

## **“Chapter 5.76 TOBACCO RETAILERS**

### **5.76.010 Findings and purpose.**

In enacting this chapter and in addition to the recitals adopted pursuant to Section 1 of this Ordinance, the City Council finds and determines that the absence of adequate regulation of tobacco retailers within the City constitutes an immediate threat to the public health, safety, and welfare. Specifically, the City Council finds as follows:

A. The unregulated development of tobacco retailing presents an immediate threat to the public health, safety, and welfare.

1. The City does not have sufficient regulations in its Municipal Code governing the establishment of tobacco retailers. Specifically, there are not currently detailed regulations regarding the development, operation, or location standards for these uses.
2. There are specific community concerns regarding the impact these uses have on the community, including neighborhood safety, effects on minors, noise, location near sensitive uses, and other public health impacts.
3. Many state laws have been adopted, which acknowledge the public health impacts of tobacco and specifically its effect on minors. State law prohibits public school students from smoking or using tobacco products while on campus, while attending school sponsored activities, or while under the supervision or control of school district employees (Education Code § 48901). State law also prohibits smoking in playgrounds and tot lots. It also prohibits smoking within 20 feet of the main entrances and exits of public buildings (Health and Safety Code § 104495).
4. Due to the lack of development, operation, and location standards for these uses, the City desires adopt new zoning regulations in order to provide clear, consistent, and uniform guidance to businesses and individuals regarding the citing and operational characteristics while also addressing significant concerns.

B. The State Planning and Zoning Law (Cal. Gov. Code §§ 65000, *et seq.*) broadly empowers the City to plan for and regulate the use of land in order to provide for orderly development, the public health, safety, and welfare, and a balancing of property rights and the desires of the community to improve their city.

C. The adoption of this Ordinance is therefore necessary to protect the City and its residents, businesses, and visitors from the potential health and safety impacts of tobacco retailers under current City regulations, including concerns with neighborhood safety, effects on minors, location near sensitive uses, and other public health impacts, and to preserve the quality of life, health, safety, and welfare of the community.

D. This chapter is intended to supplement existing applicable State and federal law regarding tobacco sales.

E. This chapter is reasonably related to the proper exercise of the city's police power and protects the health, safety, and general welfare of the public.

### **5.76.020 Applicability.**

These regulations apply to all Tobacco Retailers, including the operation of existing businesses, new businesses, relocating businesses, and the conversion or expansion of an existing business to include the sale of tobacco, tobacco products, or tobacco paraphernalia, as defined herein.

### **5.76.030 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:

“Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value 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.

“Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

“Cannabis Product” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

“Cigar” means any roll of tobacco other than a 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.

“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.

“Code” or “Ordinance” means this Chapter 5.76 TOBACCO RETAILERS of the Brentwood Municipal Code.

“Commercial Cannabis Activity” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

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

“Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

“Decoy Operation” means a person under 21 years of age participating in an inspection carried out by the Department to determine compliance with California law prohibiting the sale of a tobacco product to a person under 21 years of age.

“Deliver” means the commercial transfer of Tobacco Products or Tobacco Paraphernalia to a Consumer at a location not licensed pursuant to this chapter.

“Department” means the Brentwood Department of Community Development and any agency or Person designated by the Department to enforce or administer the provisions of this chapter.

"Electronic Smoking Device" means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or ehookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and whether natural or synthetic. "Electronic Smoking Device" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

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

“Full Retail Price” means the price listed for a Tobacco Product on its Packaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

“Labeling” means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.

“License(s)” or “Tobacco Retailer’s License” means the license issued by the Department authorizing a Tobacco Retailer to operate within City’s jurisdiction pursuant to the requirements set forth in this chapter and any other City required terms and conditions.

"Licensee" means the holder of a valid, City-issued Tobacco Retailer’s License.

“Licensed Location” means the location for Tobacco Retailing authorized by the City via a License.

“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, Tobacco Products known or labeled as small cigar, little cigar, or cigarillo.

“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 of 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.

“Permit” or “Tobacco Retailer’s Permit” means the 12 month nonrenewable permit issued by the Department authorizing a Tobacco Retailer, existing at the time the Ordinance is adopted and denied a License, the ability to continue to sell the remainder of their tobacco stock which is out of compliance with the regulations in this Code and/or wind down tobacco retailing operations for the allowed 12 month permit period.

