

ORDINANCE NO. 3417

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING
CHULA VISTA MUNICIPAL CODE CHAPTER 5.56 TO
PERMIT AND REGULATE TOBACCO RETAILERS

WHEREAS, based in part on the information contained in this section, the City Council finds that the public health, safety, and welfare of the residents of the Chula Vista is threatened when tobacco retailers fail to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors; and

WHEREAS, the City Council finds that a local permitting 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, 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); and
- State law prohibits the sale or furnishing of cigarettes, tobacco products, and tobacco paraphernalia to persons under 21 (Cal. Pen. Code § 308); and
- 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 minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952); and
- State law prohibits the sale of tobacco products and paraphernalia through self-service displays with limited exceptions for tobacco stores (Cal. Bus. & Prof. Code § 22960, 22962); and
- 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 Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

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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

WHEREAS, state and local law prohibits sales of “drug paraphernalia”; and

WHEREAS, many retailers nevertheless sell items that are commonly known to be “drug paraphernalia,” including bongos and pipes used to smoke methamphetamine and other illicit drugs, claiming that such items are intended for tobacco use; and

WHEREAS, several California cities require compliance with state drug paraphernalia laws as a condition of obtaining and maintaining a local tobacco retailer license; and

WHEREAS, California courts have affirmed the power of the City to regulate business activity to discourage violations of law. See, e.g., *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010); and

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes. For example:

- A 2013 American Lung Association in California review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the ordinances were enacted, with an average decrease of 26 percent in the youth sales rate; and
- The California Department of Health, Tobacco Control Section, reports that over 90 percent of enforcement agencies surveyed rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco; and
- A 2012 study by the U.S. Department of Health and Human Services found that odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth access laws; and

WHEREAS, over 100 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from using tobacco; 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, 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 cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults.

NOW, THEREFORE, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

Section I. Chapter 5.56 of the Chula Vista Municipal Code is hereby amended to read as follows:

Chapter 5.56

TOBACCO RETAILER

Sections:

- 5.56.010 Definitions.
- 5.56.020 Tobacco Retailer's Permit Required.
- 5.56.030 Permit Application and Procedure.
- 5.56.040 Issuance of a Permit.
- 5.56.050 Permit Renewal and Expiration.
- 5.56.060 Permits Nontransferable.
- 5.56.070 Permit Conveys a Limited, Conditional Privilege.
- 5.56.080 Permit Fee.
- 5.56.090 Tobacco Retailer Operating Requirements and Prohibitions.
- 5.56.100 Compliance Monitoring.
- 5.56.110 Suspension or Revocation of Permit.
- 5.56.120 Violations; Penalties.
- 5.56.130 Requirement for Tobacco Retailer Permit; Operative Date.

CROSS REFERENCE: Sales and Use Tax, see Ch. 3.36 CVMC. Smoking prohibited, see Ch. 8.22 CVMC.

5.56.010 Definitions.

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

A. "Arm's Length Transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm's Length Transaction.

B. "Applicant" means the Person applying for a permit pursuant to this chapter.

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C. “Chief of Police” means the Chief of Police of the City of Chula Vista, or his/her designee.

D. “City” means the City of Chula Vista.

E. “City Attorney” means the City Attorney for the City of Chula Vista, or his/her designee.

F. “Crime of Moral Turpitude” means a crime involving a readiness to do evil, an act of moral depravity of any kind that has a tendency in reason to shake one’s confidence in their honesty, deceit, or fraud.

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

H. “Electronic Smoking Device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic Smoking Device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

I. “Owner” 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 twenty percent (20%) 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.

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

K. “Police Department” means the Chula Vista Police Department, and any agency or Person designated by the Department to enforce or administer the provisions of this chapter.

L. “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.

M. “Tobacco Paraphernalia” means any item designed for the consumption, use, or preparation of a Tobacco Product.

N. “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; and

2. any Electronic Smoking Device.

3. Notwithstanding any provision of subsections (1) and (2) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” 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.

O. “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 Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange. Tobacco Retailer does not include persons licensed by the City to conduct commercial cannabis activity in accordance with chapter 5.19 of this code.

5.56.020 Tobacco Retailer’s Permit Required.

It shall be unlawful for any Person to act as a Tobacco Retailer in the City without first obtaining and maintaining, for each location at which Tobacco Retailing is to occur, a valid Tobacco Retailer’s permit pursuant to this chapter, a valid business license pursuant to chapter 5.02 of this code, and any and all required state licenses, including but not limited to a California Cigarette and Tobacco Products Retailer’s License.

