

SECTION 2: Chapter 7.106 ~~of the Richmond Municipal Code~~ is amended to read as follows:

Chapter 7.106 – TOBACCO RETAILER LICENSE^(H)

7.106.010 - Purpose.

7.106.020 - Definitions.

7.106.030 - Applicability.

7.106.040 - Operating Prerequisites.

7.106.050 - Tobacco Retailer License - Application Procedures.

7.106.060 - Tobacco Retailer License - Issuance, Denial, and Appeals.

7.106.070 - Tobacco Retailer License - Fees.

7.106.080 - Tobacco Retailer License - Expiration and Renewal.

7.106.090 - Tobacco Retailer License - Denial, Suspension, and Revocation Procedures and Effects.

7.106.100 - Operating Requirements and Prohibitions.

7.106.110 - Compliance Monitoring and Inspections.

7.106.120 - Enforcement and Penalties.

7.106.010 - Purpose.

The purpose of this ~~chapter~~Chapter is to impose a licensing requirement on tobacco retailers- and set forth clear operational standards for licensed retailers.

7.106.020 - Definitions.

~~7.106.020 - Definitions.~~

For purposes of this ~~chapter~~Chapter, the following words, terms and phrases shall have the meanings given below:

~~"Arm's~~"Arm's length transaction" means a ~~sale~~bona fide sale or transfer conducted in good faith and for valuable consideration that reflects ~~the~~the fair market value in the open market, between ~~two informed~~independent, unrelated, and ~~witting~~unaffiliated parties, ~~neither of which is under each acting in its own self-interest and without any compulsion to participate in, control, influence, or common economic interest. "Independent, unrelated, and unaffiliated parties" means parties that, at the time of the transaction- ~~A sale between-~~ do not: share common ownership, beneficial ownership, or voting control, whether direct or indirect; have overlapping directors, officers, managers, trustees, or key decision-makers; have a familial, partnership, joint venture, fiduciary, or contractual relationship that permits one party to influence or direct the business,~~

management, or operations of the other; or, act pursuant to any agreement, understanding, or coordinated plan, whether written or unwritten. "Control" means the ability, whether exercised or not, to directly or indirectly direct or materially influence the management, operations, or policies of an entity, including through ownership of voting interests, contractual rights, economic dependence, or other means of effective influence. For greater certainty, an arm's length transaction does not include any sale or transfer:

- (1) Between first-degree relatives, related companies or partners, or a sale for joint venturers, affiliates, or entities under common control or common beneficial ownership;
- (2) That results in any direct or indirect change in control, management, operational authority, or economic benefit to a related or affiliated person or entity, including through restructuring, amalgamation, assignment, trust arrangement, option, nominee arrangement, or similar device; or,
- (3) In which a significant material purpose is avoiding the, assessed on an objective basis having regard to the timing, structure, consideration, and surrounding circumstances of the transaction, is to avoid, circumvent, or mitigate the application or effect of the violations of this chapter is not an arm's length transaction.-any violation of this Chapter.

The burden of demonstrating that a transaction qualifies as an arm's length transaction rests with the party asserting such qualification.

"Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice; provided, however, that a tobacco product and shall not include the definition set forth in California Health and Safety Code Section 104559.5, as may be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.

amended from time to time. "Cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

"Cigarette" means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.

"City Manager" as used in this chapter shall mean the City Manager for the City of Richmond.

"Clerk" means any person present at the tobacco retailer who facilitates, attempts to facilitate, or has been tasked with facilitating the operations of the tobacco retailer regardless of title, status of employment, or scope of duties.

"Consumer" means any person who purchases a tobacco product for consumption ~~and~~ not rather than for sale to another.

"Department" as used in this chapter shall mean means the Richmond Police Community Development Department-, Planning Division.

"Drug paraphernalia" means and shall haveinclude the definition set forth in California Health & Safety Code Section 11014.5, as that section may be amended from time to time, and any other equipment, product, or materials of any kind which are intended or designed for drug use including common items that may otherwise not typically relate to drug use. Enforcement officers shall have authority to determine whether a specific product is intended for drug use and shall use their expertise to make this determination taking into account the context, placement of products, similar occurrences, and any other factor providing insight into the intent. Specifically, given the prevalence of abuse of nitrous oxide throughout the City, there shall be a presumption that nitrous oxide is drug paraphernalia absent mitigating circumstances or context as determined by the enforcement officer.

"Flavored tobacco product" means any tobacco product that imparts a Characterizing Flavor.

"Drug store" means any business or other commercial enterprise that is (1) licensed as a pharmacy by the State of California pursuant to the California Business and Professions Code, and (2) identified as a Drug Store with the California Board of Equalization, or with the Richmond Finance Department, or is otherwise commonly known as a drugstore.

"Electronic cigarette" means the definition set forth in Section 30121 of the California Revenue and Taxation Code, as may be amended from time to time.

"Enforcement officer" means the Richmond Community Development Department, Code Enforcement Division and any designees or agents, which are vested with authority to enforce this Chapter.

"Entire premise" means all areas within or appurtenant to a building, structure, or site used, occupied, or controlled by a tobacco retailer, including but not limited to all sales areas, storage rooms, offices, display areas, employee quarters, restrooms, hallways, loading areas, outdoor areas, and vehicles used for business purposes, regardless of whether such areas are open to the public or separately secured.

"Flavored tobacco product" means any tobacco product that imparts a Characterizing Flavor and includes any tobacco product or tobacco flavor enhancer that is not listed on the Unflavored Tobacco List established and maintained by the Attorney General pursuant to California Health and Safety Code Section 104559.1 as may be updated from time to time. There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

"Hazardous substance" means any product, compound, mixture, or material, whether natural or synthetic, the use, ingestion, inhalation, or absorption of which is determined to be

particularly detrimental to the health, safety, or welfare of an individual including but not limited to the following: (1) Any plant or derivative commonly known as Kratom (*Mitragyna speciosa*) or any product containing its active alkaloids mitragynine or 7-hydroxymitragynine; (2) nitrous oxide; (3) synthetic cannabinoids (K2, Spice, etc.); and, (4) salvia divinorum.

"Little cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. ~~"Little cigar"~~ and includes, but is not limited to, any tobacco product known or labeled as "small cigar" or "little cigar." ~~"~~ or "cigarillo".

"Looseleaf tobacco" means any product that consists of cut or shredded pipe tobacco, which is usually sold in pouches.

"Manufacturer" means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.

"New tobacco product" means the definition set forth in 21 U.S.C Section 387j(a)(1), as may be amended from time to time.

"Nitrous oxide" means any of the following substances: N2O2 dinitrogen monoxide, dinitrogen oxide, nitrogen oxide, or laughing gas, as defined in California Penal Code Section 381c(a) as may be amended from time to time. Nitrous oxide is a colorless nonflammable gas sometimes informally or colloquially referred to as "nitro," "NOX," "galaxy gas," "whippits," amongst other names.

"Package" or "packaging" means a pack, box, carton, or container or any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.

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

"Proprietor" ~~as used in this chapter shall mean~~ 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.

"Sale" or "sell" means any transfer, exchange, barter, gift, offer for sale, or distribution for commercial purpose, in any manner or by any means whatsoever.

"Sale display area" means the total area of shelving, counters, racks, cabinets, cases, or other fixtures located within the tobacco retailer that contain products accessible to customers and used to display goods offered for sale, whether for self-service or clerk-assisted purchase. For clarity, the following provisions apply:

- (1) “Sale display area” shall include: all horizontal and vertical shelf space used to present products to customers; endcaps, freestanding display units, countertop displays, and wall-mounted display systems; and, locked or behind-the-counter display cases that visibly present products to customers.
- (2) “Sale display area” shall not include: storage areas not visible to customers; back-of-retailer inventory space; and, areas where customers have no access.

"Self-service display" means the open display or storage of tobacco products or tobacco 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 vending machine is a form of self-service display.

“Shisha tobacco product” means a tobacco product smoked or intended to be smoked in a hookah and includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. “Shisha tobacco product” does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product.

