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.

5.56.095 Sale of certain items prohibited.

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.

Prior legislation: Prior code §§ 20.2.1, 20.2.5 – 20.2.9; Ords. 1133, 1178, 2506 and 2693.

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.

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 and 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. "Electronic Smoking Device" also includes cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device charges, and any other item specifically designed for the preparation, charging, or use of Electronic Smoking Devices.

I. "Flavored Tobacco Product" means a Tobacco Product that contains or emits a taste or smell, other than the taste or smell of tobacco, including but not limited to, any taste or smell relating to fruit, mint, menthol, wintergreen, chocolate, cocoa, vanilla, honey, candy, dessert, alcoholic beverage, herb, or spice. "Flavored Tobacco Products" do not include products approved by the Food and Drug Administration (FDA) for sale either as a tobacco cessation product or for other therapeutic purposes, where the product is marketed and sold solely for such an FDA-approved purpose.

J. "Loose-Leaf Tobacco" consists of cut or shredded pipe tobacco, usually sold in pouches, excluding any tobacco product which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes, including roll-your-own cigarettes.

K~~J~~. "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 20 percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a Person can or does have or share ultimate control over the day-to-day operations of a business.

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

M~~L~~. "Premium Cigars" means any cigar that is handmade, has a wrapper that is made entirely from whole tobacco leaf, and has a wholesale price of no less than twelve dollars. A Premium Cigar does not have filter, tip, or nontobacco mouth.

~~K~~N. "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~~O. "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.

P. "Shisha" means a tobacco product that is mixed with molasses, honey, fruit, or dried fruits and is sold for use in a hookah.

~~M~~Q. "Tobacco Paraphernalia" means any item designed for the consumption, use, or preparation of a Tobacco Product.

~~N~~R. "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 (~~N~~R)(1) and (~~N~~R)(2) of this section 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~~S. "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 CVMC. (Ord. 3417 § 1, 2018).

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 CVMC, and any and all required state licenses, including but not limited to a California Cigarette and Tobacco Products Retailer's License. (Ord. 3417 § 1, 2018).

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;

   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 subsection (A)(4) of this section.

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 subsection (A)(4) of this section.

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

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 subsection (A)(1) of this section.

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 Section 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 subsection (A) of this section. For Tobacco Retailer applicants with less than 20 employees, each corporate officer or partner of a Tobacco Retailer is deemed a co-Applicant and each shall provide the information required in subsection (A) of this section.

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 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. (Ord. 3417 § 1, 2018).

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 CVMC 5.56.030.

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 Section 225950 et seq. ("Stop Tobacco Access to Kids Enforcement Act" or the "STAKE Act"), Business and Professions Code Section 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 Section 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 10 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 CVMC 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 a 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 14 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 CVMC 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. (Ord. 3417 § 1, 2018).

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) of this section 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 CVMC 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 CVMC 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 CVMC 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 14 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. (Ord. 3417 § 1, 2018).

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 percent 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:

1. The location has been transferred to the 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. (Ord. 3417 § 1, 2018).

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. (Ord. 3417 § 1, 2018).

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. (Ord. 3417 § 1, 2018).

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 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 CVMC 19.60.500.

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 10 business days of a change. (Ord. 3417 § 1, 2018).

5.56.095 Sale of Certain Items Prohibited.

A. *Sale of Flavored Tobacco Prohibited.* Beginning January 1, 2023, it shall be unlawful for any Person to sell or offer for sale, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product in the City of Chula Vista.

1. There shall be a permissive inference 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.

2. There shall be a permissive inference that a Tobacco Product is a Flavored Tobacco Product if:

a. a public statement or claim is made or disseminated by the manufacturer of a Tobacco Product, or by any person authorized or permitted by the manufacturer to make or disseminate public statement concerning such tobacco product, that such Tobacco Product has or produces a taste or smell other than tobacco; or

b. text and/or images on the Tobacco Product's Labeling or Packaging explicitly or implicitly indicates that the Tobacco Product is a Flavored Tobacco Product.

B. *Exempted Products.* This section does not apply to the sale of Shisha, Premium Cigars, or Lloose-Lleaf Ttobacco.

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 time per 24-month period. Nothing in this subsection 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. (Ord. 3417 § 1, 2018).

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 CVMC 5.56.020 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 60-month period, the permit shall be suspended for 90 days.

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

4. Upon a finding by the Chief of Police of a fourth violation of this chapter at a location within any 60-month 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) of this section. Any appeal must be filed in writing with the City Clerk within 14 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 CVMC 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 CVMC 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) of this section.

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. (Ord. 3417 § 1, 2018).

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 of this chapter or any regulation adopted hereunder shall be guilty of a misdemeanor punishable by a fine of not more than $1,000 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 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 60-month 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 30 days have passed from the date of the violation.

2. After a second violation of this section at a location within any 60-month 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 90 days have passed from the date of the violation.

3. After of a third or subsequent violation of this section at a location within any 60-month 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 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 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. (Ord. 3417 § 1, 2018).

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 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 CVMC. (Ord. 3417 § 1, 2018).