5.56.030 Permit Application and Procedure.

A. All applications shall be submitted on a form supplied by the Police Department and shall include, but not be limited to, the following information:

1. The Applicant’s business name and address.
2. The address of the proposed Tobacco Retailer business location.
3. If the Applicant is a natural person:
 - a. the full true name and any other names ever used by the Applicant;
 - b. the current residential address and telephone number of the Applicant;
 - c. written proof that the applicant is 21 years of age or older;
 - d. the Applicant’s height, weight, and color of eyes and hair;
 - e. the Applicant’s valid social security number;
 - f. photographs of the Applicant as specified by the Chief of Police;
 - g. the applicant’s business, occupation, and employment history for the five years immediately preceding the date of application, including addresses and dates of employment;

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h. a list of all crimes for which the applicant has been convicted, including those dismissed pursuant to Penal Code section 1203.4, except traffic infractions, and a statement of the dates and places of such convictions;

4. If the Applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation, the names and residential addresses of each of its current officers and directors, and of each stockholder holding more than 25 percent of the stock of the corporation.

5. If the Applicant is a partnership, the name and residential address of each of the partners, including limited partners. If one or more of the partners is a corporation, the Applicant shall provide the information about that partner required by 5.56.030(A)(4) above.

6. If the Applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk. If one or more of the partners is a corporation, the Applicant shall provide the information about that partner required by 5.56.030(A)(4) above.

7. If the Applicant is a corporation or partnership, the name of the responsible managing officer pursuant to 5.56.030(C) below.

8. A single name and mailing address authorized by the Applicant 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, the Applicant shall be understood to consent to the provision of notice at the address specified in subparagraph 1 above.

9. All fictitious business names ever used by the Applicant and the respective addresses of those businesses.

10. Whether the Applicant has ever had any license or permit issued by any agency or board, or any city, county, state, or federal agency suspended or revoked, or has had any professional or vocational license or permit suspended or revoked within five years immediately preceding the application, and the reason for the suspension or revocation.

11. The name and address of the current owner and lessor of the real property upon which the proposed Tobacco Retailing business is to be conducted, and a copy of the lease or rental agreement.

12. Copies of all business tax certificates and local business licenses.

13. Copies of applications for licenses and licenses issued pursuant to California Business and Professions Code sections 22970, et seq., the "Cigarette and Tobacco Products Licensing Act of 2003". If an application for a license pursuant to the "Cigarette and Tobacco Products Licensing Act of 2003" has been denied, copies of documentation regarding the reason for the denial of such license.

14. At the discretion of the Chief of Police, such other identification and information, including fingerprints, as may be required in order to discover the truth of the matters herein and/or deemed necessary for the administration or enforcement of this chapter as specified on the application form required by this section.

B. Owners, Corporate Officers, Partners Deemed Applicants. Each Owner of a Tobacco Retailer applicant is deemed a co-Applicant and each shall provide the information required in 5.56.030(A) above. For Tobacco Retailer applicants with less than twenty (20) employees, each corporate officer or partner of a Tobacco Retailer is deemed a co-Applicant and each shall provide the information required in 5.56.030(A) above.

C. Designation of Responsible Managing Officer. A Tobacco Retailer applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

D. Change in Information. An Applicant shall inform the Police Department in writing of any change in the information submitted on an application for a Tobacco Retailer's Permit 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, subject to the laws' exemptions.

F. Application Fee. The Applicant shall pay an application fee in an amount to be set by the City Council to cover the costs incurred by the City to process the application.

5.56.040 Issuance of a Permit.

A. Upon the receipt of a complete application for a Tobacco Retailer's permit and the permit fee required by this chapter, the Chief of Police shall have authority to grant or deny the application for Tobacco Retailer permit. An application for permit may be denied by the Chief of Police for any of the following reasons:

1. The application is received after the designated time and date.
2. The application is not in the required form and/or is incomplete.
3. The Applicant has made a false, misleading, or fraudulent statement, or omission of fact in the application or in the application process;
4. The Applicant or a co-Applicant has failed to submit fingerprints or other information deemed necessary by the Chief of Police pursuant to 5.56.030 above.
5. The Applicant or a co-Applicant has within five years immediately preceding the date of the filing of the application been convicted of, suffered any civil penalty, or faced administrative action against any type of license for violations of any tobacco control law, including but not limited to the following offenses: Penal Code section 308, Business and Professions Code sections 225950, et seq. ("Stop Tobacco Access to Kids Enforcement Act" or the "STAKE

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Act”), Business and Professions Code sections 22970, et seq. (“Cigarette and Tobacco Products Licensing Act of 2003”), or a charge of violating a lesser-included or lesser-related offense including, but not limited to, Penal Code 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.