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

“Pharmacy” means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for Sale, regardless of whether the retail establishment Sells other retail goods in addition to prescription pharmaceuticals, and whether or not the Sale of prescriptions pharmaceuticals is the primary purpose, incidental, or otherwise to the purpose of the retail establishment.

“Program” means the Tobacco Retailer License Program established pursuant to this Chapter.

“Proprietor” means a Person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a Person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or 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 a 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 Paraphernalia” means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.

“Tobacco Product” means:

- a. 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; and
- b. 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.
- c. 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 Retailer” means any Person operating in a physical location 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 Products or Tobacco Paraphernalia sold, offered for Sale, exchanged, or offered for exchange or whether or not the sales are for wholesale or retail.

"Youth-Oriented Establishment" means a parcel in the City that is occupied by:

- a. a private or public elementary, middle, junior high, or high school;
- b. a library open to the public;
- c. a youth center, defined as a facility where children, ages up to 17, come together for programs and activities;
- d. any business establishment likely to be frequented by minors, such as, but not limited to, video game arcades, skating rinks, bowling alleys, etc.

#### **5.76.040 General Requirements and Prohibitions.**

A. **Tobacco Retailer’s 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’s License pursuant to this chapter for each location at which Tobacco Retailing 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 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 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 a Tobacco Product or Tobacco Paraphernalia to another Person without first verifying by means of government-issued photographic identification that the recipient is at least the minimum legal age required under state law to purchase Tobacco Products.

E. **Self-Service Displays Prohibited.** Tobacco Retailing by means of a Self-Service Display is prohibited. All tobacco products and/or tobacco paraphernalia shall be secured so that only Tobacco Retailer employees have immediate access to these items.

F. **On-Site Sales.** All Sales of Tobacco Products and Tobacco Paraphernalia to Consumers shall be conducted in-person at the Licensed Location. It shall be a violation of this chapter for any Tobacco Retailer or any of the Tobacco Retailer’s agents or employees to Deliver Tobacco Products or Tobacco Paraphernalia or to knowingly or recklessly Sell Tobacco Products

or Tobacco Paraphernalia to any Person that intends to Deliver the Tobacco Product or Tobacco Paraphernalia to a Consumer in the City.

**G. False and Misleading Advertising Prohibited.** A Tobacco Retailer without a valid Tobacco Retailer's License or a Proprietor without a valid Tobacco Retailer's License, including, for example, a Person whose License has been suspended or 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 5.76.180; and
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.

**H. Drug Paraphernalia.** In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a License issued, 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, for example, California Health and Safety Code section 11364.7, as that section may be amended from time to time.

**I. Signage.**

1. In the course of Tobacco Retailing or in the operation of a business or maintenance of a location for which a License issued, it shall be a violation of this chapter for a Licensee, or any of the Licensee's agents or employees, to cover more than 15 percent of the area of each window and clear door of the location with signs of any sort, excluding signage mandated by local, state, or federal law. For the purposes of this subsection, the area covered shall be computed to include (i) all clear areas within signs; and (ii) signs that are not attached to windows or clear doors, but are visible from exterior public rights of way in the same manner as if they were attached to windows or clear doors.
2. All signs shall be placed and maintained to ensure law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from exterior public rights of way or from the entrance. However, this subsection shall not apply to premises where there are no windows, or where the design or location of windows or landscaping precludes a view of the interior of the premises from exterior public rights of way or from the entrance.

**5.76.050 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 or 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.

#### **5.76.060 Sale of Electronic Smoking Devices 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 or offer for Sale, or to possess with intent to Sell or offer for Sale, any Electronic Smoking Device that delivers natural or synthetic nicotine or any other substance(s), which may or may not include nicotine, to the person inhaling from the device. This includes any component, part, or accessory intended or reasonably expected to be used with the electronic device, whether or not sold separately.

B. There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Electronic Smoking Devices, including, but not limited to, any component, part, or accessory intended or reasonably expected to be used with the electronic device, whether or not sold separately, or any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine, and whether natural or synthetic, possesses such Electronic Smoking Devices with intent to Sell or offer for Sale.

