



CITY OF SAN JOSÉ, CALIFORNIA

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City Clerk

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)
CITY OF SAN JOSE)

I, Dennis Hawkins, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "**Ordinance No. 28875**", the original copy of which is attached hereto, was passed for publication of title on the **14th day of December, 2010**, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the **11th day of January, 2011**, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO,
NGUYEN, OLIVERIO, PYLE, ROCHA; REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.

VACANT: NONE.

Said ordinance is effective as of **11th day of February, 2011**.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this **19th day of January, 2011**.

(SEAL)

DENNIS HAWKINS, CMC
CITY CLERK & EX-OFFICIO
CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 28875

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
TITLE 6 OF THE SAN JOSE MUNICIPAL CODE BY
ADDING A NEW CHAPTER 6.87 TO REQUIRE TOBACCO
RETAILERS TO BE LICENSED PRIOR TO ENGAGING IN
THE SALE OF TOBACCO PRODUCTS OR TOBACCO
PARAPHERNALIA**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Title 6 of the San José Municipal Code is amended to add a new chapter, to be numbered, entitled and to read as follows:

**CHAPTER 6.87
TOBACCO RETAIL LICENSE
Part 1
Purpose and Definitions**

6.87.010 Purpose of Ordinance

The failure of tobacco retailers to comply with all tobacco control laws, particularly the sale of tobacco products to minors, presents an imminent threat to the public health, safety and welfare. A local licensing program for tobacco retailers is intended to ensure that tobacco retailers comply with tobacco control laws and business standards of the City and to protect the health, safety and welfare of those persons who reside in, work in and visit this City. State law explicitly permits cities 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. A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute tobacco products to adults but will allow the City to regulate the operation of lawful businesses to discourage violations of federal, state and local tobacco-related laws. The City has a substantial interest in promoting compliance with federal, state and local

laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults. This Chapter is adopted to encourage responsible tobacco retailing and to discourage violation of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors. This Chapter does not expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or alter the penalties provided by such laws.

6.87.020 Definitions

The definitions set forth in this Part shall govern the application and interpretation of this Chapter.

6.87.030 City Manager

“City Manager” shall mean the manager of the City as appointed by the City Council in accordance with the City’s Charter, or the City Manager’s designee.

6.87.040 Department

“Department” means the City’s Department of Planning, Building and Code Enforcement.

6.87.050 Director

“Director” means the Director of the Department of Planning, Building and Code Enforcement, the Director’s designee, or such other Director as may be designated by the City Manager to administer the provisions of this Chapter.

6.87.060 Licensee

“Licensee” means and includes the holder of a Tobacco Retail License and any Person required to have a Tobacco Retail License under this Chapter, whether or not such Person is actually so licensed.

6.87.070 Person

“Person” shall have the definition given in Section 1.04.020 of this Code.

6.87.080 Premises

“Premises” means any building or portion of any building where Tobacco Retailing is occurring.

6.87.090 Self-Service Display

“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 Tobacco Retailer or the Tobacco Retailer’s agent or employee and without a direct person-to-person transfer between the purchaser and the Tobacco Retailer or Tobacco Retailer’s agent or employee. A vending machine is a form of Self-Service Display.

6.87.100 Smoking

“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) and means 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).

6.87.110 Tobacco Paraphernalia

“Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of Smoking materials of all types, cigarette rolling machines, and any other product designed and used for the Smoking, preparation, storing, or consumption of Tobacco Products.

6.87.120 Tobacco Product

“Tobacco Product” means any product containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis or beedies, or any other preparation of tobacco 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. Tobacco Product does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

6.87.130 Tobacco Retailer

“Tobacco Retailer” means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration Tobacco Products or Tobacco Paraphernalia. This definition shall be without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

6.87.140 Tobacco Retailing

“Tobacco Retailing” means engaging in any of those activities of a Tobacco Retailer. This definition shall be without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Part 2
General Provisions

6.87.200 Tobacco Retail License Required

It shall be unlawful for any Tobacco Retailer to engage in Tobacco Retailing in the City without first obtaining and maintaining a valid Tobacco Retail License from the Director pursuant to the provisions of this Chapter for each location at which Tobacco Retailing is to occur.

