

Chapter 8.38 - LICENSING OF TOBACCO RETAILERS

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8.38.010 - Purpose.

It is the purpose and intent of this chapter to discourage violations of laws which prohibit or regulate the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by state or federal law are criminally proscribed or to alter the penalty provided therefore.

(Ord. 562 § 2 (part), 2005)

8.38.020 - Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

"Enforcement agency" means the Arroyo Grande police department.

"Hearing officer" means the city employee designated by the city manager to serve in that capacity.

"Licensing agent" means a city employee designated by the city manager to serve in this capacity.

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

"Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have, or can or does share, ultimate control over the day-to-day operations of a business.

"Tobacco product" means:

1. Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis or an other preparation of tobacco; and
2. Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale or otherwise distributed with the expectation that the product or matter will be introduced into the human body but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence.

"Tobacco retailer" means any person who sells, offers for sale or does or offers to exchange for any form of consideration, tobacco or tobacco products; "tobacco retailing" shall mean the doing of any of these things.

(Ord. 562 § 2 (part), 2005)

8.38.030 - Requirement for tobacco retailer license.

- A. It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's license issued pursuant to this chapter for each location at which that activity is to occur.
- B. No license will be issued to authorize tobacco retailing at other than a fixed location; itinerant tobacco retailing and tobacco retailing from vehicles are prohibited.
- C. No license will be issued to authorize tobacco retailing at any location that is licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control). Tobacco retailing in bars and restaurants serving alcoholic beverages is prohibited.
- D. No person shall sell a tobacco product without first examining the identification of the purchaser and confirming that the proposed sale is to a purchaser who is at least the minimum age in state law for being sold the tobacco product.
- E. Licenses issued hereunder are valid for one year and each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license prior to its expiration. A tobacco retailer license does not confer any new rights under any other law and does not exempt any business that otherwise would be subject to the smoke-free work place provisions of Labor Code section 6404.5.

(Ord. 562 § 2 (part), 2005)

8.38.040 - Application procedure.

- A. An application for a tobacco retailer's license shall be submitted to the licensing agent in the name of each proprietor/person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the licensing agent and shall contain the following information:
 1. The name, address and telephone number of the applicant;
 2. The business name, address and telephone number of each location for which a tobacco retailer's license is sought;

3. Such other information as the licensing agent deems necessary for enforcement of this chapter;
4. Whether or not any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.

(Ord. 562 § 2 (part), 2005)

8.38.050 - Issuance of license.

The licensing agent shall issue a tobacco retailer license unless substantial record evidence demonstrates one of the following bases for denial:

1. The application is incomplete or inaccurate; or
2. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension is in effect pursuant to Section 8.38.110 of this chapter; or
3. The application seeks authorization for tobacco retailing in an area that is in violation of city zoning pursuant to Title 16 of this code or that is unlawful pursuant to any other local, state or federal law.

(Ord. 562 § 2 (part), 2005)

8.38.060 - Display of license.

Each licensee shall prominently display the license in a public place at each location where tobacco retailing occurs.

(Ord. 562 § 2 (part), 2005)

8.38.070 - Fees for license.

The fee for a tobacco retailer's license shall be established by resolution of the city council. The fee shall be calculated so as to recover the total cost, but no more than the total cost, of license administration and enforcement, including, for example, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violation and prosecution of violators. The fee for tobacco retailer's license shall be paid to the licensing agent.

(Ord. 562 § 2 (part), 2005)

8.38.080 - Licenses nontransferable.

A tobacco retailer's license is nontransferable to a different person or a different location. For example, if a proprietor to whom a license has been issued changes business location, that proprietor must apply for a new license prior to acting as a tobacco retailer at the new location. Or if the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer.

(Ord. 562 § 2 (part), 2005)

8.38.090 - License violation.

It shall be a violation of a license for a licensee or his or her agents or employees to violate any local, state or federal tobacco-related law.

(Ord. 562 § 2 (part), 2005)

8.38.100 - License compliance monitoring.

Compliance with this chapter shall be monitored by the Arroyo Grande police department. At least four compliance checks of each tobacco retailer shall be conducted during each twelve (12) month period. The cost of compliance monitoring shall be incorporated into the license fee.

(Ord. 562 § 2 (part), 2005)

8.38.110 - Suspension or revocation of license.

A. In addition to any other penalty authorized by law, a tobacco retailer's license may be suspended or revoked if the city finds, after notice to the licensee and opportunity to be heard, that the licensee or his or her agents or employees has violated the conditions of the license imposed pursuant to this chapter.

1. Upon a finding by the city of a first license violation within any five-year period, the license shall be suspended for thirty (30) days;
2. Upon a finding by the city of a second license violation within any five-year period, the license shall be suspended for ninety (90) days;
3. Upon a finding by the city of a third license violation within any five-year period, the license shall be suspended for one year;
4. Upon a finding by the city of a fourth license violation within any five-year period, the license shall be revoked.

B. A tobacco retailer's license shall be revoked if the city finds, after notice and opportunity to be heard, that one of the following conditions exist. The revocation shall be without prejudice to the filing of a new application for a license.

1. The application is incomplete for failure to provide the information required by Section 8.38.040 of this chapter;
2. The information contained in the application, including supplemental information, if any, is found to be false in any material respect;
3. The application seeks authorization for a license for tobacco retailing that is unlawful.

(Ord. 562 § 2 (part), 2005)

8.38.120 - Appeal of suspension and/or revocation.

A. A decision of the city to revoke or suspend a license is appealable to a hearing officer and must be filed with the hearing officer at least ten (10) working days prior to the commencement date of the license suspension or revocation. An appeal shall stay all proceedings in furtherance of the appealed

action. Following appeal, the decision of the hearing officer may be appealed to the city manager or his/her designee. A decision of the city manager or his/her designee shall be the final decision of the city.

B. During a period of license suspension, the tobacco retailer must remove from public view all tobacco products and shall not display any advertisement relating to tobacco products that promotes the sale or distribution of such products from the tobacco retailer's location or that would lead a reasonable consumer to believe that such products can be obtained at the tobacco retailer's location.

(Ord. 562 § 2 (part), 2005)

8.38.130 - Administrative fine—Penalties—Enforcement.

A. Any violation of the provisions of this chapter by any person is a crime and is punishable as provided in Chapter 1.16 of this code. Any violation of the provisions of this chapter by any person is also subject to administrative penalties as adopted by a resolution of the city council.

B. If the city finds, based on substantial record evidence, that any unlicensed person has engaged in tobacco retailing activities in violation of Section 8.38.030 of this chapter, the city shall fine that person. Each day that an unlicensed person offers tobacco products or tobacco for sale or exchange shall constitute a separate violation and will be assessed a penalty as established by resolution of the city council.

C. Violations of this chapter are hereby declared to be a public nuisance.

D. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including but not limited to administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(Ord. 562 § 2 (part), 2005)