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Culver City Municipal Code

CHAPTER 11.15: TOBACCO RETAILER LICENSING

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Cross-reference:

Smoking regulations, see Ch. 9.11

§ 11.15.005 PURPOSE.

In enacting this Chapter, it is the intent of the City Council to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco and nicotine product to minors.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.010 DEFINITIONS.

For the purposes of this Chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DEPARTMENT. The Finance Department of the City of Culver City.

ELECTRONIC SMOKING DEVICE. An electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. **ELECTRONIC SMOKING DEVICE** includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

ELECTRONIC SMOKING DEVICE PARAPHERNALIA. Cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device chargers, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices.

PROPRIETOR. 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.

SELF-SERVICE DISPLAY. The open display 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 tobacco retailer or employee of the tobacco retailer, and a direct person-to-person transfer between the purchaser and the tobacco retailer or employee of the tobacco retailer. A vending machine is a form of self-service display.

TOBACCO PARAPHERNALIA. Cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other instrument or paraphernalia designed for the smoking, preparation, storing, ingestion or consumption of tobacco products. For purposes of this Chapter, **TOBACCO PARAPHERNALIA** includes an **ELECTRONIC SMOKING DEVICE** and **ELECTRONIC SMOKING DEVICE PARAPHERNALIA**.

TOBACCO PRODUCT. Any substance containing tobacco leaf, including but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body. Except as otherwise provided herein, **TOBACCO PRODUCT** does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. For purposes of this Chapter, **TOBACCO PRODUCT** includes an **ELECTRONIC SMOKING DEVICE** and **ELECTRONIC SMOKING DEVICE PARAPHERNALIA**.

TOBACCO RETAIL ESTABLISHMENT. A fixed location at which tobacco, tobacco products and/or tobacco paraphernalia are sold, offered for sale, exchanged or offered for exchange for any form of consideration.

TOBACCO RETAILER. Any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, in public view, tobacco, tobacco products or tobacco paraphernalia. **TOBACCO RETAILING** shall mean the selling, offering for sale, or exchanging or offering to exchange for any form of consideration, in public view,

tobacco, tobacco products or tobacco paraphernalia. Any person who distributes free or low cost samples of tobacco, tobacco products or tobacco paraphernalia shall be deemed to be a tobacco retailer under this Chapter.

TOBACCO RETAILER LICENSE. A license issued by the Department authorizing a proprietor to engage in tobacco retailing.

VENDING MACHINE. A machine, appliance or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment, that is designed or used for vending purposes, including but not limited to, machines or devices that use remote control locking mechanisms.

(Ord. No. 2009-006 § 1 (part); Ord. No. 2015-004 §§ 1, 2)

§ 11.15.015 LICENSE REQUIREMENTS AND PROHIBITIONS.

A. No person shall operate as a tobacco retailer or engage in tobacco retailing without first obtaining and maintaining a valid tobacco retailer license, pursuant to this Chapter, for each tobacco retail establishment.

B. Each tobacco retailer license shall be conspicuously displayed at all times in a publicly visible location within the licensed tobacco retail establishment.

C. Tobacco retailing by means of a self-service display is prohibited.

D. No tobacco retailer shall sell or transfer tobacco, 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 under state law to purchase and possess the tobacco, tobacco product or tobacco paraphernalia.

E. No tobacco retailer shall permit any person who is younger than the minimum age established by state law for the purchase or possession of tobacco, tobacco products or tobacco paraphernalia, to participate in the sale of tobacco, tobacco products or tobacco paraphernalia.

F. A tobacco retailer without a valid tobacco retail license:

1. Shall keep all tobacco, tobacco products and tobacco paraphernalia out of public view. The public display of tobacco, tobacco products and tobacco paraphernalia in violation of this section shall constitute tobacco retailing without a tobacco retail license and a violation of § 11.15.015A. of this Chapter.

2. Shall not display any advertisement relating to tobacco, tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retail establishment, or that could lead a reasonable consumer to believe such products can be obtained at the tobacco retail establishment, without the tobacco retailer first obtaining and maintaining a valid tobacco retailer license, pursuant to this Chapter, for each tobacco retail establishment at which the advertisement is displayed.

G. The sale of tobacco, tobacco products or tobacco paraphernalia from other than a fixed location, including but not limited to, tobacco retailing by persons on foot or from

vehicles, is prohibited, and no tobacco retailer license shall be issued under this Chapter for any such activity.

H. Nothing in this Chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer license any status or right other than the right to act as a tobacco retailer at the licensed tobacco retail establishment in the City. Nothing in this Chapter is intended to be construed to render inapplicable, supersede, or affect any other provision of applicable state or federal law.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.020 APPLICATION PROCEDURE.

A. All applications shall be completed on a form prepared and supplied by the Department. The application shall be signed under penalty of perjury. The following information shall be included, without limitation, on the application:

1. The name, address and telephone number of the proprietor, including, for non-corporate proprietors, the names of all principals. Corporate proprietors shall include the name of the designated agent for service of process.

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 on the application.

3. The business name, address and telephone number of the tobacco retail establishment for which the application is submitted.

4. Proof that the tobacco retail establishment for which the application is submitted has been issued a valid state tobacco retailer license by the California Board of Equalization.

5. Whether any other licenses have been issued to the proprietor for tobacco retail sales within the city, and, if so, the name and address of each of the tobacco retail establishments for which these licenses have been issued.

6. Whether or not any proprietor or any agent or employee of the proprietor has admitted violating, or has been found to have violated, this Chapter, and, if so, the dates and locations of all such violations within the previous five (5) years.

