

ORDINANCE NO. 20-18 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND
REPEALING CHAPTER 9.45 AND AMENDING CHAPTER 7.106 OF THE CITY OF
RICHMOND MUNICIPAL CODE**

The Council of the City of Richmond hereby finds and declares as follows:

WHEREAS, based in part on the information contained in this section, the City Council finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to youth presents an imminent threat to the public health, safety, and welfare of the residents of the City; and

WHEREAS, the City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City, to protect the health, safety, and welfare of our residents; and

WHEREAS, approximately 438,000 people die in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death;¹ and

WHEREAS, the World Health Organization (WHO) estimates that by 2030, tobacco will account for 8.3 million deaths per year, killing 50% more people in 2015 than HIV/AIDS, and will be responsible for 10% of all deaths worldwide;² and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

- The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950);
- State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to youth (Cal. Pen. Code § 308);
- State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 21 years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using youth to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952);
- State law prohibits the sale of tobacco products and paraphernalia through self-services displays with limited exceptions for tobacco stores (Cal. Bus. & Prof. Code § 22960, 22962);
- State law prohibits the sale of “bidis” (hand-rolled filter-less cigarettes imported primarily from India and Southeast Asian countries) except in adult-only establishments (Cal. Pen. Code § 308.1); and
- State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than 0.60 ounces of tobacco (Cal. Pen. Code § 308.3); and

WHEREAS, state law requires all tobacco retailers to be licensed by the California Tax & Fee Administration primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and

¹ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Morbidity and Mortality Weekly Report: Annual Smoking - Attributable Mortality, Years of Potential Life Lost, and Productivity Losses - United States 1997-2001*. 2005, 54(25): p. 625-628. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5425a1.htm.

² World Health Organization. *World Health Statistics 2007, Part 1: Ten Statistical Highlights in Global Public Health*. 2007, p. 12. Available at: www.who.int/whosis/whostat2007_10highlights.pdf.

WHEREAS, California courts in such cases as *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of the City to regulate business activity in order to discourage violations of law; and

WHEREAS, in 2008 the rate of sales of tobacco to minors in Richmond, California was 36.6%, according to data from Stop Tobacco Access to Kids (STAKE) Act Program at the California Department of Public Health; and

WHEREAS, despite the state's efforts to limit youth access to tobacco, youth are still able to access cigarettes, as evidenced by the fact that:

- Each day, nearly 4,000 children under 18 years of age smoke their first cigarette, and almost 1,500 children under 18 years of age begin smoking daily;³
- More than 75% of all current smokers in 2001 began smoking before the age of 18;⁴
- Among middle school students who were current cigarette users in 2004, 70.6% were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and 66.4% were not refused purchase because of their age;⁵
- In 2002, youth smoked approximately 540 million packs of cigarettes, generating nearly \$1.2 billion in tobacco industry revenue⁶; and

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes, as evidenced by the following:

- A review of thirteen California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in twelve of the thirteen communities, with an average decrease of 68% in the youth sales rate;⁷
- A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85% in 1994 to 43% in 1998;⁸
- A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8% to 4.9% in the number of youth able to purchase tobacco;⁹ and

WHEREAS, the implementation of tobacco retailer licensing requirements is supported by most Californians, as evidenced by the following:

- Statewide, over 80% of California adults think tobacco retailers should be licensed;¹⁰
- Similarly, in rural areas in California, 78% of adults think tobacco retailers should be licensed, and 91% agree that a store owner who repeatedly sells cigarettes to minors

³ Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies. *Results from the 2004 National Survey on Drug Use and Health: National Findings*. 2005. Available at: <http://oas.samhsa.gov/NSDUH/2k4nsduh/2k4Results/2k4Results.pdf>.

⁴ Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies. *2003 National Survey on Drug Use and Health: Results*. 2003. Available at: www.oas.samhsa.gov/nhsda/2k3nsduh/2k3Results.htm#ch5.

