Section 6.24.080 Other Requirements and Prohibitions.

A. 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 is issued, it shall be a violation of this Chapter for a license, or any of the licensee's agents or employees, to:

Violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing;

1. Violate any local, state, or federal law regulating exterior, storefront, window, or door signage.

B. Display of License. Each Tobacco Retailer license shall be prominently displayed in a publicly-visible location at the licensed location.

C. Minimum Age for Person 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. (Ord. 6878 § 1, 2006)

Section 6.24.090 Compliance Monitoring.

A. The City may monitor compliance with this chapter by using City staff, or the City Manager may designate the Riverside County Health and Human Services Department or another agency to perform these functions under agreement with that agency. Any peace officer may enforce the penal provisions of this Chapter.

B. The City, or the City Manager's designee as described in (A) above, shall endeavor to check the compliance of each Tobacco Retailer at least three (3) times per twelve (12)-month period. Nothing in this paragraph shall create a right of action in any licensee or other Person against the Department or its agents.

C. Compliance checks shall determine, at a minimum, if the Tobacco Retailer is conducting business in a manner that complies with tobacco laws regulating youth access to

tobacco. When appropriate, the compliance checks shall determine compliance with other laws applicable to Tobacco Retailing.

D. The City, or the City Manager's designee as described in (A) above, shall not enforce any law establishing a minimum of 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 a compliance check supervised by a peace officer or a code enforcement official of the City; or
2. The youth Decoy is participating in a compliance check funded, in part, either directly or indirectly through subcontracting, by the City or the County Department of Health and Human Services, or funded in part, either directly or indirectly, through subcontracting, by the California Department of Health Services. (Ord. 6878 § 1, 2006)

Section 6.24.100 Revocation of License.

A. Revocation of License for Violation. In addition to any other penalty authorized by law, a Tobacco Retailer's license shall be revoked if the City, using City staff, or the Riverside County Hearing Officer, is so designated by the City Manager per an agreement with the Riverside County Health and Human Services Department, finds, after the licensee is afforded notice, as described in Sections 6.24.100 (B) (1) and (2) of this Code, 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 Chapter or, in a different legal proceeding, has pleaded guilty, "no contest," or its equivalent, or admitted to a violation of any law designated in Section 6.24.080 above.

B. Notice.

1. Whenever a notice is required to be given under this Code, unless different provisions are otherwise specifically made in this Code, such notice may be given either by personal delivery thereof to the person to be notified or by deposit in the United States mail, in a sealed envelope, postage prepaid, addressed to such person to be notified, at his or her last known business or residence address as the same appears in the public records of the city or other records pertaining to the matter to which the notice is directed. Service by mail shall be deemed to have been completed at the time of deposit in the post office or any United States mail box.

2. Proof of giving any notice may be made by the certificate of any officer or employee of this city or by affidavit of any person over the age of 18 years which shows service in conformity with this Code or other provisions of law applicable to the subject matter concerned.

C. New License After Revocation.

1. After revocation for a first license violation of this Chapter at a location within any sixty (60) month period, no new license may be issued for the location until ten (10) days have passed from the date of the revocation.

2. After revocation for a second violation of this Chapter at a location within any sixty (60) month period, no new license may be issued for the location until thirty (30) days have passed from the date of the last revocation.

3. After revocation for a third violation of this Chapter at a location within any sixty (60) month period, no new license may be issued for the location until ninety (90) days have passed from the date of the last revocation.

4. After revocation for a fourth or subsequent violation of this Chapter at a location within any sixty (60) month period, no new license may be issued for the location until five (5) years have passed from the date of revocation.

D. Revocation of License Issued in Error. A Tobacco Retailer's license shall be revoked if the Department finds, after the licensee is afforded a reasonable notice and opportunity to be heard, that one or more of the bases for denial of a license under Section 6.24.050 existed at

the time application was made or at anytime before the license was issued. The revocation shall be without prejudice to the filing of a new license application. (Ord. 6878 § 1, 2006)

Section 6.24.110 Tobacco Retailing Without a License.

A. In addition to any other penalty authorized by law, if the Department finds or any court of competent jurisdiction determines, 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 be issued a Tobacco Retailing license for that location as follows:

1. After a first violation of this Chapter at a location within a sixty (60) month period, no new license may be issued for the Person at the location until thirty (30) days have passed from the date of the violation.

2. After a second violation of this Chapter at a location within a sixty (60) month period, no new license may be issued for the Person at the location ninety (90) days have passed from the date of violation.

3. After a third or subsequent violation of this Chapter at a location within a sixty (60) month period, no new license may be issued for the Person at the location until five (five) years have passed from the date of the violation. (Ord. 6878 § 1, 2006)

Section 6.24.120 Enforcement of License Violations.

The remedies provided by this ordinance are cumulative and in addition to any other remedies available at law or equity:

A. Whenever evidence of a violation of this ordinance is obtained, in part, through the participation of a Person under the age of eighteen (18) years old, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this ordinance, and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

B. Notwithstanding any provision of the Riverside Municipal Code, violations of this Chapter are subject to a civil action brought by the County Counsel, punishable by:

1. A fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for a first violation in any sixty (60) month period; or

2. A fine not less than one thousand five hundred dollars (\$1,500) and not exceeding two thousand five hundred dollars (\$2,500) for a second violation in any sixty (60) month period; or

3. A fine not less than three thousand dollars (\$3,000) and not exceeding ten thousand dollars (\$10,000) for a third or subsequent violation in any sixty (60) month period; or

C. Violations of this Chapter may be prosecuted as infractions or misdemeanors by the County Counsel or the District Attorney.

D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.

E. Violations of this Chapter are hereby declared to be public nuisances.

F. In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the City Attorney or, in the discretion of the City Manager, the County Counsel, District Attorney including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. (Ord. 6878 § 1, 2006)

Section 6.24.130 Settlement in Lieu of Hearing.

For a first or second alleged violation of this Chapter within any sixty (60) month period, the City Attorney or, if so designated by the City Manager, County Counsel, District Attorney may engage in settlement negotiations and may enter into a settlement agreement with a

Tobacco Retailer alleged to have violated this Chapter without approval from the City Council. Notice of any settlement shall be provided to the Department and no hearing shall be held. Settlements shall not be confidential and shall contain the following minimum terms:

After a first alleged violation of this Chapter at a location within any sixty (60) month period:

1. An agreement to stop acting as a Tobacco Retailer for at least one (1) day;
2. A settlement payment to the City of at least one thousand (\$1,000) dollars; and
3. An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

B. After a second alleged violation of this Chapter at a location within any sixty (60) month period:

1. An agreement to stop acting as a Tobacco Retailer for at least ten (10) days;
2. A settlement payment to the City of at least five thousand (\$5,000) dollars; and
3. An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations. (Ord. 6878 § 1, 2006)