6.87.210 Tobacco Retail License Exemption

A. A Tobacco Retailer shall not be subject to the requirements of Section 6.87.200 and may submit a request for an exemption from Section 6.87.200 to the Director if the Tobacco Retailer can provide evidence satisfactory to the Director that Persons under the age of eighteen (18) years are prohibited from entering the Premises where Tobacco Retailing is occurring unaccompanied by a parent or legal guardian and the Premises is properly posted with signs that comply with the following conditions:

1. A sign shall be posted at each entrance to the Premises;
2. Each sign shall be clearly legible from at least ten feet (10') away from the entrance to the Premises;
3. Each sign shall state that no one under the age of eighteen (18) is allowed to enter the Premises unless accompanied by a parent or legal guardian;
4. Each sign shall state that selling Tobacco Products or Tobacco Paraphernalia to anyone under eighteen (18) years of age is illegal and subject to penalties; and

5. Each sign shall state that the law requires that all persons selling Tobacco Products or Tobacco Paraphernalia check the identification of each purchaser of Tobacco Products and Tobacco Paraphernalia.

- B. A Tobacco Retailer requesting an exemption from Section 6.87.200, as provided for in Subsection A., shall submit a written request to the Director. The request for exemption shall not be deemed complete until the Tobacco Retailer has submitted all information required by the Director to support the existence of the conditions listed in Subsection A., and has submitted a signed Indemnification Agreement as required by Section 6.87.405.

- C. Within a reasonable period of time after a Tobacco Retailer submits a complete request for exemption, the Director shall send a notice to the Tobacco Retailer of the Director's decision to either grant or deny the request for exemption.

- D. A request for exemption may be denied by the Director upon any of the grounds set forth in Section 6.87.455.

- E. A notice denying a request for exemption shall state all the grounds upon which the denial is based and shall advise that the denial of the request for exemption shall become final unless the Tobacco Retailer files a written request for hearing before the Director within the time period specified in Section 6.87.510.

- F. The Tobacco Retailer may appeal the Director's decision to deny a request for exemption by following the procedures set forth in Sections 6.87.510 through 6.87.530.

- G. A Tobacco Retailer operating under an exemption granted pursuant to this Section shall inform the Director in writing of any change in the information submitted in the request for an exemption within ten (10) business days of the change so that the Director may determine whether there has been a substantial change in the information originally submitted such that a new request for an exemption must be submitted.

- H. Unless otherwise provided in this Chapter, a Tobacco Retailer who is exempt from the requirements of Section 6.87.200 shall nevertheless be responsible for complying with the remaining provisions of this Chapter.

Part 3

Operating Regulations And Conditions

6.87.300 Operating Regulations And Conditions

- A. The provisions of this Part shall constitute terms and conditions applicable to each Tobacco Retail License issued by the Director.

- B. The provisions of this Part shall also constitute operating regulations that are applicable to each holder of a Tobacco Retail License issued pursuant to this Chapter.

- C. It shall be unlawful for any Tobacco Retailer licensed under this Chapter, required to be licensed under this Chapter, or exempted from being licensed under this Chapter, whether or not such Tobacco Retailer is actually so licensed or exempted from being licensed under this Chapter, to violate any of the provisions of this Chapter.

- D. The provisions of this Chapter are intended to provide a minimum level of public health, safety and welfare protection at businesses engaging in Tobacco Retailing. Nothing in this Chapter is intended nor shall prevent the City from imposing more stringent, site-specific operating requirements and conditions through other applicable permitting and approval processes, including, without limitation, environmental or land use approvals or permits. In the event of a conflict between an operating regulation set forth in this Chapter and a requirement or condition contained in any other applicable permit or approval, the more stringent or restrictive requirement or condition shall apply.

6.87.305 Lawful Business Operation

In the course of Tobacco Retailing or in the operation of the business or maintenance of the Premises for which a Tobacco Retail License is issued, it shall be a violation of this Chapter for any Tobacco Retailer to violate any federal, state, or local law applicable to Tobacco Products, Tobacco Paraphernalia or Tobacco Retailing.

6.87.310 Posting Of License

Unless exempted from obtaining a Tobacco Retail License under this Chapter, each Tobacco Retailer shall post the Tobacco Retail License issued to the Tobacco Retailer pursuant to this Chapter in compliance with Section 6.02.100 of this Code.