"Tobacco product" means:

- (1) ~~(1)~~—Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, looseleaf tobacco, and snuff.
- (2) ~~(2)~~—Any electronic device that delivers nicotine or other substances vaporized liquids to the person inhaling from the device, including, but not limited to an electronic cigarette, ~~electronic~~ cigar, ~~electronic~~ pipe, or ~~electronic~~ hookah.
- (3) ~~(3)~~—Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately. "
- (4) Tobacco paraphernalia.
- (5) Exemptions. The term "tobacco product" does not include ~~drugs~~:
 - i. Drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, (FDA), as those terms are defined in the Federal Food, Drug and Cosmetic Act; or,
 - ii. Nicotine replacement therapy products that are approved or authorized by the FDA for over-the-counter or prescription sale for the purpose of delivering nicotine to a user without combustion, without tobacco leaf, and without inhalation of smoke or aerosol, and that is intended to assist in the treatment of nicotine dependence or the cessation of tobacco use including the following: nicotine gum, lozenges, transdermal patches, nasal sprays, and oral inhalers, provided that such products: (1) deliver nicotine at a controlled, standardized, and measurable dosage in accordance with FDA

approval; and, (2) are marketed, labeled, and sold primarily for smoking cessation or nicotine dependence treatment, and not for recreational use.

"Tobacco paraphernalia" means any item designed or marketed for the consumption, use, or preparation of tobacco products: includes any instrument or paraphernalia that is designed for the smoking or ingestion of lawful tobacco products including without limitation cigarette papers, cigarette wrappers, cigar wrappers, blunt wraps, pipes, holders, clips, and cigarette rolling machines. "Tobacco paraphernalia" excludes items classified as "drug paraphernalia" per Health and Safety Code Section 11364.5(d), as may be amended from time to time.

"Tobacco product flavor enhancer" means a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product.

"Tobacco retailer" means any person or entity who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, 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.

(Ord. No. 20-18 N.S., § I, 7-17-2018)

7.106.030 - Requirements and prohibitions:

- (a) ~~**Tobacco Retailer 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 license 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 is 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, tobacco paraphernalia, 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 or tobacco paraphernalia to another person who appears to be under the age of 27 years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age for sale of tobacco products as established by state law.~~
- (e) ~~Minimum Age for Persons Selling Tobacco. No person who is younger than 18 years of age shall engage in tobacco retailing.~~
- (f) ~~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 revoked:
 - (1) ~~Shall keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a license under Section 7.106.090.~~~~

- ~~(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.~~
- ~~(g) Drug Paraphernalia. It shall be a violation of this chapter for any licensee or any of the licensee's agents or employees, to violate any local, state, or federal law regulating controlled substances or drug paraphernalia, such as, California Health and Safety Code Section 11364.7.~~
- ~~(h) Sale of Tobacco Products by Self-Service Display Prohibited. It is unlawful for any person to display tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display.~~
- ~~(i) **Minimum Pack Size for Little Cigars and Cigars.** No tobacco retailer shall sell or offer for sale, or possess with intent to sell or offer for sale:~~
- ~~(1) Any single little cigar or cigar, whether or not packaged for individual sale;~~
- ~~(2) Any number of little cigars or cigars fewer than the number contained in the manufacturer's original packaging intended for sale to a consumer;~~
- ~~(3) Any package of little cigars or cigars containing fewer than 20 little cigars or cigars.~~
- ~~(4) This subsection does not apply to the sale or offer for sale of a single cigar for which the retail price (exclusive of all applicable taxes and fees) exceeds \$5.00. This minimum retail amount may be adjusted from time to time by a resolution of the City Council.~~
- ~~(j) Sale of Flavored Tobacco Products Prohibited.~~
- ~~(1) It shall be a violation of this chapter for any tobacco retailer or any of the tobacco retailer's agents or employees to sell, offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.~~
- ~~(2) There shall be a rebuttable presumption that a tobacco retailer in possession of four or more flavored tobacco products, including but not limited to individual flavored tobacco products, packages of flavored tobacco products, or any combination thereof, possesses such flavored tobacco products with intent to sell or offer for sale.~~
- ~~(3) There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has:~~
- ~~A. Made a public statement or claim that the tobacco product imparts a characterizing flavor;~~
- ~~B. Used text and/or images on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor; or~~
- ~~C. Taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.~~
- ~~(k) Sale of electronic cigarettes prohibited.~~
- ~~(1) The sale by a tobacco retailer of an electronic cigarette is prohibited where the electronic cigarette:~~
- ~~A. Is a new tobacco product;~~
- ~~B. Requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and~~
- ~~C. Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.~~

~~(2) For the purposes of subsection (k)(1), electronic cigarette shall have the definition set forth in the California Revenue and Taxation Code Section 30121, as may be amended from time to time.~~

~~(3) For the purposes of subsection (k)(1), new tobacco product has the meaning set forth in 21 U.S.C. § 387j(a)(1), as may be amended from time to time.~~

~~(Ord. No. 20-18 N.S., § I, 7-17-2018; Ord. No. 14-19 N.S., § I, 9-10-2019)~~

~~Note—Ord. No. 14-19 N.S., adopted Sept. 10, 2019, shall be effective 114 days after adoption.~~

~~7.106.040 - Limits on eligibility for tobacco retailer license:~~

~~No license may issue to authorize tobacco retailing at other than a fixed location. "Youth For example, tobacco retailing by persons on foot or from vehicles is prohibited.~~

~~(Ord. No. 20-18 N.S., § I, 7-17-2018)~~

~~7.106.050 - Location requirements:~~

~~Except as provided in Section 7.106.060, in land use districts where tobacco retailing regulated by this chapter would otherwise be a permitted use, no license may be issued, and no existing license may be renewed, to authorize tobacco retailing if the tobacco retailers is:~~

~~(a) Within 500 feet of any parcel occupied by any existing tobacco retailing business; or~~

~~(b) Within 1,000 feet of any parcel occupied by a youth-populated area. For purposes of this subsection, "youth-populated area" means a parcel that is occupied by a: any of the following:~~

~~(1) Public or private school; that facilitates instruction to minors (K-12, _____preschools, daycares);~~

~~(2) Playground open to the public; regardless of ownership or access;~~

~~(3) Park open to the public or to all the residents of a private community or open to the public or to all the residents of a private community; or,~~

~~(4) Library Open that has any hours open to the public.~~

7.106.030 - Applicability.

The standards set forth in this Chapter shall apply to all tobacco retail sales and tobacco retailers including the operation of existing businesses, new businesses, and the conversion or expansion of an existing business to include the sale of tobacco, tobacco products, or tobacco paraphernalia, as defined herein. The provisions of this Chapter shall take effect and be in full force and operation thirty (30) days after its final passage and adoption.

7.106.040 - Operating Prerequisites.

Tobacco retailers must comply with all of the following operating prerequisites prior to engaging in any tobacco retailing operations or attempted sales of tobacco products:

(A) **Tobacco Retailer License Required.** It shall be unlawful for any person or entity to operate as a tobacco retailer in the City without first obtaining and maintaining a valid

tobacco retailer license pursuant to this Chapter for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer license is a nuisance as a matter of law and a violation of this Code.

(B) Lawful Business Operation. It shall be unlawful for any person or entity to operate as a tobacco retailer in the City without first obtaining and maintaining both: (1) a valid State tobacco retailer license and seller's permit issued and obtained from the California Department of Tax and Fee Administration; and, (2) a business tax certificate obtained pursuant to Chapter 7.04 of this Code, which shall be applied for and a complete application shall be on file with the City prior to applying for a tobacco retailer license. Upon issuance of the tobacco retailer license, the City will process and issue a business tax certificate. The issuance of any license, permit, or certificate shall not eliminate compliance with any other requirements, including the requirement for another permit, certificate, or clearance, imposed by any other local, State, or federal rule, regulation, or law.

(C) Location Requirements. All locational requirements must be met including the following:

(1) Fixed Location Required. No license may be issued to authorize tobacco retailing at any location other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles is prohibited.

(2) Drug Store Operations Prohibited. No drug store shall engage in tobacco retailing or otherwise sell or distribute tobacco products.