#### **5.76.070 Tobacco Product Pricing and Packaging.**

A. **Packaging and Labeling.** No Tobacco Retailer shall Sell any Tobacco Product to any Consumer unless such product: (1) is sold in the original Manufacturer's Packaging intended for Sale to Consumers; and (2) conforms to all applicable federal Labeling requirements.

B. **Display of Price.** The price of each Tobacco Product offered for Sale shall be clearly and conspicuously displayed to indicate the price of the product.

C. **Prohibition of Tobacco Coupons and Discounts.** No Tobacco Retailer shall:

1. Honor or redeem, or offer to honor or redeem, a Coupon to allow a Consumer to purchase a Tobacco Product for less than the Full Retail Price;
2. Sell any Tobacco Product to a Consumer through a multiple-Package discount or otherwise provide any such product to a Consumer for less than the Full Retail

Price in consideration for the purchase of any Tobacco Product or any other item;  
or

3. Provide any free or discounted item to a Consumer in consideration for the purchase of any Tobacco Product.

D. **Minimum Package Size for Little Cigars and Cigars.** No Tobacco Retailer shall Sell to a Consumer:

1. any Little Cigar unless it is sold in a Package of at least twenty (20) Little Cigars; or
2. any Cigar unless it is sold in a Package of at least at least six (6) Cigars; provided, however, that this subsection shall not apply to a Cigar that has a price of at least \$10.00 per Cigar, including all applicable taxes and fees.

E. **Minimum Prices for Cigarettes, Little Cigars, and Cigars.** No Tobacco Retailer shall Sell to a Consumer:

1. Cigarettes at a price that is less than \$10.00 per Package of 20 Cigarettes, including all applicable taxes and fees;
2. Little Cigars at a price that is less than \$10.00 per Package of Little Cigars, including all applicable taxes and fees; or
3. Cigars at a price that is less than \$10.00 per Cigar, including all applicable taxes and fees.
4. The minimum prices established in this section shall be adjusted annually (percent change in the annual average, not seasonally adjusted) by the Department in proportion with the Consumer Price Index: all urban consumers for all items for the San Francisco area statistical area as reported by the United States Bureau of Labor Statistics or any successor to that index.

#### **5.76.080 Limits On Eligibility for a Tobacco Retailer's License.**

A. **Mobile Vending.** No License may issue to authorize Tobacco Retailing at other than a fixed physical location, including, but not limited to, Tobacco Retailing by Persons on foot or from vehicles or for delivery services.

B. **Licensed Cannabis Businesses.** No License may be issued, and no License may be renewed, to authorize Tobacco Retailing at a location licensed for Commercial Cannabis Activity by the State of California in accordance with the Business and Professions Code Division 10. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a License issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to engage in Commercial Cannabis Activity.

C. **Pharmacies.** No License may be issued, and no License may be renewed, to authorize Tobacco Retailing in a Pharmacy.

D. **Proximity to Youth-Oriented Establishment.** No License may be issued, and no License may be renewed, to authorize Tobacco Retailing within five hundred (500) feet of a Youth-Oriented Establishment as measured by a straight line from the nearest point of the property line of the parcel on which the Youth-Oriented Establishment is located to the nearest point of the property line of the parcel on which the Licensee's business is located.

E. **Proximity to Other Tobacco Retailers.** No License may be issued, and no License may be renewed, to authorize Tobacco Retailing within five hundred (500) feet of a Tobacco Retailer location already licensed pursuant to this chapter as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing Licensee's business is located.

F. **Total Number of Tobacco Retailer Licenses.** The issuing of Tobacco Retailer Licenses is limited as follows:

1. The total number of Tobacco Retailer's Licenses within the City shall be limited to no more than forty-two (42).
2. No new License may be issued to authorize Tobacco Retailing if the number of Tobacco Retailer Licenses already issued equals or exceeds the total number authorized pursuant to subsection 1.

G. **Bars and Restaurants.** No License may be issued, and no License may be renewed, to authorize Tobacco Retailing at any location that is (i) licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); or (ii) offering food for sale for consumption on the premises. For example, and without limitation, Tobacco Retailing is prohibited in bars and restaurants.