7. A statement by the proprietor, under penalty of perjury, that the contents of the application are true and correct.

8. Such other information as the Department deems necessary for the administration or enforcement of this Chapter, as specified on the application form required by this section.

B. For proprietors with multiple tobacco retail establishments within the City, a separate application is required for each proposed tobacco retail establishment.

C. Any change to the information required to be submitted in order to apply for a tobacco retailer license shall be provided to the Department within ten (10) business days of such change in information.

D. The proprietor shall be required to disclose any violations of the state tobacco licensing laws at any tobacco retail establishment within the five (5) years prior to the application for which the proprietor's state tobacco retailer's license was either suspended or revoked.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.025 LICENSE FEE.

The annual fee for a Tobacco Retailer License and the procedures for the processing and collection of such fee shall be established by resolution of the City Council.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.030 ISSUANCE OF LICENSE.

A. Except as otherwise provided herein, and except where a tobacco retailer establishment would not otherwise be permitted under local, state or federal laws, a license shall be issued upon receipt of a complete application in conformity with all requirements set forth in § 11.15.020, and the payment of the required license fee.

B. A tobacco retailer license shall not be issued where:

1. Suspension or revocation proceedings are pending before any local, state or federal agency for violations of local, state or federal tobacco control laws.

2. The proprietor or any person employed by the proprietor has been convicted of any violation of any local, state or federal tobacco control law within six (6) months prior to the date of application.

3. The proprietor's tobacco retailer license was revoked for the same tobacco retail establishment within the five (5) years preceding the date of the application.

4. The proprietor has not obtained a valid state tobacco retailer license from the California Board of Equalization.

5. The proprietor does not have a valid City business tax certificate or is delinquent on the payment of business tax, late payment penalties or other associated fees.

6. The information presented on the application is incomplete, inaccurate or false.

7. The application seeks a tobacco retailer license for a proprietor to whom this Chapter prohibits a license to be issued.

C. A tobacco retailer license is valid only for the tobacco retail establishment for which it has been issued and may not be transferred from one (1) person to another, or from one (1) tobacco retail establishment to another.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.035 LICENSE RENEWAL AND EXPIRATION.

A. A tobacco retailer license will be valid through the last day of February of every year, and if not renewed, will expire.

B. If any material information required for issuance of a tobacco retailer license has changed since the original license was issued, the proprietor shall be ineligible for a license renewal, but must apply for a new tobacco retailer license in accordance with the application procedures set forth in § 11.15.020 of this Chapter.

C. A tobacco retailer license that is not timely renewed shall expire at the end of its term. To reinstate a license that has expired or to renew a license not timely received pursuant to this Chapter, the proprietor must follow the application procedures set forth in § 11.15.020 of this Chapter.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.040 COMPLIANCE MONITORING AND ENFORCEMENT.

Compliance with the provisions of this Chapter shall be monitored by the Finance Department, Police Department and/or Enforcement Services Division, including any authorized designee of such departments and division, and/or by any other person or persons so designated by the City Manager.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.045 VIOLATIONS UNLAWFUL; PENALTIES.

A. A violation of any provision of this Chapter is unlawful.

B. The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

C. A violation of any provision of this Chapter is subject to a civil action brought by the City Attorney, punishable by a civil fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000) per violation.

D. A violation of any provision of this Chapter may, at the discretion of the City Attorney, be prosecuted as an infraction or misdemeanor.

E. The City Council shall, by resolution, establish the penalties for a violation of this Chapter, but in no event shall such penalties exceed the maximum penalties permitted under state law.

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

G. In addition to the criminal penalties attached to violations of this Chapter, any violation of this Chapter is hereby declared a public nuisance.

(Ord. No. 2009-006 § 1 (part))

§ 11.15.050 LICENSE SUSPENSION AND REVOCATION; ADMINISTRATIVE FINES.

A. In addition to any criminal or other penalty authorized by this Code and other applicable law, a tobacco retailer license may be suspended or revoked by the Committee on Permits and Licenses, as set forth herein, based on one or more of the following findings:

1. The tobacco retailer, or his or her agents or employees, has violated any provision of this Chapter, or any other local, state or federal tobacco-related law; or
2. The information contained in the application, including supplemental information, if any, is found to be false or misleading in any material respect; or
3. The tobacco retailer license was issued in error, or on the basis of false or misleading information supplied by the proprietor; or
4. The tobacco retailer license fee is unpaid; or
5. The tobacco retailer license has been transferred in violation of this Chapter.

B. Upon a finding of a first license violation, the tobacco retailer license shall be suspended for thirty (30) days; upon a finding of a second license violation within five (5) years of the first violation, the tobacco retailer license shall be suspended for ninety (90) days; and upon a finding of a third license violation within five (5) years of the first violation, the tobacco retailer license shall be revoked.

C. In addition to any criminal or other penalty authorized by this Code and other applicable law, an administrative fine may be imposed on a tobacco retailer for a violation of any provision of this Chapter, in accordance with the procedures set forth in §§ 11.01.600 et seq. of this Code.

D. The procedure used for appealing a revocation or suspension shall be in accordance with the procedures set forth in §§ 11.01.500, et seq. of this Code.

E. A tobacco retailer, whose license has been revoked, may not apply for a new tobacco retailer license for a period of five (5) years after the effective date of the revocation.

F. During any period of license suspension or revocation, the tobacco retailer must remove from public view all tobacco, tobacco products, tobacco paraphernalia, and tobacco-related advertising.

(Ord. No. 2009-006 § 1 (part))