(3) Convenience Market Operations Limited. Convenience markets shall adhere to the sale limitations and operational requirements set forth in Section 15.04.610.150(F) of this Code.

(4) Concurrent Sales of Cannabis Prohibited. No sales of cannabis products shall take place at any tobacco retailer.

(5) Undue Concentration Prohibited. Except as provided in Section 7.106.040(D) below, no tobacco retailing may take place, no license may be issued, and no existing license may be renewed, to authorize tobacco retailing if the proposed tobacco retailer is located within 500 feet of any parcel occupied by any existing licensed tobacco retailer or pending application for tobacco retailer. For purposes of this Section, distance is measured by the shortest line connecting any point on the property line of the parcel on which tobacco retailing business will be established or maintained to any point on the property line of the other parcel.

(6) Proximity To Youth Population Prohibited. Except as provided in Section 7.106.040(D) below, no tobacco retailing may take place, no license may be issued, and no existing license may be renewed, to authorize tobacco retailing if the proposed tobacco retailer is located within 1,000 feet of any parcel occupied by a youth-populated area. For purposes of this section, distance is measured by the shortest line connecting any point on the property line of the parcel on which tobacco retailing business will be established or maintained to any point on the property line of the other parcel.

(Ord. No. ~~20-18 N.S.~~, § I, 7-17-2018)

~~7.106.060 - Existing tobacco retailers:~~

~~A tobacco retailer operating lawfully on the date this ordinance is adopted [July 17, 2018] that is ineligible to receive or renew a tobacco retailer's license for a location pursuant to Section 7.106.050, and any tobacco retailer operating lawfully that becomes ineligible to receive or renew a tobacco retailer's license due to the creation of a new youth-populated area, may receive or renew a license for that location so long as all of the following conditions are met:~~

~~(1) The license is timely obtained and is renewed without lapse.~~

~~(2) The~~ **(D) Exemption For Existing Licensed Tobacco Retailers.** Existing licensed tobacco retailers operating in substantial compliance prior to the effective date of this ordinance shall be exempt from certain prerequisite location requirements, set forth in Section 7.106.040(C) above, so long as the retailer's tobacco license does not lapse, State requirements are met, and operations are brought into compliance with all provisions of this Chapter no more than one hundred and twenty (120) days after the date this ordinance is adopted. Failure to bring operations into compliance within this period shall be grounds for suspension or revocation of such tobacco retailer license.

(E) Limitation on Number of Tobacco Retailers. Operation Subject to Availability of Licenses. Regardless of compliance with the requirements set forth in Section 7.106.040, the City has determined that the number of tobacco retailers operating within the City at any one time shall be limited to prevent undue concentration within the City. All operations regardless of compliance with this Chapter are subject to the following limitations:

(1) The total number of tobacco retailer licenses issued by the City at any given time shall not exceed fifty (50) licenses.

~~In the event that the number of active tobacco retailer does not commit 3 or more violations of this chapter at a location within any 60-month period.~~

~~(2) (3) The~~ licenses reaches the maximum amount of fifty (50) licenses, no additional tobacco retailer is not closed for business or otherwise suspends licenses shall be issued until such time that the total number of active tobacco retailing for more than 60 consecutive days licenses falls below the maximum limit.

~~(4) The tobacco retailer does not substantially change the business premises or business operation. A substantial change to the business operation includes, but is not limited to, the transferring of a location to new proprietor(s) in an arm's-length transaction and the transferring of a location for which a significant purpose is avoiding the effect of the violations of this chapter.~~

~~(5) The tobacco retailer retains the right to operate under all other applicable laws.~~

(Ord. No. ~~20-18 N.S.~~, § I, 7-17-2018)

~~7.106.070 - Application procedure:~~

~~Application for a tobacco retailer's~~ **7.106.050 - Tobacco Retailer License – Application Procedures.**

All new and existing tobacco retailers must obtain an annual tobacco retailer license and comply with all operating prerequisites and standards as set forth in this Chapter. An application for a tobacco retailer license shall be submitted on a form supplied by the Department and shall contain, at a minimum, the following information:

(A) Proprietor Information.

(1) An application for a tobacco retailer 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, and shall include the license application fee set forth under Section 7.106.120.

(2) 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. Each proprietor of the business that is seeking to operate under a tobacco retailer license must provide the following information:

~~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 retailers. 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 7.106.120 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.~~

All applications shall be submitted on a form supplied by the Richmond Police Department and shall contain, at a minimum, the following information:

- i. (1) — The name, address, telephone number, driver's license or similar identification, including date of birth, of each proprietor of the ~~business~~ tobacco retailer that is ~~seeking applying for~~ a license;
- (2) — 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 (1) above.
- (3) — 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 Department of Tax and Fee Administration.
 - ii. (4) — The title and function(s) that each proprietor will serve in the operations of the tobacco retailer;
 - iii. Information on whether the proprietor has operated a tobacco retailer previously within the City including the business name of the tobacco retailer, the names of the operators, and the dates of operation;
 - iv. A summary of criminal history ("LiveScan") for each proprietor prepared by the Richmond Police Department not more than thirty (30) days prior to the date the application is submitted;
 - v. Whether or not ~~any~~the proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, ~~this chapter~~the City's tobacco regulations and, if so, the dates and locations of all such violations within the previous past five years;

~~(5) A copy of the conditional use permit, if applicable (or an explanation as to why such permit is not required).~~

- ~~vi. (6) A statement signed by each proprietor attesting that no flavored tobacco products, drug paraphernalia, illegal drugs, hazardous substances, or cannabis is or will be sold at the business seeking tobacco retailer at any time;~~
 - ~~vii. A statement signed by the property owner of record attesting to their understanding of the provisions set forth in this Chapter and agreement to ensure tenant compliance with such provisions including the prohibition of sales of flavored tobacco products, drug paraphernalia, illegal drugs, hazardous substances, and cannabis;~~
 - ~~viii. A statement signed by each proprietor attesting to compliance with the operating prerequisites set forth in Section 7.106.040 or a statement explaining that the exemption in Section 7.106.040(D) applies and if so, that the criteria for the exemption has been complied with;~~
 - ~~ix. A statement signed by each proprietor that they provide unconditional consent to all enforcement officers, the Department, and any agents to inspect the tobacco retailer pursuant to the provisions of this Chapter including unannounced inspections of the entire premise without prior notice. As part of this statement, each proprietor agrees and acknowledges that failure to comply is a violation of this Chapter and grounds for immediate revocation of such tobacco retailer license-; and,~~
 - ~~x. If the proprietor is not a natural person, the proprietor shall provide additional information on the entity including the following: (1) documents demonstrating entity ownership and control including: the articles of incorporation, articles of organization, certificate of formation, operating agreement, most recent statement of information, board of directors resolutions, manager resolutions, and bylaws; (2) documents demonstrating management structure including the names of all managers and members; and, (3) a disclosure identify all direct and indirect beneficial owners. A statement signed by an authorized officer or manager confirming the accuracy and completeness of information provided shall be provided.~~
- ~~(3) If the proprietor is not a natural person, the information requested in Section 7.106.050(A) shall be provided by an officer or manager with authorized authority to bind the entity.~~
- ~~(4) 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 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 retailers. 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 7.106.090. Nothing in this Chapter shall be construed to vest in any person~~

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

(B) Prerequisite Compliance. The following information regarding compliance with prerequisite operating requirements shall be provided:

- (1) Proof that the location for which a tobacco retailer license is sought has been issued a valid state tobacco retailer license and seller's permit by the California Department of Tax and Fee Administration. Providing a copy of the valid state license and California reseller number shall be sufficient proof.
- (2) Proof that a complete application for a business tax certificate pursuant to Chapter 7.04 of this Code has been applied for and submitted pursuant to the procedures in Chapter 7.04 of this Code. Providing a copy of the notice of submission of the business tax certificate shall be sufficient proof.
- (3) Proof of compliance with the operating prerequisites set forth in Section 7.106.040 or proof that the exemption in Section 7.106.040(D) applies and the criteria for the exemption has been met.