H. **Smoking on Premises.** No License may be issued, and no License may be renewed, to authorize Tobacco Retailing at any location where Smoking is permitted inside the premises or in any adjacent outdoor area owned, leased, or operated by the Person to be licensed. In addition, no License may be issued, and no License may be renewed, to authorize Tobacco Retailing at any location where Smoking is permitted within twenty-five (25) feet of any doorway, window, opening, or other vent into the licensed premises. For purposes of this subsection, "Smoking" means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic device, or any other device that delivers nicotine or other substances to a person.

#### **5.76.090 New License Application Process.**

A. **Tobacco Retailer's License Applications.** Applications for a Tobacco Retailer's License shall be physically filed with the Department either in person or by mail. No digital, electronic, facsimile, or other non-physical delivery methods for the License application will be accepted. The City shall review the applications for full compliance with this Chapter and issue Licenses to applicants on a rolling and "first come, first served" basis. The number of issued Licenses shall not exceed the number established in 5.76.080.F.

B. **Open Application Period.** The Department shall begin accepting applications for Tobacco Retailer's Licenses on the effective date of this Ordinance solely from existing Tobacco

Retailers operating lawfully on the date of adoption of this Ordinance. For all other applicants, i.e. applicants that are not existing Tobacco Retailers, the Department shall begin accepting applications for Tobacco Retailer's Licenses thirty one (31) calendar days from the effective date of this Ordinance. The Department shall reject any applications from any applicant that is not an existing Tobacco Retailer if the application is received by the Department prior to the 31st calendar day from the adoption of the Ordinance.

**C. Tobacco Retailers Existing at the Time the Ordinance is Adopted.** All existing Tobacco Retailers operating lawfully on the date of the adoption of this Ordinance may apply for a Tobacco Retailer's License and a Tobacco Retailer's Permit pursuant to the following:

1. If the City approves and issues the License to an existing Tobacco Retailer, and if the Tobacco Retailer is legally operating at the time of adoption of this Ordinance, the Licensee may also be issued a non-renewable twelve (12) month Tobacco Retailer's Permit, for the specific purpose of selling off tobacco products stock that are not in compliance with the regulations of this Code (i.e. minimum package size, electronic smoking devices). Without a Permit, a Licensee may not sell any prohibited tobacco products in stock under any circumstances and must fully comply with all tobacco retailing regulations in this Ordinance.
2. If the City denies or rejects the License application of an existing Tobacco Retailer based solely on any of the limitations listed in 5.76.080, and if the Tobacco Retailer is legally operating at the time of adoption of this Ordinance, the denied Tobacco Retailer may instead be issued a non-renewable twelve (12) month Tobacco Retailer's Permit, for the specific purpose of winding down of all tobacco retailing operations and selling off tobacco products stock that are not in compliance with the regulations of this Code (i.e. minimum package size, electronic smoking devices). Without a Permit, a Tobacco Retailer that is not licensed by the City may not operate as a Tobacco Retailer under any circumstances.
3. An issued Permit shall not be renewed by the City and shall only be valid for 12 months from the date the Permit is issued, at which point the Permit shall permanently and immediately terminate along with any allowances or rights included.

**D. 30 Day Period to Obtain a License or Permit.** All Tobacco Retailers, existing on the date of the adoption of this Ordinance, must be operating either under a License and/or a Permit within thirty (30) calendar days from the adoption of this Ordinance. No extensions or waivers shall be granted by the City past the 30 calendar days. Any Tobacco Retailer, existing on the date of the adoption of this Ordinance, that is not operating under either a License or a Permit within 30 calendar days from the adoption of this Ordinance shall be considered in violation of this Chapter and subject to enforcement or legal action. The City is prohibited from issuing any Tobacco Retailer's Permits on the expiration of this initial 30 calendar day period.

#### **5.76.100 New and Renewed License Application Requirements.**

A. An application for a new or renewed 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. If the License is granted, the Proprietor(s) shall be considered, collectively if more than one Proprietor or singularly if only one Proprietor, the Licensee of the Tobacco Retailer's License.

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 new or renewed Tobacco Retailer's License. No Proprietor may rely on the issuance or renewal of a License as a determination by the City that the Proprietor has complied with all laws applicable to Tobacco Retailing. A License issued or renewed 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 5.76.170 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.