6.87.320 Compliance Inspection

- A. The Director, the Chief of Police and any City Official charged with enforcing the provisions of this Code shall have the power and authority to enter any business engaging in Tobacco Retailing during regular business hours to inspect the Premises and to determine compliance with the provisions of this Chapter.

- B. Should any inspection reveal noncompliance with any of the provisions of this Chapter and should reinspection be needed to determine compliance, the cost of any such reinspection shall be billed to the owner of the Premises or the operator of the business engaging in Tobacco Retailing in the amount set forth in the Schedule of Fees established by resolution of the City Council.

6.87.330 Positive Identification Required

No Tobacco Retailer shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to any Person without first examining the identification of that Person to confirm that Person is at least the minimum age under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

6.87.340 Minimum Age for Persons Selling Tobacco Products and Paraphernalia

No Person who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products or Tobacco Paraphernalia shall engage in Tobacco Retailing.

6.87.350 Self-Service Displays Prohibited.

No Tobacco Retailer shall engage in Tobacco Retailing by means of a Self-Service Display unless the Tobacco Retailer is granted an exemption from obtaining a Tobacco Retail License pursuant to Section 6.87.210.

6.87.360 False and Misleading Advertising Prohibited.

- A. Except for a Tobacco Retailer who is exempt from obtaining a Tobacco Retail License under this Chapter, a Tobacco Retailer who does not have a valid Tobacco Retailer License or whose Tobacco Retailer License has been suspended or revoked:

1. Shall keep all Tobacco Products and Tobacco Paraphernalia out of public view; and
 2. Shall not display any advertisement relating to Tobacco Products or Tobacco Paraphernalia that promotes the sale or distribution of such products or paraphernalia from the Premises or that could lead a reasonable consumer to believe that Tobacco Products or Tobacco Paraphernalia can be obtained at that Premises.
- B. The public display of Tobacco Products or Tobacco Paraphernalia in violation of subsection A. shall constitute Tobacco Retailing without a Tobacco Retail License in violation of Section 6.87.200.

6.87.370 Limits on Eligibility and Location.

- A. No Tobacco Retail License or exemption from such license under this Chapter 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 Tobacco Retail License or exemption from such license under this Chapter may be issued to authorize Tobacco Retailing at a temporary or recurring temporary event. For example, Tobacco Retailing at flea markets and farmers' markets is prohibited.

6.87.380 Other Legal Duties

- A. Each Tobacco Retailer shall:
1. Comply with all applicable laws and ordinances governing the sale of any Tobacco Products or Tobacco Paraphernalia;

2. Comply with all conditions imposed by the Director as part of the Tobacco Retail License; and
 3. Comply with all conditions imposed by any other permit or license required for the business engaging in Tobacco Retailing.
- B. Each Tobacco Retailer, and any other Person(s) responsible for the operation of the business engaging in Tobacco Retailing, excluding the City, its agents, officers and employees, shall be jointly and severally liable for:
1. Any violation of this Chapter;
 2. Any violation of the terms of the Tobacco Retail License or of the exemption issued to the Tobacco Retailer under this Chapter;
 3. Any violation of any other license or permit required for the business engaging in Tobacco Retailing; and
 4. Any violation of any other applicable law that arises out of the sale of Tobacco Products or Tobacco Paraphernalia.

6.87.390 Rules And Regulations

- A. The City Manager is hereby authorized to make and promulgate any rules and regulations necessary to implement the requirements of this Chapter. The rules and regulations shall be in addition to the requirements set forth in this Chapter. In the event of a conflict between a provision set forth in this Chapter and a rule or regulation promulgated by the City Manager pursuant to this Section, the more stringent or restrictive requirement or condition shall apply.