(C) Operating Information. The following information regarding operating procedures shall be provided:

- (1) The address of the property where the proposed tobacco retailer will operate.
- (2) A preferred service address to receive all notices and documents from the City relating to compliance and enforcement with this Chapter.
- (3) Proposed hours of operation.
- (4) List of proposed tobacco products and paraphernalia for sale.
- (5) A site plan with fully dimensioned interior and exterior floor plans, including security cameras, lighting, identification of where tobacco products will be displayed, and disabled access compliance pursuant to Title 24 of the State of California Code of Regulations and the federal Americans with Disabilities Act.
- (6) If the site is being rented, leased or is being purchased under contract, a copy of such lease or contract.
- (7) If the site is being rented or leased, written proof that the property owner and landlord, if applicable, were given notice that the property will be used as a tobacco retailer, and that the property owner and landlord, if applicable, agree(s) to said operations. If the retail facility is to be a subtenant, then "landlord" shall mean the primary tenant.

(D) Additional Information. Such other information as the Department deems necessary to process the tobacco retailer license or otherwise necessary for the administration of this Chapter. If the Department requests additional information, the applicant must supply the information within thirty (30) days and such application shall be on hold until such additional information is provided. If an applicant fails to correct any specified deficiency or provide the requested information within thirty (30) days, the application will be deemed expired for inaction. After the expiration of an application, the submittal of a new, complete application is required.

(E) Material Change. All information required by the Department to apply for a tobacco ~~retailer's~~retailer license shall be updated with the ~~Richmond Police~~ Department whenever the information changes. A tobacco retailer shall provide the Department with any updates within ten ~~business~~(10) days of a change.

(Ord. No. ~~20-18 N.S.~~, § I, ~~7-17-2018~~)

(F) Fee. Payment of fee as described in Section 7.106.070 shall be provided with the application for the tobacco retailer license.

7.106.080-060 – Tobacco Retailer License – Issuance of license, Denial, and Appeals.

(A) Issuance. Upon the Department's receipt of ~~an application for both~~ a complete application for a tobacco ~~retailer's~~retailer license and the license fee as required by this ~~chapter~~Chapter, the ~~Richmond Police~~ Department ~~shall~~may make the determination to issue a tobacco ~~retailer~~ license unless ~~substantial~~evidence demonstrates that one or more of the following bases for denial exists:

- ~~(1) (1)~~—The information presented in the application is incomplete, inaccurate, or false. Intentionally supplying inaccurate or false information shall be a violation of this ~~chapter~~Chapter;
- ~~(2) (2)~~—The application seeks authorization for tobacco retailing for a proprietor to whom this ~~chapter~~Chapter prohibits a license to be issued;
- ~~(3) (3)~~—The application seeks authorization for tobacco retailing at a location for which this ~~chapter~~Chapter prohibits a license to be issued;
- ~~(4) (4)~~—The application seeks authorization for tobacco retailing that is prohibited pursuant to this ~~chapter~~Chapter (e.g., mobile vending), that is unlawful pursuant to this Code, or that is unlawful pursuant to any other law;

(Ord. No. ~~20-18 N.S.~~, § I, ~~7-17-2018~~)

7.106.090 - Tobacco retailing without a license.

~~In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department 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 retailing 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 person or 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 person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until 90 (90) days have passed from the date of the violation.~~

- ~~(3) After of a third or subsequent violation of this section at a location within any 60-month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's-length transaction), until five years have passed from the date of the violation.~~

~~(Ord. No. 20-18 N.S., § I, 7-17-2018)~~

~~7.106.100 - License renewal and expiration:~~

- ~~(a) Renewal of License. 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 apply for the renewal of his or his tobacco retailer's license and submit the license fee not later than 30 days prior to expiration of the term.~~

- ~~(b) Expiration of License. A tobacco retailer's license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subparagraph(a), the proprietor must:~~

~~Submit the license fee and application renewal form; and~~

~~Submit a signed affidavit affirming that the proprietor:~~

- ~~(1) 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~~

~~(5) (2) Has waited the appropriate ineligibility period established for tobacco retailing without a license, as~~
The applicant, or any officer, agent or owner of the applicant, if an entity, or proposed manager of the tobacco retailer has been found in violation of this Chapter, has had a prior tobacco retailer license revoked within the last year, been issued an administrative citation for operating without a tobacco retailer license within the last two years, or has had other licenses or operational approvals relating to business operations within the City revoked within the last year;

~~(6) The applicant, or any officer, agent or owner of the applicant, if an entity, or proposed manager of the tobacco retailer has an outstanding amount of fines or fees owed to the City and are delinquent on payment;~~

~~(7) The applicant or any officer, agent or owner of the applicant, if an entity, or proposed manager of the tobacco retailer has been found in violation of any State law relevant to such license application and/or has any relevant State license that has been revoked or currently suspended;~~

~~(8) The City has assessed the impact that issuance of the tobacco retailer license will have on the public and has determined, based on substantial evidence from various City or public records and research including code-enforcement, nuisance, or law-enforcement data, that the impact on the public raises credible health, safety, and welfare concerns that outweigh the applicant's interest in operating. Such concerns may include, but are not limited to: documented increases in traffic or pedestrian congestion attributable to similar uses in the vicinity; proximity to schools, youth-serving facilities, or areas where minors regularly congregate, and the potential for increased youth access to tobacco products; the existing concentration of tobacco retailers within the surrounding area and the cumulative impact on vulnerable or disproportionately affected populations; documented crime statistics, police reports,~~

or enforcement data demonstrating an association between tobacco retail activity and public safety impacts at or near the proposed location; the applicant's prior compliance history, including any violations of tobacco, business licensing, or related regulations at the proposed location or other locations operated by the applicant; and, the site's historical pattern of complaints, enforcement actions, or adverse impacts related to similar historical uses;

- (9) Based on review of City documents and data, the City finds that issuance of the license would be contrary to this Code or State law, or legislation demonstrating detriment to public health, safety, or welfare;
- (10) That the proposed use aggravates existing problems in the neighborhood relating to the use or sale of tobacco as demonstrated by City records including but not limited to code-enforcement, nuisance, or law-enforcement data demonstrating a historical concentrated rate of tobacco-related violations exceeding the citywide average;
- (11) That the proposed adversely affects adjacent or nearby uses, including churches and other places for religious assembly, schools, hospitals, parks, recreation centers, and residences;
- (12) That the proposed use interferes with vehicular or pedestrian circulation along a public street or sidewalk;
- (13) That the proposed use is not compatible with or otherwise does not enhance, where appropriate, the visual quality of the surrounding area; or,
- (14) That there is an "undue concentration" of tobacco retailers in the surrounding area such that the number of tobacco retail licenses outstanding is at the limits set forth in Section 7.106.040(E).

(B) **Determination.** Notice of the Department's determination on the application will be provided and served on the applicant pursuant to the procedures set forth in Section 7.106.090(A)(2) as well as posted on the City's website for a period of 10 (ten) days. If denied, the notice will set forth the grounds for the determination. The Department may place conditions on operation aimed at protecting the public safety, health, or welfare. Any conditions will be set forth in the notice of determination.

(C) **Appeal.** Anyone aggrieved by the Department's decision may appeal pursuant to the procedures set forth in Section 7.106.090 of this chapter, before seeking renewal of the license. (C).

(Ord. No. ~~20-18 N.S.~~, § I, 7-17-2018)

7.106.110-070 - Tobacco Retailer License is nontransferable. - Fees.

- (a) 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).
- (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 transferred to new proprietor(s) in an arm's length transaction; and

~~(2) The new proprietor(s) provide the City with clear and convincing evidence that the new proprietor(s) have acquired or are acquiring the location in an arm's length transaction.~~

~~(Ord. No. 20-18 N.S., § I, 7-17-2018)~~

~~7.106.120 - License fees.~~

~~(A)(a) — Amount of Fees. The fee~~The fees associated with the tobacco retailer license and administration of this Chapter shall be established in a schedule of fees maintained by the City and available to the public. The fees shall be calculated so as to recover the total costs of both license administration and license enforcement, including, for example, issuing the 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 the Chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program; and shall be separately accounted for. Fees are nonrefundable except as may be required by law. A tobacco retailer license will not be renewed and become invalid if the application and license fees have not been paid in full not later than thirty (30) days prior to expiration.

