

Chapter 9.38 RESTRICTING THE SALE, DISPLAY AND PROMOTION OF TOBACCO PRODUCTS OR CIGARETTES TO MINORS

9.38.010 Purpose and intent.

It is the purpose and intent of the city council to enact regulations further restricting the sale or display of tobacco products and cigarettes in the city to minors, beyond that provided for by state law. Accordingly, the city council enacts the following regulations as not preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S Code Section 1332, et seq.

(Ord. 2223 § 1 (part), 2003: Ord. 2172 § 1 (part), 2000)

9.38.020 Definitions.

For purposes of this chapter:

"Advertising display" means a sign, sign-board, billboard, poster, or banner that is temporarily or permanently placed within a building or displayed in the window(s) of a commercial establishment to advertise or promote products. It does not include printed material on the container of a product sold at retail.

"Cigarette," as used in this chapter and as defined by 15 U.S. Code Section 1332, means: (A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (B) 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 in subparagraph A of this definition.

"Playground" means any outdoor premises or grounds owned or operated by the city, a public or private school, childcare center, or youth or recreational center, that contains any play or athletic equipment used or intended to be used by minors.

"Recreation center or facility" means any recreation center or facility under the control, direction or management of the city.

"School" means any public or private elementary or secondary school, attendance at which satisfies the compulsory education laws of the state of California.

"Self-service display" means an open display of tobacco products to which the public has access without the intervention of an employee.

"Tobacco advertising display" means an advertising display that concerns tobacco products.

"Tobacco product" means any substance or product other than cigarettes containing tobacco leaf, including but not limited to cigars, pipe tobacco, snuff, chewing tobacco, and dipping tobacco.

"Tobacco retailer" or "tobacco retail store" means any person or business entity that sells any tobacco product or cigarettes and includes an employee of that person or business entity. Any retail establishment selling tobacco products or cigarettes incidental to other merchandise qualifies within this definition.

"Vendor-assisted" means that only a store employee has access to a particular product and assists a customer by supplying the product, and the customer does not take possession of the product until it is purchased.

(Ord. 2223 § 1 (part), 2003: Ord. 2172 § 1 (part), 2000)

9.38.030 Measure of distance.

The distance between any tobacco retail store and any school, playground, recreation center or facility, childcare center, or library, shall be measured in a straight line, without regard to intervening structures, from the exterior of the tobacco retail store to the closest property line of the school, playground, recreation center or facility, childcare center, or library.

(Ord. 2223 § 1 (part), 2003: Ord. 2172 § 1 (part), 2000)

9.38.040 Restrictions on location of tobacco products and tobacco advertising displays.

- A. It is unlawful for any tobacco retailer to place, maintain, or cause to be placed or maintained any tobacco product or tobacco advertising display within two feet of any candy, snack, or nonalcoholic beverage display inside a tobacco retail store located within one thousand feet of any school, playground, recreation center or facility, childcare center or library.
- B. Except as allowed in Section 9.38.040(A), it is unlawful for any person to advertise tobacco products within one thousand feet of any school, playground, recreation center or facility, childcare center or library.

(Ord. 2223 § 1 (part), 2003: Ord. 2172 § 1 (part), 2000)

9.38.050 Exceptions to location of tobacco products and tobacco advertising displays inside retail establishments.

- A. Section 9.38.040 does not apply to commercial establishments where access to the premises by persons under twenty-one years of age is prohibited by law.
- B. Section 9.38.040A does not apply within any establishment to displays containing tobacco products which are not accessible and visible to patrons, or to displays located above, behind or below a sales counter and which are not accessible to patrons. Any display containing tobacco products shall not be used as an "advertising display" as defined in Section 9.38.020.

(Ord. 2223 § 1 (part), 2003: Ord. 2172 § 1 (part), 2000)

(Ord. No. 2018-2452, § 4, 12-4-2018)

9.38.060 Self-service sale and distribution of tobacco products—Prohibited.

It is unlawful for any tobacco retailer to sell, permit to be sold, offer for sale, or display for purposes of sale, by means of self-service displays or by any means other than vendor-assisted sales, any tobacco products or cigarettes.

(Ord. 2223 § 1 (part), 2003: Ord. 2172 § 1 (part), 2000)

9.38.070 Restrictions on distribution of free tobacco samples, promotional items or cigarettes to minors.

- A. It is unlawful for tobacco retailer to distribute free tobacco products or promotional items, except in enclosed areas where minors are not permitted.

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- B. It is unlawful for any tobacco retailer to permit or allow a minor to be within six feet of any area or display where cigarettes are distributed free or at reduced cost as part of a promotion.

(Ord. 2223 § 1 (part), 2003: Ord. 2172 § 1 (part), 2000)

9.38.080 Posting of signs regarding tobacco products and cigarette sales to minors.

- A. Every tobacco retailer shall post conspicuously in their place of business at each point of purchase a notice stating that the sale of tobacco products and cigarettes to persons under twenty-one years of age is prohibited by law and subject to penalties, except for United States Armed Forces active duty personnel with military ID who are at least eighteen years of age. The notice shall also state that photo identification is required to purchase tobacco products and cigarettes. The letters of the sign shall be at least one-half inch in height.
- B. Any sign meeting the content requirements of California Business and Professional Code Section 22952(b) and regulations promulgated thereunder, and the posting requirements of California Penal Code Section 308(c), satisfies subsection "A" of this section.

(Ord. 2223 § 1 (part), 2003: Ord. 2172 § 1 (part), 2000)

(Ord. No. 2018-2452, § 5, 12-4-2018)

9.38.090 Extensions for compliance.

- A. Any business that needs to make modifications to its business premises or advertising practices in order to comply with Sections 9.38.040, 9.38.060, or 9.38.080 of this chapter must comply within sixty calendar days after June 30, 2003.
- B. Any business owner may apply to the city manager, through the planning director, for a reasonable extension of time within which to comply with Sections 9.38.040, 9.38.060 or 9.38.080 of this chapter, provided that the application for extension is submitted on or before the last day of the sixty-day compliance period.
- C. An extension may be granted only for good cause for a maximum of one year from the effective date. "Good cause" means that the extension is necessary to prevent the business from suffering unreasonable financial hardship, or to prevent unreasonable disruption in business operations.

(Ord. 2223 § 1 (part), 2003: Ord. 2172 § 1 (part), 2000)

9.38.100 Enforcement.

- A. Violations of this chapter shall be prosecuted as infractions for the first offense, and may be prosecuted as misdemeanors for subsequent offenses, subject to the penalties provided in Section 1.20.010 of this code. In addition, injunctive relief, civil penalties or administrative remedies provided in Title 1 of this code, may be sought or imposed for violations.
- B. This chapter may be enforced by any police officer, building inspector, code conformance officer, business license inspector or fire inspector.

(Ord. 2223 § 1 (part), 2003: Ord. 2172 § 1 (part), 2000)