- B. No rules or regulations shall be adopted by the City Manager as final prior to the City Manager meeting all the following requirements:
1. Any proposed rules and regulations shall be made available for inspection and copying by the public at the Office of the City Clerk during normal business hours.
 2. A copy of any proposed rules and regulations shall be mailed to each holder of a Tobacco Retail License and to each holder of an exemption.
 3. A thirty (30) day public comment period shall be provided which shall commence on the date of service of the proposed rules and regulations on the Tobacco Retailers. During this period, any Person may submit written comments to the City Manager.
 4. At the close of the public comment period, the City Manager shall consider all the public comments on the proposed rules and regulations.
 5. Once the City Manager has considered all public comments, the City Manager shall finalize the rules and regulations.
 6. The finalized rules and regulations shall be accompanied by a brief written statement from the City Manager that references all the reasonable written comments on the proposed rules and regulation and explains why the comments were accepted, rejected, or modified by the City Manager.
 7. The City Manager may adopt the rules and regulations as final upon service of the finalized rules and regulations on the licensed Tobacco Retailers and the Tobacco Retailers who are exempted from obtaining a Tobacco Retail License.

- C. Any rules and regulations adopted by the City Manager may be amended by following the procedure outlined in Subsection B.

- D. No Person licensed under this Chapter, required to be licensed under this Chapter, or exempted from being licensed under this Chapter, whether or not such Person is actually so licensed or exempted from being licensed under this Chapter, shall violate the provisions of the rules and regulations authorized under this Section.

Part 4
Limitations On License

6.87.400 Procedures And Determinations

- A. The procedures set forth in Part 1.5 of Chapter 6.02 for summary suspension shall govern the summary suspension of any Tobacco Retail License issued pursuant to this Chapter.

- B. Any other actions taken by the City regarding an application for a new Tobacco Retail License or an existing Tobacco Retail License shall be governed by the provisions set forth in Sections 6.87.405 through 6.87.530.

6.87.405 Indemnification Agreement Required

Any Tobacco Retailer applying for a Tobacco Retail License under Section 6.87.440 or requesting an exemption under Section 6.87.210 shall agree to fully indemnify, defend and hold harmless the City, its officers, employees and agents for all claims, losses, or liabilities that arise out of the issuance or use of the Tobacco Retail License or exemption, or that arise out of any sale, distribution, transfer or use of Tobacco Products or Tobacco Paraphernalia, in a form approved by the City Attorney's Office.

6.87.410 License and Exemption Nontransferrable

No Tobacco Retailer shall assign or transfer any Tobacco Retail License or any exemption issued under this Chapter, and any attempt to assign or transfer any such license or exemption shall render the license or exemption null and void.

6.87.415 License and Exemption Convey a Limited, Conditional Privilege

Nothing in the Chapter shall be construed to grant any Tobacco Retailer obtaining and maintaining a Tobacco Retail License or an exemption under this Chapter any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the City identified on the face of the Tobacco Retail License issued by the Director or on the exemption granted by the Director. Nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. Obtaining a Tobacco Retail License or exemption under this Chapter does not make the Person engaged in Tobacco Retailing a "retail or wholesale tobacco shop" for the purposes of California Labor Code Section 6404.5.

6.87.420 Term Of License

- A. Each Tobacco Retail License issued under this Chapter shall expire one (1) year after the date of issuance, subject to suspension or revocation as provided for in this Chapter.
- B. The expiration date of each Tobacco Retail License shall be shown on the license itself and each Tobacco Retail License shall expire at midnight on the expiration date.

6.87.425 License Fees

- A. Each Tobacco Retailer who applies for or holds a Tobacco Retail License shall pay all associated fees in the amounts established by resolution of the City Council.
- B. The Director shall not issue or renew a Tobacco Retail License prior to full payment of any applicable fees.

6.87.430 Application - Form

An application for any Tobacco Retail License required by this Chapter must be filed on the form provided by the Director.

6.87.435 One License or Exemption and Separate License and Exemption

- A. Only one (1) Tobacco Retail License or exemption is required per Tobacco Retailing establishment.
- B. Every Tobacco Retailer shall be required to secure a separate Tobacco Retail License or exemption in accordance with the requirements of this Chapter for each and every separate place of business conducted by such Tobacco Retailer.