C. All applications shall be submitted on a form supplied by the Department and shall contain the following information:

1. The name, address, and telephone number of each Proprietor of the business seeking the License.
2. The business name, address, and telephone number of the single fixed location for which a License is sought.
3. 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 2. above.
4. Proof that the location for which a Tobacco Retailer's License is sought has been issued a valid state license for the Sale of Tobacco Products.
5. 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 five (5) years.
6. If the application is for a renewal of an existing License, whether or not the existing License is currently subject to suspension, and an explanation for any suspension.
7. If the application is for a new License, whether or not the location, for which the License is sought, had been a Licensed Location in the previous five (5) years, and an explanation for any termination of the prior License.
8. A copy of an executed lease agreement or property deed of the single fixed location for which a License is sought.
9. A signed declaration, provided by the Department, signed by each Proprietor stating that to the best of their knowledge the business and location are not disqualified to operate as a Tobacco Retailer under the limitations listed in 5.76.080.
10. Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application forms required by this section.

D. A licensed Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer's License within ten (10) business days of a change.

E. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq.*) or any other applicable law.

#### **5.76.110 Denial of Application for a License.**

The Department shall deny the issuance or renewal of a License when the Department obtains substantial evidence demonstrating that one or more of the following bases for denial exists:

- A. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter;
- B. The application seeks authorization for Tobacco Retailing at a location for which this chapter prohibits a license to be issued;
- C. The application seeks authorization for Tobacco Retailing for a Proprietor to whom this chapter prohibits a License to be issued; and/or
- D. 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.

#### **5.76.120 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's License is one year. Each Licensee shall apply for the renewal of their Tobacco Retailer's License and submit the license fee no 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:

1. submit the license fee and application renewal form; and
2. submit a signed affidavit affirming that the Proprietor has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the License expiration date and before the License is renewed.

#### **5.76.130 Licenses 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). Any existing License, suspended or otherwise valid, shall immediately and automatically terminate upon the change in Proprietor(s) of the Licensed Location without any action taken by the City.

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.

**5.76.140 License Conveys a Limited, Conditional Privilege.**

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 limited conditional privilege to act as a Tobacco Retailer at the location in the City identified on the face of the permit, for the length of time the License is valid, excluding any renewal. Further, a Licensee has no granted, inherent, implied, apparent, or privileged right for a renewal of their License.

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:

A. any provision of this Code; and/or

B. any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. Obtaining a Tobacco Retailer's License does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

**5.76.150 License Fee.**

The fee to issue or to renew a Tobacco Retailer's License shall be established in the Cost Allocation Plan and Schedule of City Fees. The fee shall be calculated so as to recover the total cost of License administration, including, issuing the License, administering the License Program, retailer education, retailer inspection and compliance checks, but shall not exceed the cost of the regulatory Program authorized by the Chapter. All fees shall be used exclusively to fund the Program. Fees are nonrefundable except as may be required by law.

**5.76.160 Compliance Monitoring and Right of Entry.**

A. To the extent permissible by law, the Department, the Brentwood Police Department, or their designees, or any peace officer, shall have the right to enter and inspect any Tobacco Retailer for the purpose of ensuring compliance with these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner. This right to enter and inspect may be exercised by the City regardless of any suspected violation by the Tobacco Retailer. If the Proprietor or his or her agents or employees refuses permission to enter, inspect, or investigate the establishment, the City may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 et seq., or any successor legislation thereto. In addition, any peace officer may enforce the penal provisions of this chapter. The City may designate additional Persons to monitor compliance with this chapter.

B. The Department shall perform at least two (2) compliance checks and one (1) Decoy Operation on each Tobacco Retailer per twelve (12) month period. Nothing in this paragraph shall create a right of action in any Licensee, Proprietor, third party, or other Person against the City or its agents. If a violation has occurred, the Tobacco Retailer shall be inspected again within three (3) months. All Licensed Locations must be open to inspection by designated persons during regular business hours.

C. The City Council of the City of Brentwood does not intend and nothing in this chapter shall be interpreted to penalize the purchase, use, possession, or attempted purchase, use, or possession of Tobacco Products or Tobacco Paraphernalia by Persons under twenty-one years of age; provided, however, that Persons under twenty-one years of age remain subject to generally applicable laws regulating such conduct without respect to the Person's age.

