

## Chapter 8.23 - LICENSURE OF TOBACCO RETAILERS <sup>[4]</sup>

<sup>(4)</sup> **Editor's note**— Ord. No. 3159, § 2, adopted August 18, 2008, in effect repealed the former Chapter 8.23, §§ 8.23.100—8.23.103, and enacted a Chapter 8.23 as set out herein. The former Chapter 8.23 pertained to cigarette vending machines and derived from Ord. No. 2532, § 2, 1991.

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### 8.23.100 - 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:

- (a) "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.
- (b) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (c) "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 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. Where there is more than one proprietor, a primary proprietor shall be designated to act as license applicant.
- (d) "Self-service display" means the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or

employee of the retailer. A vending machine is a form of self-service display.

(e) "Smoking" means possessing a lighted tobacco product, lighted tobacco paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind), the lighting of a tobacco product, tobacco paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).

(f) "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

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

(h) "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia, or who distributes free or low cost samples of tobacco products or tobacco paraphernalia. "Tobacco retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

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

(Ord. No. 3159 § 2, 8-19-08)

**8.23.110 - Tobacco retailer license required.**

(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 pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer's license is a public nuisance.

(b) A tobacco retailer or proprietor without a valid tobacco retailer license, including a person whose license has been suspended and/or revoked:

- (1) Shall not sell any tobacco products and/or tobacco paraphernalia.
- (2) Shall keep all tobacco products and tobacco paraphernalia out of public view.
- (3) 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.
- (4) The public sale or display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a license under Section 8.23.210

(c) Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the right to act as a tobacco retailer at the location in the county identified on the face of the license. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this code or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a tobacco retailer license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

(Ord. No. 3159 § 2, 8-19-08)

**8.23.120 - Limits on tobacco retailer licenses.**

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

(b) No license may be issued to authorize tobacco retailing at any business establishment, the main purpose of which is serving food for sale for consumption by guests on the premises or any business, the main purpose of which is licensed under state law to serve alcoholic beverages for consumption on the premises.

(c) No license will be required of any person or party having a lease or concession from the county to operate on land owned or operated by the county, or any person or party having a lease or concession to operate on land owned or operated by any public entity.

(1) Nothing in Section 8.23.120(c) of this title exempts any person or party from complying with the applicable requirements and prohibitions of this code, or state and federal laws.

(2) Nothing in Section 8.23.120(c) of this title exempts any person or party from the applicable enforcement and monitoring of this title.

(Ord. No. 3159 § 2, 8-19-08)

**8.23.130 - Application procedure.**

(a) Application for a tobacco retailer's license shall be submitted and signed by the primary proprietor, or an authorized agent thereof.

(b) It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retailer's license. No proprietor may rely on the issuance of a license as a determination by the county that the proprietor has complied with all laws applicable to tobacco retailing. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.

(c) All applications shall be taken by the tax collector and shall contain the following information:

(1) The name, mailing address and telephone number of the applicant. If the applicant is a corporation, the name shall be exactly as set forth in its articles of incorporation. If the applicant is a partnership, the name of each general partner shall be stated. If one or more of the partners is a corporation, the provisions of this section as to a corporate applicant apply;

- (2) The residence of the applicant or, if a corporation, the principal place of business;
- (3) The business name, address, and telephone number of the single fixed location for which a license is sought;
- (4) If the applicant is a corporation, the name and mailing address of an officer who is duly authorized to accept the service of legal process;
- (5) Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization;
- (6) The term for which such license is applied;
- (7) The amount of the license fee;
- (8) Such other information as the tax collector deems necessary for the administration or enforcement of this chapter.

(d) All information required to be submitted in order to apply for a tobacco retailer's license shall be updated with the tax collector whenever the information changes. A tobacco retailer shall provide the tax collector with any updates within thirty business days of a change.

(Ord. No. 3159 § 2, 8-19-08)

**8.23.140 - Grounds for denial of the issuance of license.**

Upon the receipt of an application for a tobacco retailer's license and the license fee required by this chapter, the tax collector shall process and issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exist.