~~(Ord. No. 20-18 N.S., § I, 7-17-2018)~~

~~7.106.130-080 - Tobacco Retailer License - Expiration and Renewal.~~

(A) Term and Renewal of License. A tobacco retailer license is invalid if the appropriate fee has not been paid in full not later than thirty (30) days prior to expiration or if the term of the license has otherwise expired. The term of a tobacco retailer license shall run from the date of approval through the end of the applicable calendar year in which the tobacco retailer license was issued. Each tobacco retailer shall apply for the renewal of their tobacco retailer license yearly by submitting the license fee not later than thirty (30) days prior to expiration.

(B) Expiration of License. A tobacco retailer license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to Section 7.106.080(A) above, the proprietor must provide the following to the Department:

(1) An application for a new tobacco retailer license pursuant to the procedures set forth in Section 7.106.050 along with the applicable fee set forth in Section 7.106.070; and,

(2) A signed affidavit affirming that the tobacco retailer:

i. Has not sold and will not sell any tobacco product or tobacco paraphernalia after the license expiration date and before a new license is issued;

ii. Has waited the appropriate ineligibility period established for tobacco retailing without a license, as set forth in Section 7.106.120(D), before seeking a new tobacco retailer license; and,

iii. Is in compliance with all applicable location standards as set forth in Section 7.106.040(C).

(C) License is Nontransferable. The following provisions shall apply to the transfer of tobacco retailer licenses:

- (1) A tobacco retailer license may not be transferred from one person to another or from one location to another. A new tobacco retailer license is required whenever a tobacco retailing location has a change in proprietor(s) or operation at a new location is desired.
- (2) Notwithstanding any other provision of this Chapter, license revocation- or prior violations at a location shall continue to be counted against a location and licensee ineligibility periods set forth in Sections 7.106.090(D)(3) and 7.106.120(D) shall continue to apply to a location unless:
 - (a)—i. The location has been transferred to new proprietor(s) in an arm's length transaction; and,
 - ii. The new proprietor(s) provide the City with clear and convincing evidence that the new proprietor(s) have acquired or are acquiring the location in an arm's length transaction. The Department shall have authority to investigate whether the transaction is conducted at arm's length. The documents required by Section 7.106.050(A)(2)(x) must be provided and the Department may request supplemental documents and information determined to be necessary for the assessment. If additional information after the transfer indicates the transaction was not conducted at arm's length, the tobacco retailer license shall be revoked.

7.106.090 - Tobacco Retailer License – Denial, Suspension, and Revocation of License for Violation: Procedures and Effects.

(A) Determination Procedures.

- (1) Notice. The determination of whether a tobacco retailer license should be denied, suspended, or revoked shall be initiated by a written statement explaining the determination, ground(s) for such determination, a statement of the right to appeal, and deadline for such appeal. If the determination regards suspension, the notice shall include information on the ability to cure and such applicable deadlines for curing.
- (2) Service. The notice will be served to the tobacco retailer via overnight mail at the elected service address as set forth in the applicant's application for tobacco retailer license pursuant to Section 7.106.050(C)(2). Failure to receive service shall not invalidate the notice or that service is effective. The fees associated with service shall be set forth in the City's schedule of fees maintained by the City and available to the public.

(B) Grounds for Determination.

- (1) Grounds for Denial. The grounds for denial are set forth in Section 7.106.060(A).
- (2) Grounds for Suspension. In addition to any other penalty authorized by law, a tobacco retailer's license shall be revoked if any court of competent jurisdiction determines, or if the City Manager or his or her designee finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that

retailer license may be suspended if the licensee, or any of the licensee's officers, agents or employees, has violated any of the provisions, requirements, conditions, or prohibitions of this chapter Chapter or any conditions of the license itself, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law pertaining to the display, sale, exchange, or transfer of any tobacco products, tobacco paraphernalia, drug paraphernalia, hazardous substances, electronic cigarette and vaping devices, illegal drugs, and/or electronic cigarette and vaping accessories.

- (3) ~~(b)~~—Notice of **Grounds for Revocation** Hearing. ~~If.~~ In addition to any other penalty authorized by law, a tobacco retailer license may be revoked for any of the following:
- i. The licensee has failed to cure the grounds for revocation exist, the City Manager warranting suspension within the prescribed amount of time.
 - ii. The licensee, or his any of the licensee's officers, agents or her designee may issue a notice of revocation employees, has violated any of the provisions, requirements, conditions, or prohibitions of this Chapter or any conditions of the license itself, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law pertaining to the display, sale, exchange, or transfer of any tobacco products, tobacco paraphernalia, drug paraphernalia, electronic cigarette and vaping devices, hazardous substances, illegal drugs, and/or electronic cigarette and vaping accessories and has previous had their tobacco retail license suspended within the last year.
 - iii. The licensee, or any of the licensee's officers, agents or employees, has been issued more than one administrative citation within the last year for violations any of the provisions, requirements, conditions, or prohibitions of this Chapter or any conditions of the license itself.
 - iv. The licensee, or any of the licensee's officers, clerks, agents or employees, has been issued at least one administrative citation within the last five (5) years for operating without a tobacco retail license and has been issued an additional administrative citation for any violation of the provisions, requirements, conditions, or prohibitions set forth in this Chapter or any conditions of the tobacco retailer license itself.
 - v. The licensee, or any of the licensee's officers, agents or employees, has been issued at least one administrative citation within the five year for violations of any of the provisions, requirements, conditions, or prohibitions set forth in Section 7.106.090(B)(3)(vi) below and has been issued an additional administrative citation for violations any of the provisions, requirements, conditions, or prohibitions of this Chapter or any conditions of the license itself.
 - vi. The licensee, or any of the licensee's officers, agents or employees, has violated provisions, requirements, conditions, or prohibitions of this Chapter that the City has determined have a significant negative impact on

the public's health, safety, and welfare including any of the following provisions:

1. Failure to make the entire premises of available for inspection as described in Section 7.106.110;
 2. Displaying, selling, or making flavored tobacco products or tobacco flavor enhancers available;
 3. Selling, marketing, or making tobacco products available to minors;
 4. Displaying, selling, or making drug paraphernalia or hazardous substances available; or,
 5. Displaying, selling, or making cannabis available.
- vii. The Department determines that one or more of the bases for denial of a license under Section 7.106.060(A) existed at the time application was made or at any time before the license was issued. If the tobacco retailer license is revoked pursuant to this subsection, revocation shall be without prejudice to the filing of a new tobacco retailer license application and the restrictive period set forth in Section 7.106.090(D)(3) below regarding timing for subsequent applications shall not apply.
- viii. The Department determines that a transfer was not made at arm's length as required by Section 7.106.080(C)(2).

(C) Procedures to Contest Determination.

- (1) Appeal of Determination. The decision of the Department to deny, suspend, or revoke a tobacco retailer license or any other determination made pursuant to the provisions of this Chapter is appealable before a neutral hearing. ~~A~~ officer and an appeal request must be filed with the Department within ten (10) days of the date of mailing of the Department's notice. Failure to properly and timely file such an appeal shall constitute a waiver of the right to appeal and a failure to exhaust administrative remedies. If such an appeal is made, it shall not stay enforcement of the appealed action except upon written request to the Department demonstrating either likelihood of successful appeal, an abuse of discretion, irreparable harm, or that such stay is not in the public's interest, and decision in writing by, the Department that a stay would not otherwise be adverse to public safety, health or welfare. There will be no stays extended when the action taken is pursuant to Section 7.106.090(B)(3)(vi).
- (2) Notice of Hearing. If the Department's decision is timely appealed, the City shall issue notice of ~~revocation~~the hearing. The notice of hearing will be served ~~to~~ ~~on~~ the tobacco retailer as specified in Section 7.106.460090(A)(2) and will include all of the following information:
- i. ~~(1)~~—The address or a definite description of the location where the tobacco ~~retailer's~~retailer license is issued;
 - ii. ~~(2)~~—The grounds for ~~revocation~~;the determination; and,
 - iii. The date of the hearing before the neutral hearing officer. The notice of hearing shall set the hearing date no later than forty-five (45) days following the date the notice of hearing is served. The date of the hearing shall not be

continued except upon written request for a documented emergency or other unforeseen and unavoidable circumstance beyond the reasonable control of the requesting party such as the following situations: (1) a serious illness, hospitalization, or medical emergency involving the requesting party or an immediate family member; (2) a natural disaster; (3) an unavoidable court order, subpoena, or legal obligation requiring the requesting party's presence at the same date and time; (4) a verified failure of essential infrastructure or utilities, including power, telecommunications, or transportation systems, that makes attendance impracticable; or, (5) other comparable exigent circumstances of similar gravity as determined by the City. All requests must be in writing and provided to the City at least 24 hours prior to the time of the scheduled hearing. The hearing can only be continued one time upon a showing of emergency by the requestor. The City may provide additional continuances should it determine necessary due to scheduling conflicts, staffing availabilities, or other logistics.