6.87.440 License Application

- A. Applications for a new Tobacco Retail License shall contain or be accompanied by the following:
 - 1. If the Tobacco Retailer is:

- a. An individual, the individual shall state his or her legal name and any aliases and shall submit satisfactory proof that he or she is eighteen (18) years of age;
 - b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
 - c. A closely held corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors and of each stockholder, and the name and address of the registered corporate agent for service of process;
 - d. A corporation, other than a closely held corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the state and date of incorporation, evidence that the corporation is in good standing and authorized to do business in the state of California, the names and capacity of all officers, directors and principal owners, and the name and address of the registered corporate agent for service of process;
 - e. A limited liability company, the company shall state its complete name, the date of filing of the articles of organization and operating agreement, and the names of all managers and members;
2. The legal name under which the business engaging in Tobacco Retailing is or will be conducted;

3. The physical address and all telephone numbers of the business engaging in Tobacco Retailing;
4. Proof of the Tobacco Retailer's right to possess the Premises where the Tobacco Retailing is to occur and proof that engaging in Tobacco Retailing from the Premises does not violate the terms of any contract or lease regarding the Premises;
5. The following personal information concerning the Tobacco Retailer, if an individual; and concerning each stockholder, each officer and each director, if the Tobacco Retailer is a closely held corporation; and concerning each partner, including limited partners, having an ownership interest in the business of more than ten percent (10%), if the Tobacco Retailer is a partnership:
 - a. Complete legal name, and any aliases;
 - b. Date of birth;
 - c. Current residence address (post office boxes will not be deemed to satisfy this requirement);
 - d. If the Person has resided at the current residence address for less than three (3) years, the previous addresses immediately prior to the present address for the last three (3) years;
 - e. A copy of a valid government issued photo identification card or valid government issued driver's license;
 - f. The business history experience, including but not limited to, whether or not the Person previously operating in this City or

anywhere in the United States under any permit or license issued to a business engaging in Tobacco Retailing, has had such a permit or license denied, revoked or suspended and the reasons therefor, and the business activities or occupations subsequent to such action of denial, suspension or revocation;

6. A signed indemnification agreement as required by Section 6.87.405;
7. Proof of payment of any applicable business tax for the business engaging in Tobacco Retailing which is due to the City pursuant to Chapter 4.76 of the Code;
8. A copy of all current and valid permits, licenses or other authorization(s) required by the City or any other federal, state or local agency for the Premises and for the operation of the business engaging in Tobacco Retailing, including but not limited to any and all permits, licenses and authorization(s) required by the California Department of Alcoholic Beverage Control, the California Board of Equalization, County Department of Health, the City's Department of Planning, Building and Code Enforcement, and the Fire Marshal;
9. The name, telephone number and address of the Person authorized to accept service of process on behalf of the business engaging in Tobacco Retailing and all of the business owners;
10. Authorization for the Director to seek other information the Director considers necessary for a complete investigation and to conduct an investigation into the truth of the statements set forth in the application;
11. A dated statement agreeing and certifying under penalty of perjury the following:

- a. That the information provided in the application is true and correct.
 - b. That for purposes of this Chapter all persons signing and required to sign the application shall be deemed the Tobacco Retailer applying for the Tobacco Retail License and shall be deemed the Licensee under the Tobacco Retail License as a result of the submission of the application.
 - c. That all persons signing and required to sign the application are and shall be bound by the terms of any Tobacco Retail License issued as a result of the submission of the application and shall be liable for any violation of said license.
- B. The application shall be signed by the Tobacco Retailer as follows:
1. For an individual, the application shall be signed by that individual.
 2. For a partnership, the application shall be signed by each of the partners.
 3. For a limited liability company that has elected to be managed by its members, the application shall be signed by each member or by an officer authorized by the articles of organization or the operating agreement to bind the company. In the case of a limited liability company that has elected to be managed by a manager or managers, the application shall be signed by the manager or managers or by an officer authorized by the articles of organization or the operating agreement to bind the company.
 4. For a corporation, the application shall be signed by two (2) officers of the corporation, one from each of the following categories:

- a. The chairperson of the board, the president, or a vice president.
 - b. The secretary, assistant secretary, chief financial officer, or assistant treasurer.
- C. An application shall not be deemed complete until all the information required in Subsections A. and B. has been provided to the Director and the required fees and any applicable business tax required pursuant to Chapter 4.76 of the Code have been paid.

6.87.445 Updated Information

A licensed Tobacco Retailer shall inform the Director in writing of any change in the information submitted on an application for a Tobacco Retail License within ten (10) business days of the change so that the Director may determine whether there has been a substantial change in the information originally submitted such that a new application must be submitted.