The application has incomplete, inaccurate, or false statements on a material matter in the application. Intentionally supplying inaccurate or false information shall be a violation of this chapter.

(Ord. No. 3159 § 2, 8-19-08)

**8.23.150 - License renewal and/or reinstatement.**

(a) Issuance Period. The period of all annual tobacco retailer licenses is one year and shall begin on the first day of the month in which the license is issued and shall expire on the last day of the month in which the license was issued, one year from the date of issuance. No license shall be granted or issued for a period longer than one year from the month of issuance. In the case of applications for a tobacco retail license at a location where a business license is required under this code, the initial tobacco retailer license shall be prorated so as to expire on the expiration date of the then current business license.

(b) Renewal of License. Except as otherwise provided in this chapter, every licensee who has obtained a tobacco retailer license may obtain a renewal of the license from the tax collector. Such license may be denied on any grounds for which a license could be denied pursuant to Section 8.23.140

- (1) Application for renewal and all license fees as required by this chapter are due and payable on the first business day after the date of expiration. A tobacco retailer is permitted a thirty-day

grace period thereafter to submit said application and payment. Subsequent to the grace period, a penalty of fifty percent of the license fee shall be added for renewal. Subsequent to the grace period, a penalty of fifty percent of the license fee shall be added for renewal. If the entire license fee, with the addition of penalties, is not submitted within sixty days after the expiration of the grace period, the Tax Collector shall automatically suspend the license. If the licensee desires to continue business a request to reinstate the license, subject to the review of the appropriate county departments, must be made to the tax collector's office no more than one hundred eighty days after the expiration date of the license. If a request to reinstate is not made the license will automatically be revoked, and a new license application must be made to the tax collector's office as set forth in Section 8.23.130 of this chapter.

(c) Reinstatement of License. To reinstate a license that has been suspended in accordance with this chapter the proprietor(s) must:

- (1) Submit the license fee plus the penalty if applicable;
- (2) Submit a signed affidavit to the tax collector affirming that the proprietor(s):
  - (i) Has not sold and will not sell any tobacco product or tobacco paraphernalia after the license suspension date and prior to the license being reinstated; and
  - (ii) Has waited the appropriate ineligibility period established for a violation as set forth in Section 8.23.200 of this chapter or for tobacco retailing without a license, as set forth in Section 8.23.210 of this chapter, before seeking reinstatement of the license.

(Ord. No. 3159 § 2, 8-19-08)

**8.23.160 - Licenses nontransferable.**

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

(b) Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

- (1) The location has been fully transferred to a new proprietor or fully transferred to entirely new proprietors; and
- (2) The new proprietor(s) provide the county with clear and convincing evidence that the new proprietor(s) have acquired or is acquiring the location in an arm's length transaction.

(Ord. No. 3159 § 2, 8-19-08)

**8.23.170 - Fees for license.**

The fee to issue or to renew a tobacco retailer's license shall be established by resolution of the board of supervisors. The fee shall be calculated so as to recover the total cost 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 this

chapter. All fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

(Ord. No. 3159 § 2, 8-19-08)

**8.23.180 - Other requirements and prohibitions.**

(a) Lawful Business Operation. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license is issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to:

(1) Violate any local, state, or federal law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing.

(2) Violate any local, state, or federal law regulating exterior, storefront, window, or door signage.

(b) Display of License. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

(c) 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 thirty 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 product or tobacco paraphernalia.

(d) Minimum Age for Persons Selling Tobacco. No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in tobacco retailing.

(e) Self-Service Displays Prohibited. No tobacco retailer shall display tobacco products or tobacco paraphernalia by means of a self-service display or engage in tobacco retailing by means of a self-service display.

(Ord. No. 3159 § 2, 8-19-08)

**8.23.190 - Compliance monitoring.**

(a) Compliance with this chapter shall be monitored by the sheriffs department. Any peace officer may enforce the penal provisions of this chapter.