6. The Applicant or a co-Applicant has within ten years immediately preceding the date of the filing of the application been convicted of any felony criminal offense or any Crime of Moral Turpitude.

7. There are charges pending against the Applicant or a co-Applicant for a felony offense, a Crime of Moral Turpitude, or an offense involving the use of a weapon.

8. The Applicant or a co-Applicant has within five years immediately preceding the date of the filing of the application been convicted of, suffered any civil penalty, or faced administrative action for violation of local, state, or federal law.

9. The Applicant seeks authorization for Tobacco Retailing that is prohibited pursuant to this chapter, that is unlawful pursuant to this Code including without limitation the zoning, building, and business license tax regulations and codes, or that is unlawful pursuant to any other law.

10. The Applicant or a co-Applicant has had a Tobacco Retailer’s renewal permit or an application for a Tobacco Retailer’s permit denied within one year prior to the date of application.

11. The Applicant or a co-Applicant is ineligible for a Tobacco Retailer permit pursuant to section 5.56.120.

B. The Chief of Police shall serve the Applicant, either personally or by first class mail addressed to the Authorized Address, with dated written notice of the decision to approve or deny the application for Tobacco Retailer’s permit. If the application has been approved, the notice shall state the permit fee amount, the date by which the permit fee must be paid, and the location where payment must be made. If the application has been denied, the notice shall state the reasons for denial, the effective date of the decision, and the right of the applicant to appeal the decision to the City Manager. Any appeal must be filed in writing with the City Clerk within fourteen days of service of the notice. The City Manager’s determination regarding the application shall be final. The City Manager shall provide dated written notice to the applicant, either personally or by first class mail addressed to the Authorized Address, of the City Manager’s determination and the right of the applicant to seek judicial review of the City Manager’s determination.

C. No permit shall issue pursuant to this chapter unless the permit fee, established in accordance with 5.56.080, has been timely paid pursuant to the notice issued above.

D. A permit issued under this chapter shall be valid for a period of one year from the date of the issuance or from the date of renewal.

5.56.050 Permit Renewal and Expiration

A. A Tobacco Retailer’s permit shall automatically renew on an annual basis unless the Chief of Police determines prior to the date on which the permit is to be automatically renewed that any

of the factors identified in subsection C below exist. A Tobacco Retailer shall have the duty to ensure that all City records generated pursuant to this chapter are accurate and up-to-date prior to automatic renewal.

B. The Tobacco Retailer shall pay a renewal fee established pursuant to 5.56.080 prior to the date on which the permit is to be automatically renewed.

C. The Chief of Police shall have authority to grant or deny the renewal permit. A renewal permit may be denied by the Chief of Police for any of the following reasons:

1. Any of the grounds for suspension or revocation under section 5.56.110 exist;
2. The permit is suspended or revoked at the time of the application;
3. The Tobacco Retailer has not been in regular and continuous operation in the four months prior to the renewal application.
4. The Tobacco Retailer fails to or is unable to renew any required state licenses.
5. The Tobacco Retailer has failed to pay the renewal fee established pursuant to 5.56.080 prior to the date on which the permit is to be automatically renewed.
6. The Tobacco Retailer fails to ensure that all City records generated pursuant to this chapter are accurate and up-to-date prior to the automatic renewal.

D. The Chief of Police is authorized to make all decisions concerning the issuance of a renewal permit. In making the decision, the Chief of Police is authorized to impose additional conditions on a renewal permit if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare.

E. The Chief of Police shall serve the Tobacco Retailer, either personally or by first class mail addressed to the Authorized Address, with dated written notice of the decision to approve or deny the renewal permit. A denial notice shall state the reasons for the action, the effective date of the decision, and the right of the Tobacco Retailer to appeal the decision to the City Manager. Any appeal must be filed in writing with the City Clerk within fourteen days of service of the notice. The City Manager's determination regarding the renewal permit shall be final. The City Manager shall provide dated written notice to the Tobacco Retailer, either personally or by first class mail addressed to the Authorized Address, of the City Manager's determination and the right of the Tobacco Retailer to seek judicial review of the City Manager's determination.

5.56.060 Permits Nontransferable.

A. A Tobacco Retailer's permit may not be transferred from one Person to another or from one location to another. A new Tobacco Retailer's permit is required whenever a Tobacco Retailer has a change in more than 20% ownership of the Tobacco Retailer or whenever a Tobacco Retailer changes location.