⁵ US Department of Health and Human Services, Centers for Disease Control and Prevention. *Morbidity and Mortality Weekly Report: Tobacco Use, Access & Exposure to Tobacco Among Middle & High School Students, U.S., 2004*. 2005, 54: p. 297-301. Available at: www.cdc.gov/mmwr/preview/mmwrhtml/mm5412a1.htm.

⁶ Heaton C, Farrelly MC, Weitzenkamp D, et al. "Youth Smoking Prevention and Tobacco Industry Revenue." *Tobacco Control*, 15: 103-106, 2006. Available at: <http://tobaccocontrol.bmj.com/cgi/content/full/15/2/103>.

⁷ American Lung Association of California, Center for Tobacco Policy and Organizing. *Tobacco Retail Licensing is Effective*. 2007. Available at: www.center4tobaccopolicy.org/_files/_files/5377_Tobacco%20Retailer%20Licensing%20is%20Effective%20October%202007.pdf.

⁸ Ma GX, Shive S and Tracy M. "The Effects of Licensing and Inspection Enforcement to Reduce Tobacco Sales to Minors in Greater Philadelphia, 1994-1998." *Addictive Behaviors*, 26(5): 677-87, 2001. Abstract available at: www.ncbi.nlm.nih.gov/entrez/query.fcgi?cmd=Retrieve&db=PubMed&list_uids=11676378&dopt=Abstract.

⁹ Forster JL et al. "The Effects of Community Policies to Reduce Youth Access to Tobacco." *American Journal of Public Health*, 88(8): 1193-1197, 1998. Available at: www.ajph.org/cgi/reprint/88/8/1193.

¹⁰ California Department of Health Services, Tobacco Control Section. *California Tobacco Control Update*. 2004. Available at: <http://dhs.ca.gov/tobacco/documents/pubs/2004TCSupdate.pdf>.

should no longer have the right to sell cigarettes;¹¹

- 65% of California's key opinion leaders surveyed support implementation of tobacco-licensing requirements;¹²
- Over 90% of enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco;¹³ and

WHEREAS, seventy-eight cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop youth from smoking;¹⁴ and

WHEREAS, state law prohibits the sale or display of cigarettes through a self-service display. This law, which applies only to cigarettes, explicitly provides that broader local requirements may be enacted (Cal. Bus. & Prof. Code § 22962); and

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- Nearly 11% of all tobacco retailers unlawfully sold to youth in 2007;¹⁵
- Non-traditional tobacco retailers such as deli, meat, and donut shops sold to minors in 2007 at a much higher rate than the statewide average, as high as 16%;¹⁶
- Teens surveyed in 2002 say they bought their cigarettes at: gas stations (58%), liquor stores (45%), and supermarkets and small grocery stores (29% combined);¹⁷ and

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws; and

WHEREAS, while state law prohibits possession of certain forms of "drug paraphernalia," and prohibits all sales of "drug paraphernalia," many retailers continue to sell items that are commonly known to be "drug paraphernalia," and claim that such items are intended to be used for tobacco; and

WHEREAS, City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the purchase of tobacco products by youth; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to youth; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, the City of Richmond has a special responsibility with respect to the protection of youth; and

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act, enacted in 2009, prohibited candy –and fruit flavored cigarettes, largely because these flavored products were marketed to youth and young adults, and younger smokers were more likely than over smokers to have tried these products; and

WHEREAS, although the manufacture and distribution of flavored cigarettes (excluding

¹¹ American Lung Association of California, Center for Tobacco Policy and Organizing. *Survey of California Rural and Small Town Voters About Local Tobacco Retail Licensing Ordinances*. 2008. Available at: www.center4tobaccopolicy.org/files/files/Rural_Poll_Summary_of_Findings_Final_5-21-08.pdf.

¹² California Department of Health Services, Tobacco Control Section. *Final Report, Independent Evaluation of the California Tobacco Control Prevention & Education Program: Waves 1, 2, and 3 (1996-2000)*. 2003. Available at: www.dhs.ca.gov/tobacco/documents/pubs/WavesComplete.pdf.

¹³ *Id.*

¹⁴ American Nonsmokers' Rights Foundation. *California Municipalities With Ordinances Restricting Youth Access To Tobacco*. 2008. Available at: http://talc.phlaw.org/pdf_files/0021.pdf.