(b) The sheriffs department shall check the compliance of each tobacco retailer at least four times per twelve month period, excepting that, the sheriffs department may check the compliance of tobacco retailers previously found to be in compliance a fewer number of times so that it may check the compliance of tobacco retailers previously found in violation of the licensing law a greater number of times. Nothing in this paragraph shall create a right of action in any licensee or other person against the county or its agents.

(c) Compliance checks shall determine, at a minimum, if the tobacco retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco. When appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco retailing.

(d) The county shall not enforce any law establishing a minimum age for tobacco purchases or

possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

- (1) The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the county; or
- (2) The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the health agency or the State of California Department of Health Services.

(Ord. No. 3159 § 2, 8-19-08)

### **8.23.200 - Suspension and/or revocation of license.**

(a) Suspension and/or Revocation of License for Violation. In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended and/or revoked if the health agency finds or any court of competent jurisdiction determines, after the licensee is afforded notice and an opportunity to be heard pursuant to subsection (b), that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or, in a different legal proceeding, has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 8.23.180(a) of this chapter.

- (1) Upon a finding by the health agency of a first license violation within any five-year period, the license shall be suspended for thirty days.
- (2) Upon a finding by the health agency of a second license violation within any five-year period, the license shall be suspended for ninety days.
- (3) Upon a finding by the health agency of a third license violation within any five-year period, the license shall be revoked and no new license shall be issued for one year from the date of revocation.
- (4) Upon a finding by the health agency of a fourth license violation within any five-year period, the license shall be revoked and no new license shall be issued for five years from the date of revocation.

(b) Appeal of Suspension and/or Revocation. A decision of the health agency to suspend and/or revoke a license is appealable to the public health officer and must be filed with the health agency within ten days of mailing of the health agency's notice of suspension/revocation. If such an appeal is made, it shall stay enforcement of the appealed action. An appeal to the public health officer is not available for a revocation made pursuant to subsection (c) below.

(c) Revocation of License Issued in Error. A tobacco retailer's license shall be revoked if the Health Agency finds, after the licensee is afforded reasonable notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 8.23.140 existed at the time application was made or at any time before the license issued. The decision by the health agency shall be the final decision of the county. The revocation shall be without prejudice to the filing of a new license application.

(Ord. No. 3159 § 2, 8-19-08)

**8.23.210 - Tobacco retailing without a license.**

(a) In addition to any other penalty authorized by law, if the health agency finds or any court of competent jurisdiction determines, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for or be issued a tobacco retailing license for that location as follows:

(1) After a first violation at a location within any sixty-month period, no new license may issue for the person at the location until sixty days have passed from the date of the violation.

(2) After a second violation at a location within any sixty-month period, no new license may issue for the Person at the location until one hundred and eighty days have passed from the date of the violation.

(3) After of a third or subsequent violation at a location within any sixty-month period, no new license may issue for the person at the location until five years have passed from the date of the violation.

(b) For the purposes of the civil remedies provided in this chapter:

(1) Each day on which a tobacco product or tobacco paraphernalia is offered for sale in violation of this chapter; or

(2) Each individual retail tobacco product and each individual retail item of tobacco paraphernalia that is distributed, sold, or offered for sale in violation of this chapter;

Whichever is greater shall constitute a separate violation of this chapter.

(c) Persons found engaging in tobacco retailing without a valid tobacco retailer's license may appeal this finding in accordance with section 8.23.200(b).

(Ord. No. 3159 § 2, 8-19-08)

**8.23.220 - Enforcement.**

(a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

(b) Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen 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.

(c) Violations of this chapter are subject to a civil action brought by the district attorney or the county counsel, punishable by a civil fine not less than two hundred dollars and not exceeding one thousand dollars per violation.

(d) Violations of this chapter may, in the discretion of the district attorney, be prosecuted as infractions or misdemeanors.

(e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall

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also constitute a violation of this chapter.

(f) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the county code enforcement officer, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

(Ord. No. 3159 § 2, 8-19-08)