6.87.450 Investigation and Determination

- A. Upon receiving a completed application for a Tobacco Retail License, the Director shall investigate the information required by Section 6.87.440.
- B. The Director shall also coordinate the investigation of the Premises for the purpose of assuring that the Premises complies with the requirements of this Chapter and applicable public health, safety, welfare and zoning laws set forth in this Code and in federal, state and local laws.
- C. The Director shall make a determination to approve or deny the application within a reasonable period of time after the applicant has submitted a complete application.

6.87.455 Denial, Suspension or Revocation

An application for a Tobacco Retail License or a request for an exemption may be denied, and a Tobacco Retail License issued or an exemption granted pursuant to this Chapter may be suspended or revoked by the Director upon any of the following grounds:

- A. The Tobacco Retailer has knowingly made a false statement of fact or omitted a fact required to be revealed in an application for the Tobacco Retail License or a request for an exemption, or in any amendment or report or other information required to be made thereunder;
- B. The Premises in which the Tobacco Retailing will occur is in violation of any building, zoning, health, safety, fire, police or other provision of this Code or of federal, state or local law which substantially affects the public health, safety or welfare;
- C. The Tobacco Retailer has violated the terms and conditions of the Licensee's Tobacco Retail License or other requirements of this Chapter within the past five (5) years;
- D. The Tobacco Retailer has owned or leased a premises that has been the subject of an administrative, civil or criminal nuisance abatement action and court judgment or administrative determination finding the premises to be a nuisance within the past five (5) years;
- E. Failure to pay any disturbance response fee imposed pursuant to Section 6.02.310;
- F. Failure to pay any reinspection fee authorized by Section 6.87.320B;

- G. A prior application for a license or permit to operate a business engaged in Tobacco Retailing in the City or anywhere in the United States has been denied by the City or any federal, state, or local agency on one or more of the grounds provided in this Section within five (5) years prior to the date of the current application;
- H. A permit or license issued by the City or any federal, state or local agency to operate or manage a business engaged in Tobacco Retailing anywhere in the United States has been revoked or suspended within the past five (5) years;
- I. The Tobacco Retailer has conducted the business engaging in Tobacco Retailing in a manner that creates or results in a public nuisance, as defined in Section 1.13.050 of this Code or Sections 3479 and 3480 of the California Civil Code, on or within one hundred fifty (150) feet of the Premises;
- J. If the Tobacco Retailer is a corporation, the corporation is not in good standing in the state of California or is not authorized to do business in the state of California;
- K. Engaging in Tobacco Retailing, or allowing or offering Tobacco Products or Tobacco Paraphernalia for sale at the Premises for which the Tobacco Retail License or exemption is sought or was issued or granted is prohibited under the terms of any contract or lease for that Premises.
- L. If the Tobacco Retailer is requesting an exemption or operating under an exemption, the conditions required under Section 6.87.210 do not exist or have ceased to exist.

6.87.460 Renewal of License

- A. A Licensee may renew its Tobacco Retail License by complying with the following:
1. An application to renew must be filed on the form provided by the Director;
 2. The application to renew must be filed with the Director no later than sixty (60) days prior to the expiration date of the current Tobacco Retail License; and
 3. The application shall contain or be accompanied by the information required by Section 6.87.440 above.
- B. An application to renew shall not be deemed complete until all the information required in Subsection A. has been provided to the Director and the required fees and any applicable business tax required pursuant to Chapter 4.76 of the Code have been paid.
- C. If an application to renew a Tobacco Retail License is not filed, or the renewal fees are not paid, prior to the expiration date of the current Tobacco Retail License, the Tobacco Retail License shall be deemed to have expired on the date of expiration noted on the Tobacco Retail License.

6.87.465 Penalty for Late Renewal

Any Person who fails for more than thirty (30) calendar days after the expiration of any Tobacco Retail License issued to apply for a new Tobacco Retail License and who continues to engage in Tobacco Retailing shall pay to the City a penalty of ten percent (10%) of the amount of a Tobacco Retail License fee. Such penalty shall be paid at the

time the Person applies for a new Tobacco Retail License and shall be in addition to the fee charged for a new Tobacco Retail License.