Hearing. (3) —~~The date of the revocation hearing before the neutral hearing officer. The notice of revocation hearing will set the hearing date no sooner than 20 days and no later than 45 days following the date the notice of revocation hearing is served.~~

(3) (c) —~~Revocation~~ **Hearing.** ~~A tobacco retailer's license may be revoked by the City Manager or his or her designee after a tobacco retailer's license revocation hearing. At the hearing, the~~ The Department's determination to deny, suspend, or revoke the tobacco retailer license or any other determination made pursuant to the provisions of this Chapter may be upheld or denied based on the findings made by the hearing officer after a complete hearing. Administrative hearings are informal, and formal rules of evidence and discovery do not apply. Oral evidence shall be taken only on oath or affirmation. The City bears the burden of proof to establish the grounds for determination by a preponderance of evidence. An applicant/licensee may bring an interpreter to the hearing provided there is no expense to the City for the interpreter. The hearing officer may question any person who presents evidence or who testifies at any hearing. The City may issue subpoenas requiring attendance of witnesses or production of books or other documents for evidence or testimony at the hearing. At the hearing, the applicant/licensee will be given the opportunity to testify and to present evidence concerning the grounds set forth in the notice of revocation hearing. After considering the testimony and evidence submitted at the hearing, the neutral hearing officer will issue a written decision to revokeupholding or not revokerejecting the licenseDepartment's determination and will list in the decision the reason or reasons for that decision. The written decision will be served as specified in Section 7.106.160. A revocation is without prejudice to the filing of a new application for a tobacco retailer's license.090(A)(2). The determination issued by the hearing officer shall be deemed a final order and may be judicially reviewed pursuant to California Code of Civil Procedure Section 1094.6. There is no right to a further administrative

appeal. Failure to appear at such hearing shall constitute a waiver of appeal and a failure to exhaust administrative remedies.

~~(d) — Revocation Appeal. The decision of the hearing officer to revoke a tobacco retailer's license may be appealable to the City Council. Such appeals must be submitted in writing to the City Council within 30 days after the licensee receives notice of the decision to revoke the license. The City Council shall hear the licensee's appeal at a noticed public hearing within 90 days after licensee submits his or her written appeal.~~

~~(e) — New License After Revocation.~~

~~(1) — After revocation for a first violation of this chapter at a location within any 60 period, no new license may issue for the location until ten days have passed from the date of revocation.~~

~~(2) — After revocation for a second violation of this chapter at a location within any 60 month period, no new license may issue for the location until 30 days have passed from the date of revocation.~~

~~(3) — After revocation for a third violation of this chapter at a location within any 60-month period, no new license may issue for the location until 90 (90) days have passed form the date of revocation.~~

~~(4) — After revocation for four or more violations of this chapter at a location until any 60-month period, no new license may issue for the location until five years have passed from the date of revocation.~~

~~(Ord. No. 20-18 N.S., § I, 7-17-2018)~~

~~7.106.140 - Compliance monitoring.~~

~~(D) (a) — **Effect.**~~

~~(1) **Effect of Denial.** The hearing officer's decision to uphold the denial of the tobacco retailer license is without prejudice to the filing of a new application for a tobacco retailer license.~~

~~(2) **Effect of Suspension.** Upon the hearing officer's decision to uphold the suspension of the tobacco retailer license, the following provisions shall apply:~~

~~i. The licensee shall immediately cease operation of all tobacco retailing activity and may only resume operation upon expiration of the suspension period and compliance with any necessary conditions to cure the violations including completing trainings or other remedial efforts as determined necessary by the Department. Engaging in the continued to display, advertise, or sell tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a license under Section 7.106.120. Compliance with this Section shall be verified by an inspection of the entire premise of the tobacco retailer by an enforcement officer.~~

~~(3) **Effect of Revocation.** Upon the hearing officer's decision to uphold the revocation of the tobacco retailer license, the following provisions shall apply:~~

~~i. No refunds of any fees shall be made to any tobacco retailer upon revocation.~~

~~ii. No tobacco retailer license shall be issued to the same applicant, proprietor, or licensee for a period of one year from the date of the hearing officer's decision.~~

- iii. The licensee shall immediately cease operation of all tobacco retailing and shall remove all tobacco products and tobacco paraphernalia from the retail location within 5 days. Failure to remove or engaging in the continued to display, advertise, or sell tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a license under Section 7.106.120. Compliance with this section shall be verified by an inspection of the entire premises by an enforcement officer.

7.106.100 - Operating Requirements and Prohibitions. All tobacco retailer operations must comply with the following operating requirements and prohibitions:

(A) Signage.

- (1) "No Smoking" signs with letters of not less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted at the entrance of the tobacco retailer.
- (2) Age-of-Sale Signs. To comply with California's STAKE Act, signs must be posted in a conspicuous place at each point of purchase at the tobacco retailer stating that tobacco sales to individuals under the age of twenty-one (21) years old are prohibited. This sign must be readily visible and present at all times.
- (3) All signage must comply with the City's requirements set forth in the City's Sign Article contained in Chapter 15.04.609 of this Code, including the prohibition of electronic, digital, and animated signs.

(B) Display and Presentation of Documents.

- (1) A valid tobacco retail license obtained pursuant to this Chapter must be displayed in a conspicuous public location at the tobacco retailer at all times such that it is readily visible to the public.
- (2) The tobacco retailer license and seller's permit both obtained from the California Department of Tax and Fee Administration (CDTFA) must be displayed in a conspicuous public location at the tobacco retailer at all times such that both are readily visible to the public.
- (3) A copy of the conditions of approval as set forth on the issued tobacco retailer license, when applicable, must be kept on the premises and presented to any enforcement officer upon request.
- (4) All documentation necessary to demonstrate compliance with this Chapter must be maintained at the premise of the tobacco retailer at all times such that it can be presented to an enforcement officer upon request at any inspection.

(C) Sales.

- (1) **Minimum Clerk Age.** No person who is under the age of twenty-one (21) years old, which is the minimum age established by State law for the purchase or possession of tobacco products, shall engage in tobacco retailing. Clerks shall have identification on them at all times while engaging in tobacco retailing and upon request must present such identification to an enforcement officer.

- (2) **Positive Identification Required.** No person engaged in tobacco retailing shall sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of twenty-seven (27) years old without first examining the identification of the recipient to confirm that the recipient is at least the minimum age for sale of tobacco products as established by State law.
- (3) **Display of Tobacco Product Pricing.** The price of each tobacco product offered for sale shall be clearly and conspicuously displayed to indicate the price of the product.
- (4) **Tobacco Coupons and Discounts Prohibited.** No tobacco retailer shall:
- i. Honor or redeem, or offer to honor or redeem, a coupon to allow a person to purchase a tobacco product for less than the full retail price;
 - ii. Sell any tobacco product to a person through a multiple-package discount or otherwise provide such product to a consumer less than the full retail price in consideration of the purchase of any tobacco product or any other item; or,
 - iii. Provide any free or discounted item to a person in consideration for the purchase of any tobacco product.
- (5) **Sales of Tobacco Products by Self-Service Display Prohibited.** It is unlawful for any person to display or sell tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display.
- (6) **On-site Sales.** All sales of tobacco products shall be conducted in-person at the licensed tobacco retailer location. It shall be a violation of this Chapter for any tobacco retailer or any of the tobacco retailer agents or employees to deliver tobacco products or to knowingly or recklessly sell tobacco products to any person that intends to deliver the tobacco product at a location other than the physical location of the tobacco retailer.
- (7) **Limitation on Sale Display Area for New Tobacco Retailers.** Any tobacco retailer that applies for and obtains a tobacco retailer license for the first time after the effective date of this ordinance shall ensure that no more than twenty (20) percent of its total sale display area is devoted to the display of tobacco products. If this limitation is applicable, it shall be noted on the tobacco retailer license at the time of issuance. Any transfer or change in ownership shall result in this limitation automatically applying regardless of whether the prior operator's tobacco retailer license was issued prior to the effective date of this ordinance.