¹⁵ California Department of Health Services, Tobacco Control Section. *Youth Purchase Survey, 2007: Percent of Retailers Selling Tobacco to Youth by Store Type*. 2007 (graph on file with TALC).

¹⁶ *Id.*

¹⁷ California Department of Health Services, Tobacco Control Section. *Final Report, Tobacco Control Successes in California: A Focus on Young People, Results from the California Tobacco Surveys, 1990-2002*. 2003, p. 11-12. Available at: www.dhs.ca.gov/tobacco/documents/eval/2003CTSReport.pdf.

menthol) are banned by federal law, neither federal law nor California law restricts the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions in these devices; and

WHEREAS, the density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates; and

WHEREAS, more than 1 in 4 stores located within 1,000 feet of California schools sell tobacco, and more than 3 out of 4 of these tobacco retailers sell flavored tobacco products (not including mentholated cigarettes); and

WHEREAS, the California Attorney General has stated that electronic cigarette companies have targeted youth with fruit-flavored products; and

WHEREAS, adding menthol and other flavorings to tobacco products, such as cigarettes, little cigars, cigarillos and smokeless tobacco, can mask the natural harshness and taste of tobacco, making these products easier to use and increasing their appeal among youth; and

WHEREAS, adding menthol and other flavorings to tobacco products, such as cigarettes, little cigars, cigarillos and smokeless tobacco, can mask the natural harshness and taste of tobacco, making these products easier to use and increasing their appeal among youth; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain as follows:

SECTION I. Chapter 7.106 entitled “Tobacco Retailer License” Ordinance of the Richmond Municipal Code is hereby amended as follows (~~strikeout text indicates deletion~~; underline text indicates insertion):

SECTION I.

Chapter 7.106 entitled “**Tobacco Retailer License**” of the City of Richmond Municipal Code is hereby amended to read as follows:

Sections

7.106.010	Purpose.
7.106.020	Definitions.
7.106.030	Requirements and Prohibitions.
7.106.040	Limits on Eligibility for Tobacco Retailer License.
7.104.050	Location Requirements.
7.106.060	Existing Tobacco Retailers.
7.106.070	Application Procedure.
7.106.080	Issuance of License.
7.106.090	Tobacco Retailing Without a License.
7.106.100	License Renewal and Expiration.
7.106.110	License is Nontransferable.
7.106.120	License Fees.
7.106.130	License Revocation.
7.106.140	Compliance Monitoring.
7.106.150	Enforcement.
7.106.160	Service.

7.106.010 Purpose.

The purpose of this Chapter is to impose a licensing requirement on Tobacco Retailers.

7.106.020 Definitions.

For purposes of this Chapter, the following words, terms and phrases shall have the

meanings given below:

“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.

“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 shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.

“Cigar” means any roll or tobacco other than an 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.

“Consumer” means any person who purchases a Tobacco Product for consumption and not for Sale to another.

“Department” as used in this Chapter shall mean the Richmond Police Department.

“Drug Paraphernalia” shall have the definition set forth in California Health & Safety Code section 11014.5, as that section may be amended from time to time.

“Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor.

“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” includes, but is not limited to, any tobacco product known or labeled as “small cigar” or “little cigar.”

“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.

“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 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.

“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.

“Tobacco Product” means:

- (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, snuff;
- (2) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
- (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. “Tobacco Product” does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

“Tobacco Paraphernalia” means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.

“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. “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.

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 twenty-seven (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 twenty (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 five dollars (\$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.

(a) 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.

(b) 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.

(c) 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.

7.106.040 Limits on Eligibility for Tobacco Retailer License.

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

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:
 - a. Public or private school;
 - b. Playground open to the public;
 - c. 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
 - d. Library open to the public.

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.

7.106.060 Existing Tobacco Retailers

A Tobacco Retailer operating lawfully on the date this ordinance is adopted 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 Tobacco Retailer does not commit 3 or more violations of this Chapter at a location within any sixty-month period.