6.87.470 Investigation and Determination - Renewal

Upon receiving a completed application to renew, the Director shall investigate the information required in Section 6.87.460 by following the process set forth in Section 6.87.450 above.

6.87.475 Denial – Renewal

An application to renew a Tobacco Retail License may be denied by the Director upon the grounds set forth in Section 6.87.455.

Part 5

Hearing And Appeal Procedure

6.87.500 Notice of Intended Decision

- A. Upon determining the existence of any of the grounds for denial, suspension, or revocation in accordance with Section 6.87.455, the Director shall issue to the Tobacco Retailer a notice of intended decision to deny, suspend or revoke the Tobacco Retail License.
- B. The notice of intended decision shall state all the grounds upon which the denial, suspension or revocation is based.
- C. The notice of intended decision shall advise that the denial, suspension or revocation shall become final unless the Tobacco Retailer files a written request for hearing before the Director within the time period specified in Section 6.87.510.

- D. In instances where a Tobacco Retail License is being revoked or suspended, the notice of intended decision shall specify the effective date of the revocation or suspension of such license.

6.87.510 Procedure for Hearing Before the Director

With regard to a request for hearing before the Director to appeal any denial of a request for exemption under Section 6.87.210 or any notice of intended decision issued pursuant to Section 6.87.500, the following rules shall apply:

- A. The written request for a hearing before the Director must be received by the Director within ten (10) calendar days of the date of service of the denial of request for exemption or of the notice of intended decision to deny, suspend or revoke the Tobacco Retail License.
- B. Upon receipt of a timely written request for hearing, the Director shall schedule a hearing which shall be held no later than thirty (30) calendar days after receipt of the request, unless that time is waived by the Tobacco Retailer.
- C. The Director shall serve a notice of hearing on the Tobacco Retailer no later than ten (10) calendar days prior to the scheduled date of the hearing.
- D. At the hearing before the Director, the Tobacco Retailer shall be given the opportunity to present witnesses and documentary evidence.
- E. The hearing will be conducted informally and the technical rules of evidence shall not apply. Any and all evidence which the Director deems reliable, relevant and not unduly repetitious shall be considered.

6.87.520 Decision of the Director

- A. Within thirty (30) calendar days after the close of the hearing held pursuant to Section 6.87.510, the Director shall serve on the Tobacco Retailer a written decision sustaining, reversing or modifying his or her denial of a request for exemption or his or her notice of intended decision. If the Director sustains or modifies the denial of a request for exemption or his or her notice of intended decision, the Director may impose additional conditions upon the exemption or upon the Tobacco Retail License if those conditions were reviewed at the hearing and the conditions are intended to protect the health, safety or welfare of the public or prevent the conduct or condition that led to the issuance of the denial of the request for exemption or the notice of intended decision from reoccurring.

- B. The decision by the Director after hearing shall become final unless the Tobacco Retailer files an appeal before the San José Appeals Hearing Board within the time period specified in Section 6.87.530.

6.87.530 Appeal to Board

- A. If the Tobacco Retailer is dissatisfied with the written decision issued by the Director pursuant to Section 6.87.520, he or she may file an appeal to the San José Appeals Hearing Board.

- B. The appeal must be in writing on a form provided by the San José Appeals Hearing Board and received by the secretary of the San José Appeals Hearing Board within ten (10) calendar days of the date the Director's decision is served upon the Tobacco Retailer.

- C. The appeal hearing before the San José Appeals Hearing Board shall be conducted in accordance with the rules and regulations of the San José Appeals

Hearing Board, but shall be heard no later than sixty (60) calendar days after the receipt of the appeal, or within the next two (2) regularly-scheduled meetings of the San José Appeals Hearing Board, whichever is later in time.

- D. Within twenty (20) calendar days after the hearing before the San José Appeals Hearing Board, the San José Appeals Hearing Board shall serve upon the Tobacco Retailer a written decision sustaining, reversing or modifying the Director's decision.
- E. The decision by the San José Appeals Hearing Board after hearing shall be final for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure of the State of California.

PASSED FOR PUBLICATION of title this 14th day of December, 2010, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, HERRERA, KALRA,
LICCARDO, NGUYEN, PYLE; REED.

NOES: CONSTANT, OLIVERIO.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTES:



LEE PRICE, MMC
City Clerk