B. Notwithstanding any other provision of this chapter, prior violations at a Tobacco Retailer location shall continue to be counted against the location and permit ineligibility periods shall continue to apply to the location unless:

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1. the location has been transferred to new Owner in an Arm's Length Transaction; and
2. the new Owner provides the City with clear and convincing evidence that the new Owner(s) have acquired or are acquiring the location in an Arm's Length Transaction.

5.56.070 Permit Conveys a Limited, Conditional Privilege.

Nothing in this chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's permit 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. It is the responsibility of each permittee to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's Permit. No permittee may rely on the issuance of a permit as a determination by the City that the permittee has complied with all laws applicable to Tobacco Retailing. Nothing in this chapter shall be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

5.56.080 Permit Fee.

The fee to issue or to renew a Tobacco Retailer's permit shall be established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a permit, administering the permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

5.56.090 Tobacco Retailer Operating Requirements and Prohibitions.

A. Compliance with All Laws Required. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a permit issued, it shall be a violation of this chapter for a permittee, or any of the permittee's agents or employees, to violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

B. Fixed Location Required. No Person shall engage in Tobacco Retailing at other than a fixed location. For example, Tobacco Retailing by Persons on foot or from vehicles is prohibited.

C. Display of Permit. Each Tobacco Retailer permit shall be prominently displayed in a publicly visible location at the permitted 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 under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

E. Self-Service Displays Prohibited. Tobacco Retailing by means of a Self-Service Display is prohibited.

F. Tobacco Display Prohibited without Valid Permit. A Tobacco Retailer without a valid Tobacco Retailer permit shall not display Tobacco Products or Tobacco Paraphernalia in public view. A Tobacco Retailer without a valid Tobacco Retailer permit 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 permittee or any of the permittee's agents or employees to violate any local, state, or federal law regulating controlled substances or Drug Paraphernalia, except that conduct authorized pursuant to state law shall not be a violation of this chapter.

H. Windows.

1. In the course of Tobacco Retailing or in the operation of a business or maintenance of a location for which a permit issued, it shall be a violation of this chapter for a permittee, or any of the permittee's agents or employees, to cover more than 20 percent of the window area with window signs in accordance with section 19.60.500 of this code.

2. All windows shall be 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.

I. Change in Information. A Tobacco Retailer shall inform the Police Department in writing of any change in the information submitted on an application for a Tobacco Retailer's permit within ten (10) business days of a change.

5.56.100 Compliance Monitoring.

A. Compliance with this chapter shall be monitored by the Police Department. In addition, any peace and/or code enforcement officer may enforce the provisions of this chapter.

B. The Police Department shall inspect each Tobacco Retailer at least one (1) time per twenty-four (24) month period. Nothing in this paragraph shall create a right of action in any permittee or other Person against the City or its agents.

C. Right of Access. The Police Department and/or their authorized representatives shall have full access to enter a permitted Tobacco Retailer location to conduct an inspection during the operating hours of the Tobacco Retailer. Failure to cooperate with any Police Department inspection may result in a permit violation subject to suspension or revocation. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges.

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5.56.110 Suspension or Revocation of Permit.

A. Suspension or Revocation of Permit for Violation. In addition to any other penalty authorized by law, a Tobacco Retailer's permit may be suspended or revoked if any court of competent jurisdiction determines, or the Chief of Police finds based on a preponderance of the evidence, after the permittee is afforded notice and an opportunity to be heard, that the permittee, or any of the permittee's agents, officers, partners, representatives, managers, 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 designated in section 5.56.020 above as follows:

1. Upon a finding by the Chief of Police of a first violation of this chapter at a location, the permittee shall be issued a warning by the Department.

2. Upon a finding by the Chief of Police of a second violation of this chapter at a location within any sixty-month (60) period, the permit shall be suspended for ninety (90) days.

3. Upon a finding by the Chief of Police of a third violation of this chapter at a location within any sixty-month (60) period, the permit shall be suspended for one (1) year.

4. Upon a finding by the Chief of Police of a fourth violation of this chapter at a location within any sixty-month (60) period, the permit shall be revoked.

B. The Chief of Police shall serve the Tobacco Retailer, either personally or by first class mail addressed to the Authorized Address, with dated written notice of the decision to suspend or revoke the permit. A suspension or revocation notice shall state the reasons for the action, the effective date of the decision, and the right of the permittee to appeal the decision to the City Manager. An appeal to the City Manager is not available for a revocation made pursuant to subsection (C) below. Any appeal must be filed in writing with the City Clerk within fourteen days of service of the notice. The City Manager's determination regarding the suspension or revocation shall be final. The City Manager shall provide dated written notice to the Tobacco Retailer, either personally or by first class mail addressed to the Authorized Address, of the City Manager's determination and the right of the Tobacco Retailer to seek judicial review of the City Manager's determination.