(3) The Tobacco Retailer is not closed for business or otherwise suspends Tobacco Retailing for more than sixty (60) consecutive days.

(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.

7.106.070 Application Procedure.

Application for a Tobacco Retailer's license shall be submitted in the name of each Proprietor proposing to conduct retail tobacco sales and shall be signed by each Proprietor or an authorized agent thereof, and shall include the license application fee set forth under section 7.106.120.

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 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:

1. The name, address, telephone number, driver's license or similar identification, including date of birth, of each Proprietor of the business that is seeking 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.
4. Whether or not any Proprietor or any agent 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 past five years.
5. A copy of the conditional use permit, if applicable (or an explanation as to why such permit is not required).
6. A statement signed by each Proprietor that no Drug Paraphernalia is or will be sold at the business seeking the license.

All information required by the Department to apply for a Tobacco Retailer's 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 (10) business days of a change.

7.106.080**Issuance of License.**

Upon the receipt of an application for a Tobacco Retailer's License and the license fee required by this Chapter, the Richmond Police Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

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.
2. The application seeks authorization for Tobacco Retailing for a Proprietor to whom this Chapter prohibits a license to be issued.
3. The application seeks authorization for Tobacco Retailing at a location for which this Chapter prohibits a license to be issued.
4. The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this Chapter (e.g. mobile vending), that is unlawful pursuant to this Code, or that is unlawful pursuant to any other law.

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 sixty-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 thirty (30) days have passed from the date of the violation.
2. After a second violation of this section at a location within any sixty-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 ninety (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 sixty-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 (5) years have passed from the date of the violation.

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 thirty (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
- (2) has waited the appropriate ineligibility period established for Tobacco Retailing

without a license, as set forth in section 7.106.090 of this Chapter, before seeking renewal of the license.

7.106.110 License is Nontransferable

- 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.

7.106.120 License Fees.

A. Amount of Fees. The fee shall be established in a schedule of fees. 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.

7.106.130 License Revocation

A. Revocation of License for Violation. 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 the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter or has pleaded guilty, "no contest" or its equivalent.

B. Notice of Revocation Hearing. If any grounds for revocation exist, the City Manager or his or her designee may issue a notice of revocation hearing. A notice of revocation hearing will be served to a Tobacco Retailer as specified in section 7.106.160 and will include all of the following information:

- (1) The address or a definite description of the location where the Tobacco Retailer's license is issued;
- (2) The grounds for revocation;
- (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 twenty (20) days and no later than forty-five (45) days following the date the notice of revocation hearing is served.

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 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 revoke or not revoke the license 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.

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 thirty (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 ninety (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 sixty (60) period, no new license may issue for the location until ten (10) days have passed from the date of revocation.

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

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

(4) After revocation for four or more violations of this Chapter at a location until any sixty-month (60) period, no new license may issue for the location until five (5) years have passed from the date of revocation.

7.106.140 Compliance Monitoring.

A. Compliance with this Chapter shall be monitored by the Department. Any peace officer may enforce the penal provisions of this Chapter.

B. Nothing in this Chapter shall create a right of action in any Tobacco Retailer licensee or other Person against the city 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.

7.106.150 Enforcement.

The City may seek compliance with this Chapter by any remedy allowed under the Richmond Municipal Code, including, but not limited to, revocation (section 7.106.130), administrative fines (Richmond Municipal Code Chapter 2.62), or the penalties set forth in section 1.04.100 of the Richmond Municipal Code.

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.

SECTION 2.

Any provisions of the Richmond Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, unenforceable or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 4.

This Ordinance shall take effect and be in force from and after 9 months after date of enactment.

First introduced at a regular meeting of the City Council of the City of Richmond held on July 10, 2018, and finally passed and adopted at a regular meeting held on July 17, 2018, by the following vote:

- AYES: Councilmembers Beckles, Choi, Martinez, Recinos, Vice Mayor Willis, and Mayor Butt.
- NOES: None.
- ABSTENTIONS: Councilmember Myrick.
- ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Ordinance No. 20-18 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on July 17, 2018.



Pamela Christian, City Clerk of the City of Richmond