(D) **Design Standards.**

- (1) **Lighting.** All off-street parking areas, pedestrian walkways, and building entrances serving a tobacco retailer shall be illuminated during all hours the business is open to the public. Lighting shall be designed, installed, and maintained to provide a minimum maintained horizontal illuminance of not less than one (1.0) foot-candle, measured at grade on the parking surface and pedestrian walking surfaces. If otherwise not measurable, illumination shall be sufficient to ensure safe pedestrian access and

visibility during hours of operation and shall be arranged to minimize excessive glare, shadowing, or dark areas.

- (2) **Security Cameras.** At least two 24-hour time-lapse security cameras must be operating, properly maintained, and installed on the exterior of the tobacco retailer at specific locations specified by the Richmond Police Department. All criminal and suspicious activities recorded on the surveillance equipment must be reported to the Richmond Police Department. To the extent required by law, all operators of tobacco retailers shall provide any tapes or other recording media from the security cameras to the Richmond Police Department upon request.
- (3) **Sound Walls.** If the tobacco retailer abuts a residential zoning district, a sound wall may be required between the activity and the abutting lot should the Department determine applicable and placed as a condition on the tobacco retailer license at the time of issuance. The sound wall must be no higher than six feet and must not obstruct the view of the building and parking areas from the street.
- (4) **Windows.** On the primary frontage of a tobacco retailer, there must be a minimum of 240 square feet of transparent fenestration in the area 30 inches above grade to 84 inches above grade that is to remain unobstructed during business hours.

(E) Prohibited Products and Uses.

- (1) **Minimum Pack Size for Little Cigars and Cigars.** No tobacco retailer shall sell or offer for sale, or possess with intent to sell or offer for sale:
 - i. Any single little cigar or cigar, whether or not packaged for individual sale;
 - ii. Any number of little cigars or cigars fewer than the number contained in the manufacturer's original packaging intended for sale to a consumer;
 - iii. Any package of little cigars or cigars containing fewer than twenty (20) little cigars or cigars; or,
 - iv. This subsection does not apply to the sale or offer for sale of a single cigar for which the retail price (exclusive of all applicable taxes and fees) exceeds \$5.00. This minimum retail amount may be adjusted from time to time by a resolution of the City Council.
- (2) **Sales of Cannabis Prohibited.** It shall be unlawful for any tobacco retailer or any of the tobacco retailer agents or employees to sell, offer for sale, or to possess with intent to sell or offer for sale any cannabis at the tobacco retailer.
- (3) **Sales of Drug Paraphernalia and Hazardous Substances Prohibited.** It shall be a violation of this Chapter for any licensee or any of the licensee's agents or employees, to violate any local, state, or federal law regulating controlled substances or drug paraphernalia, such as, California Health and Safety Code Sections 11364 through 11376.564.7. It shall be unlawful for any tobacco retailer or any of the tobacco retailer agents or employees to sell, offer for sale, or to possess with intent to sell or offer for sale any drug paraphernalia or hazardous substances.
- (4) **Sale of Flavored Tobacco Products Prohibited.** It shall be unlawful for any tobacco retailer or any of the tobacco retailer agents or employees to sell, offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.
 - i. The following rebuttable presumptions shall apply in any determination:

- a. There shall be a rebuttable presumption that a tobacco retailer in possession of four (4) or more flavored tobacco products, including but not limited to individual flavored tobacco products, packages of flavored tobacco products, or any combination thereof, possesses such flavored tobacco products with intent to sell or offer for sale. This presumption may only be rebutted by the following evidence: (1) producing inventory records, invoices, or shipping documentation demonstrating that the flavored tobacco products were received in error, were being returned to the manufacturer or distributor, or were held solely for disposal or destruction; and, (2) evidence that such products were segregated from retail inventory and stored in a location not accessible to the public.
- b. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has:
 - 1. Made a public statement or claim that the tobacco product imparts a characterizing flavor;
 - 2. Used text and/or images on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor; or,
 - 3. Taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.
- ii. Exception. The prohibitions in Section 7.106.100(E)(4) do not apply to the following:
 - a. Sales of flavored shisha tobacco products by a tobacco retailer if the requirements in California Health and Safety Code Section 104559.5(c) are met, which may be amended from time to time.

(5) Sale of Tobacco Product Flavor Enhancers Prohibited. It shall be a violation of this Chapter for any tobacco retailer or any of the tobacco retailer agents or employees to sell, offer for sale, or to possess with intent to sell or offer for sale, any tobacco product flavor enhancers. The rebuttable presumptions set forth in Section 7.106.100(E)(4)(i) shall apply.

(6) Sale of Electronic Cigarettes Prohibited. It shall be a violation of this Chapter for any tobacco retailer or any of the tobacco retailer agents or employees to sell, offer for sale, or to possess with intent to sell or offer for sale an electronic cigarette where the electronic cigarette:

- i. Is a new tobacco product;
- ii. Requires premarket review under 21 U.S.C. § 387j, as may be amended from time to time; and,
- iii. Does not have a premarket review order under 21 U.S.C. § 387j(c)(1)(A)(i), as may be amended from time to time.

(7) Unlicensed Operations Prohibited. A tobacco retailer or proprietor without a valid

tobacco retailer license, including a retailer whose licenses has been revoked shall:

- i. Immediately cease any and all displays, advertisements, and sales of all tobacco products and tobacco paraphernalia at the retail location and shall remove all tobacco products and tobacco paraphernalia from the retail location within 5 days. Failure to remove or continue to display, advertise, or sell tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a license under Section 7.106.120. Compliance with this section shall be verified by an inspection of the entire premises by an enforcement officer.

(8) On-Site Use and Consumption Prohibited. It shall be unlawful for any tobacco retailer or any of the tobacco retailer agents or employees to permit, allow, or otherwise authorize on-site consumption of any tobacco product or shisha. It shall be unlawful for any person to consume any tobacco product or shisha on the premise of any tobacco retailer.

7.106.110 - Compliance Monitoring and Inspections.

(A) Enforcement. ~~chapter~~ Compliance with this Chapter shall be monitored by the Department and enforcement officers and their designees. Any peace officer may enforce the penal provisions of this chapter-Chapter. All documentation necessary to demonstrate compliance with this Chapter must be maintained at the premise of the tobacco retailer at all times such that they can be presented by the clerk to an enforcement officer upon request at any inspection. Similarly, all necessary keys, authorizations, and items necessary to gain access to the entire premise of the tobacco retailer must be maintained at the premise of the tobacco retailer at all times such that the clerk entire premise can be made available to an enforcement officer upon request at any inspection.

(B) (b) — Annual Compliance Inspection. To ensure tobacco retailers are operating in compliance with this Chapter, all tobacco retailers shall be subject to an unannounced inspection by an enforcement officer and/or their designees/agents at least once every calendar year. No notice will be provided prior to the inspection, consent to such unannounced inspection is a condition of the tobacco retailer license, and the tobacco retailer or their agent/employees shall make the entire premises of the tobacco retailer available for such inspection. Failure to provide complete access is a violation of this Chapter subject to all enforcement remedies.