C. Revocation of Permit Wrongly Issued. A Tobacco Retailer's permit shall be revoked if the Chief of Police finds, after the permittee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a permit under section 5.56.020 existed at the time application was made or at any time before the permit issued, or one or more of the bases for denial of a renewal permit under section 5.56.050 existed at the time the renewal permit was issued. Notice and appeal of the revocation shall be conducted in accordance with subsection B above.

D. If a permit issued under this chapter is suspended or revoked, all Tobacco Products and Tobacco Paraphernalia at the suspended or revoked Tobacco Retailer's location shall be removed from public view for the duration of the suspension or revocation. The Tobacco Retailer additionally 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 for the duration of the suspension or revocation.

5.56.120 Violations; Penalties.

A. It shall be unlawful for any Person to violate any provision, or to fail to comply with the requirements, of this chapter or any regulation adopted hereunder. Any person violating any of the provisions or failing to comply with any of the requirements this chapter or any regulation adopted hereunder shall be guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for a period of not more than six months, or by both a fine and imprisonment. Each day that a violation continues is deemed to be a new and separate offense. No proof of knowledge, intent, or other mental state is required to establish a violation.

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

C. Any condition caused or allowed to exist in violation of any of the provisions of this chapter or any regulation adopted hereunder is a public nuisance and may be abated by the City, or by the City Attorney on behalf of the people of the State of California, as a nuisance by means of a restraining order, injunction, or any other order or judgment in law or equity issued by a court of competent jurisdiction. The City, or the City Attorney on behalf of the people of the State of California, may seek injunctive relief to enjoin violations of, or to compel compliance with this chapter or seek any other relief or remedy available at law or equity, including the imposition of monetary civil penalties. Each day that a violation continues is deemed to be a new and separate offense and subject to a maximum civil penalty of \$2,500.00 for each and every offense.

D. Tobacco Retailing Without a Valid Permit; Ineligibility for Permit. In addition to any other penalty authorized by law, if the Chief of Police 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 permit, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailer's permit as follows:

1. After a first violation of this section at a location within any sixty-month (60) period, no new permit 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 (60) period, no new permit 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.

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3. After of a third or subsequent violation of this section at a location within any sixty-month (60) period, no new permit 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.

E. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a Person under the age of eighteen (18) 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.

F. The remedies specified in this section are cumulative and in addition to any other remedies available under State or local law for a violation of this Code.

5.56.130 Requirement for Tobacco Retailer Permit; Operative Date.

For a Tobacco Retailer business not in existence, a Tobacco Retailer permit must be obtained prior to commencement of Tobacco Retailing. For an existing Tobacco Retailer business, a Tobacco Retailer permit must be obtained the later to occur of six (6) months after the date the Police Department begins accepting applications for Tobacco Retailer permits or upon renewal of the Tobacco Retailer's business license issued pursuant to chapter 5.02 of this code.

Section II. Severability

If any portion of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid, unenforceable or unconstitutional, by a court of competent jurisdiction, that portion shall be deemed severable, and such invalidity, unenforceability or unconstitutionality shall not affect the validity or enforceability of the remaining portions of the Ordinance, or its application to any other person or circumstance. The City Council of the City of Chula Vista hereby declares that it would have adopted each section, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more other sections, sentences, clauses or phrases of the Ordinance be declared invalid, unenforceable or unconstitutional.

Section III. Construction

The City Council of the City of Chula Vista intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Section IV. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day after its final passage.

Section V. Publication

The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Presented by

Approved as to form by

DocuSigned by:
Roxana Kennedy
92514C3B0ED24DE...
Roxana Kennedy
Chief of Police

DocuSigned by:
Glen R. Googins
CF40650850444BF...
Glen R. Googins
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 6th day of March 2018, by the following vote:

AYES: Councilmembers: Aguilar, Diaz, McCann, Padilla, and Salas
NAYS: Councilmembers: None
ABSENT: Councilmembers: None

DocuSigned by:
Mary Challe Salas
062BFD7C0386456...
Mary Salas, Mayor

ATTEST:

DocuSigned by:
Kerry K. Bigelow
3074D104EAF342E...
Kerry K. Bigelow, MMC, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO)
CITY OF CHULA VISTA)

I, Kerry K. Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3417 had its first reading at a regular meeting held on the 27th day of February 2018 and its second reading and adoption at a regular meeting of said City Council held on the 6th day of March 2018; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

3/16/2018
Dated

DocuSigned by:
Kerry K. Bigelow
3074D104EAF342E...
Kerry K. Bigelow, MMC, City Clerk