#### **5.76.170 Suspension or Revocation of License.**

A. **Suspension or Revocation of License for Violation.** In addition to any other penalty authorized by law, a Tobacco Retailer's License shall be suspended or revoked if any court of competent jurisdiction determines, or the Department 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, or admitted to a violation of any law of this chapter, as follows:

1. Upon a finding by the Department, or other jurisdictional body, of a first violation of this chapter at a location within any five-year (5) period, the License shall be suspended for sixty (60) days, and the Licensee shall be fined one thousand dollars (\$1,000).
2. Upon a finding by the Department, or other jurisdictional body, of a second violation of this chapter at a location within any five-year (5) period, the License shall be suspended for one hundred and twenty (120) days and the Licensee shall be fined one thousand dollars (\$1,000).
3. Upon a finding by the Department, or other jurisdictional body, of a third violation of this chapter at a location within any five-year (5) period, the License shall be revoked, the Licensee shall have no right of renewal for that location, and the Licensee shall be fined one thousand dollars (\$1,000).

B. **Effect on Renewal.** Any suspension of a License pursuant to section 5.76.170 does not affect the right of the Licensee to renew the suspended License. If the renewal of the License occurs prior to the end of the suspension period, and the Licensee renews the suspended License, the suspension shall continue for its required period. Any revocation of a License shall necessarily terminate any rights the Licensee has to renewal of the revoked License. However, the Licensee of the revoked License may apply for a new License at the same location pursuant to the new license application procedures as set forth in this chapter.

C. **Appeal of Suspension or Revocation.** A decision of the Department to suspend or revoke a License is appealable to City Council and any appeal must be filed in writing with City Clerk within ten (10) days of mailing of the Department's decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to the City Council is not available for a revocation made pursuant to subsection (D) below.

D. **Revocation of License Wrongly Issued.** A Tobacco Retailer's License shall be revoked if the Department finds, after the Licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a License under Section 5.76.110, 5.76.080, or other Section existed at the time application was made or at any time before the License was issued or renewed. The decision by the Department shall be the final decision of the City. Such a revocation shall be without prejudice to the filing of a new License application.

**5.76.180 Tobacco Retailing Without a Valid License.**

A. 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, then the following apply:

1. The Person shall be in violation of this chapter and shall be ineligible to apply for, be issued, or renew a Tobacco Retailer's License for any location within the jurisdictional boundaries of the City; if the Person holds a valid License(s) for other Licensed Location(s), said License(s) for those Licensed Location(s) shall continue to be valid until its expiration at which point that Person shall be ineligible to renew said License(s); and
2. The location of the violation shall not be eligible to be included in any License application as a potential Licensed Location, regardless of ownership transfer of the property or business via an Arm's Length Transaction or not.

B. Tobacco Products and Tobacco Paraphernalia offered for Sale or exchange in violation of this section are subject to seizure by the relevant authority or any peace officer and shall be forfeited after the licensee and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products and Tobacco Paraphernalia were not offered for Sale or exchange in violation of this chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Section 5.76.150. Forfeited Tobacco Products and Tobacco Paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

C. 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 shall constitute a separate violation of this chapter; and
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 shall constitute a separate violation of this chapter.

**5.76.190 Liability for Expenses.**

Any Tobacco Retailer who is found to have violated any of the regulations, rules, or limitations as outline in this chapter shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Reinspection and penalty fees, and all costs and expenses to ascertain compliance with previously noticed violations shall be charged to the Proprietor(s) of the Tobacco Retailer, as set by the City Council in the Master Fee Schedule. However, the City reserves the right to recover any and all outstanding enforcement costs and charges incurred by the Tobacco

Retailer from the Property Owner for non-compliance or non-payment pursuant to Title 8, Chapter 8 of the Brentwood Code of Ordinances or any other available legal remedy.

**5.76.200 Additional Remedies.**

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 twenty-one (21) 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 City Attorney, punishable by a civil fine equal to one thousand dollars (\$1,000) per violation.

D. Violations of this chapter may, in the discretion of the City Prosecutor, be prosecuted as infractions or misdemeanors when the interests of justice so require.

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

F. Any violation of this chapter is hereby declared a public nuisance, subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures of contained in the Brentwood Code of Ordinances and state law, including but not limited to, an action for abatement or injunctive relief.

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

**5.76.210 Other Laws.**

This chapter does not intend and shall not be interpreted to regulate any conduct where the regulation of such conduct has been preempted by the United States or the State of California.”