(C) Complaint Based Inspections. All tobacco retailers shall be subject to inspection by an enforcement officer and/or their designees/agents at any time an enforcement officer or the Department receives a complaint of potential criminal or nuisance activities occurring on or near the premises or if the Department has reason to believe that violations of this Chapter exist at the tobacco retailer. No notice will be provided prior to the inspection, consent to such unannounced inspection is a condition of the tobacco retailer license, and the tobacco retailer or their agent/employees shall make the entire premises of the tobacco retailer available for such inspection. Failure to provide complete access is a violation of

this Chapter subject to all enforcement remedies including immediate revocation of the tobacco retailer license as provided in Section 7.106.090(B)(3)(iv).

(D) Inspection Findings. If an enforcement officer determines at any inspection of a tobacco retailer that violations of this Chapter exist, the following provisions shall apply:

(1) The inspection findings and any enforcement actions shall be reported to the Department. The Department shall review the inspection findings and enforcement actions taken by the enforcement officer and shall determine whether to suspend or revoke the tobacco retailer license. The effect of the Department's decision and necessary compliance procedures are set forth in Section 7.106.090(D).

(2) If the Department determines to suspend the tobacco retailer license, certain measures to cure the suspension will be determined and the tobacco retailer must promptly comply with these additional measures. An additional inspection to ensure compliance with these additional measures must take place within the time prescribed in the suspension notice.

(3) The tobacco retailer shall be invoiced for the costs of the inspection and any necessary re-inspection and enforcement costs in accordance with the City's master fee schedule.

(E) Refusal. If the tobacco retailer or their agent/employee refuses permission and access to enter, inspect or investigate the entire premise of the tobacco retailer, it shall be a violation of this Chapter subject to immediate revocation of the tobacco retailer license as provided in Section 7.106.090(B)(3)(vi) and the City may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 et seq., or any similar or successive legislation applicable to facilitate such inspection.

(F) Nothing in this ~~chapter~~Chapter shall create a right of action in any tobacco retailer licensee or other person against the ~~city~~City or its agents.

~~(e) — Compliance checks~~ **7.106.120 – Enforcement and Penalties.**

(A) Public Nuisance Declared. Any violation of this Chapter is hereby declared to be a public nuisance. Each day a violation of this Chapter exists constitutes a separate and distinct violation. All methods available to abate public nuisances including those prescribed in Chapter 9.22 of this Code shall ~~determine, at a minimum, if be available.~~

(B) Administrative Fines.

(1) Amount. Each person who violates any provision of this Chapter shall be subject to an administrative fine in an amount up to \$500 for the first violation and up to \$1,000 for the second and each subsequent violation(s).

(2) Increased Administrative Fines For Flavored Tobacco Products and Enhancers. No tobacco retailer is conducting business in a manner that complies or any of the tobacco retailer agents or employees, shall sell, offer for sale, or possess with ~~tobacco~~ laws regulating youth access to the intent to sell or offer for sale any flavored tobacco. When appropriate, the compliance checks shall determine compliance products or tobacco product flavor enhancers. Pursuant to California Health and Safety Code

Section 104559.5(f)(1), any violation of this subsection shall be subject to the heightened administrative fine amounts, as follows:

- i. \$500 for the first violation;
- ii. \$1,000 for the second violation within a two-year period from the issuance of the first violation;
- iii. \$1,200 for a third violation within a two-year period from the issuance of the first violation;
- iv. \$3,000 for a fourth violation within a two-year period from the issuance of the first violation;
- v. \$5,000 for a fifth or subsequent violation within a two-year period from the issuance of the first violation.

(3) **Administrative Citation Procedures.** All procedures in Chapter 2.62 of this Code relating to the issuance, noticing, payment, collection, and appeal of administrative citations issued pursuant to this Chapter shall apply. The provisions in Chapter 2.62 relating to fine amounts shall not apply.

(C) **Seizure Of Prohibited Flavored Tobacco Products.** Flavored tobacco products offered for sale or exchange in violation of this Chapter are subject to immediate seizure by the Richmond Police Department or agent thereof and shall be forfeited after the licensee and any other owner of the flavored tobacco products seized is given reasonable notice and an opportunity to appeal and demonstrate that the flavored tobacco products were not offered for sale or exchange in violation of Chapter 7.106.

(1) After such flavored tobacco products offered for sale or exchange in violation of this Chapter are seized, Richmond Police Department or an agent thereof shall provide the tobacco retailer with ~~other laws~~ notice of seizure documenting the items seized and providing information on the right to appeal such seizure.

(2) Seized and forfeited flavored tobacco products shall be turned over the California Department of Tax and Fee Administration if acceptable otherwise, these products 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 ~~to~~ law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

(D) **Tobacco Retailing Without a License.** Any person issued an administrative citation for ~~engaging in tobacco retailing~~ without a tobacco retailer license shall be ineligible to obtain a tobacco retailer license for a period of two years after the date of issuance of the administrative citation absent successful appeal or revocation of the administrative citation. In addition to any other penalty authorized by law, if a person is determined by the enforcement officer to be engaging in tobacco retailing without a license, the summary abatement procedures in Chapter 9.22 shall apply and the enforcement officer may engage in immediate summary abatement pursuant to the procedures in Chapter 9.22 given the substantial and imminent dangers to public health, safety, and welfare.

7.106.150 - ~~Enforcement~~

- (E) Aiding and Abetting. Causing, permitting, allowing, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- (F) Remedies Cumulative. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity, and may be used in conjunction with, or in lieu of, each other remedy. Administrative citations may be imposed simultaneously for both general violations of this Chapter and for violations relating to flavored tobacco products and enhancers.
- (G) Other Penalties and Remedies. Notwithstanding any other penalty provided by this Code or otherwise by law, any person who violates any provision of this Chapter shall be guilty of a misdemeanor for each such violation punishable in accordance with Section 1.04.100 of this Code. In addition, the City may ~~seek compliance with this chapter by any remedy allowed~~ enforce the provisions of this Chapter by any means authorized by law, including but not limited to criminal and/or civil enforcement process including, without limitation, through nuisance abatement proceedings, restraining order, preliminary or permanent injunction, or by any other means available in law or equity.
- (H) Recovery of Attorney's Fees – Prevailing Party. In any proceeding or action under this Chapter, including any appeal, reasonable attorneys' fees may be recovered by the prevailing party if the City elects, at the initiation of the action or proceeding, to seek its attorney's fees in the event it is the prevailing party; however, the award of attorneys' fees to a prevailing party shall not exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding. In addition, the City may recoup its staff costs for investigating and enforcing violations and providing notice in accordance with this Chapter.
- (I) Evidence Provided By Minor. Whenever evidence of a violation of this Chapter is obtained in any 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 Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (J) Outstanding Fees and Fines.
- (1) Condition of License. No Tobacco Retailer License shall be issued, renewed, or deemed valid if the applicant or licensee has any unpaid City fees, fines, penalties, or costs related to tobacco retailing operations, including but not limited to permit fees, inspection fees, abatement costs, or administrative citations.
 - (2) Debt to the City. All unpaid fees, fines, or penalties assessed pursuant to this Chapter shall constitute a debt to the City. The City may collect such debt by any lawful means, including but not limited to:
 - i. Institution of a civil action;

- ii. Placement of a lien or special assessment on the real property associated with the tobacco retailing business, consistent with Government Code Sections 38773–38773.7;
- iii. Referral of the debt to a collection agency; and,
- iv. Any other method of recovery authorized by law.

~~7.106.160–Service:~~

~~All notices or decisions required to be served by this chapter will be served either by the method specified in subsection (a) or by the method specified in subsection (b) below. The failure of a person to receive a properly addressed service shall not affect the validity of the proceedings.~~

- ~~(a) Certified Mail. Certified mail will be addressed to the tobacco retailer at the address shown on the license application. Service is deemed complete upon the deposit of the notice or decision, postage pre-paid, in the United States mail. Simultaneously, the same notice or decision may be sent by regular mail. If a notice or decision sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail on the date mailed.~~
- ~~(b) Personal Service. Personal service is deemed complete on the date the notice or decision is personally served.~~

~~(Ord. No. 20-18 N.S., §1, 7-17-2018)~~