

ORDINANCE NO. 2025-\_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY  
AMENDING TITLE 9 OF THE NATIONAL CITY MUNICIPAL CODE BY  
AMENDING CHAPTER 9.38 PERTAINING TO TOBACCO RETAILER LICENSING  
AND RESTRICTING THE SALE, DISPLAY AND PROMOTION OF TOBACCO TO YOUTH**

**WHEREAS**, the City of National City (the "City"), pursuant to the police powers delegated to it by the California Constitution, has the authority to enact or amend laws which promote the public health, safety, and general welfare of its residents; and

**WHEREAS**, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code; and

**WHEREAS**, pursuant to a published 10-day notice of the adoption of said ordinance, a public hearing was held by the City Council on August 19, 2025, and at said public hearing, all persons interested were given the opportunity to appear and be heard before the City Council; and

**NOW, THEREFORE, the City Council of the City of National City does ordain as follows:**

**Section 1.** All protests, if any, against said amendment to the Municipal Code and each of them be and hereby are denied and overruled.

**Section 2.** Section 9.38 (Restricting the Sale, Display and Promotion of Tobacco Products or Cigarettes to Minors) is hereby amended to read as follows:

**Chapter 9.38 - TOBACCO RETAILER LICENSE AND RESTRICTING THE SALE, DISPLAY AND PROMOTION OF TOBACCO TO YOUTH.**

**Section 9.38.010 Purpose and intent.**

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 products to youth, 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. Accordingly, the City Council enacts the following regulations as not preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S. Code sec. 1332, et seq.

**Section 9.38.020 Definitions.**

For purposes of this chapter:

- 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. "Cannabis" has the meaning set forth in California Business and Professions Code Section 26001, as that

section may be amended from time to time.

- D. "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.
- E. "Cannabis Retailer" means any retail establishment in which cannabis or cannabis products are sold or offered for sale to persons that do not hold a license to engage in commercial cannabis activity issued by the State of California in accordance with the Business and Professions Code Section 26000 et seq., as that section may be amended from time to time.
- F. "Child-Resistant Packaging" means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- G. "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 4.5 pounds per thousand.
- H. "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.
- I. "City" means City of National City, California.
- J. "Compliance checks" means systems the department uses to investigate and ensure that tobacco retailers are following and complying with the requirements of this chapter. Compliance checks may involve the use of persons between the ages of 18 and 20 who purchase or attempt to purchase tobacco products. Compliance checks may also be conducted by the department or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to tobacco products.
- K. "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.
- L. "Delivery sale" means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a tobacco retail establishment. Delivery sale includes the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.
- M. "Department" means the Community Development Department and any agency or person designated by the City to enforce or administer the provisions of this chapter.
- N. "Electronic Smoking Device" means an electronic 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 e-hookah. "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. "Electronic Smoking Device" does not include "drugs," "devices," or "combination products," authorized for sale

by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act. "

- O. "Flavored Tobacco Product" means any tobacco product that imparts:
  - 1. a taste or odor distinguishable by an ordinary consumer, other than the taste or odor of tobacco, either prior to or during the consumption of such tobacco product, including but not limited to tastes or odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or
  - 2. a cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product.
- P. "Full Retail Price" means the displayed price plus all applicable taxes and fees if such taxes and fees are not included in the displayed price. For the purposes of this chapter, "Displayed Price" means the price displayed 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.
- Q. "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 4.5 pounds per thousand. Little Cigar includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.
- R. "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.
- S. "Moveable Place of Business" means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.
- T. "Person" means any human being, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- U. "Pharmacy" means any retail establishment in which the profession of pharmacy is practice 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.
- V. "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 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 has or shares ultimate control over the day-to-day operations of a business.
- W. "Recreation Facility" means an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes, and includes but is not limited to, a gymnasium, playing court, playing field, and swimming pool.
- X. "Sale" mean any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.
- Y. "Self-Service Display" means the open display or storage of tobacco products 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 face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.

- Z. "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. "Smoking" includes using an electronic smoking device.
- AA. "Tobacco Product" means:
  - 1. Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled absorbed, or ingested by any other means, including but not limited to, a cigarette, cigar, little cigar, pipe tobacco, snuff, snus, or chewing tobacco;
  - 2. Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
  - 3. Any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes. "Tobacco Product" does not mean "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.
- BB. "Tobacco Retailer" means any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.
- CC. "Tobacco Retailing" means engaging in the activities of a tobacco retailer.
- DD. "Youth-Oriented Facility" means a parcel in the city that is occupied by:
  - 1. a private or public kindergarten, elementary, middle, junior high, or high school;
  - 2. a library open to the public;
  - 3. a playground open to the public;
  - 4. a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
  - 5. a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes;
  - 6. a park open to the public or to all the residents of a private community;
  - 7. a licensed child-care facility or preschool [other than a small-family day care home or a large-family day care home [as defined in California Health & Safety Code § 1596.78]].

**Section 9.38.030**      **General requirements and prohibitions.**

- A. *Tobacco retailer's license required.* It shall be unlawful for any person to engage in tobacco retailing in the City without first obtaining and maintaining a valid tobacco retailer's license for each location at which tobacco retailing is to occur.
- 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 the sale of tobacco products.
- C. *Smoking prohibited.* Smoking, including smoking for the purpose of sampling any tobacco product, is prohibited

within the indoor area of any retail establishment licensed under this chapter. Smoking also prohibited outdoors within 25 feet of any retail establishment licensed under this chapter.

- D. *Minimum Legal Sales Age.* No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.
- E. *Display of License.* Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- F. *Positive identification required.* No person engaged in tobacco retailing shall sell a tobacco product to another person without first verifying by means of government- issued photographic identification that the recipient is at least 21 years of age.
- G. *Self-service displays prohibited.* Tobacco retailing by means of a self-service display is prohibited.
- H. *On-site Sales.* All sales of tobacco products shall be conducted in-person in 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 engage in the delivery sale of tobacco products or to knowingly or recklessly sell or provide tobacco products to any person that intends to engage in the delivery sale of the tobacco product in the City.
- I. *Posting of Signs.* 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. The notice shall also state that photo identification is required to purchase tobacco products. The letters of the sign shall be at least one-half inch in height.
  - a. 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 I of this Section.

**Section 9.38.040**      **Limits on eligibility for a tobacco retailer license.**

- A. *Mobile Vending.* No license may be issued to authorize tobacco retailing at other than a fixed location. No tobacco retail license will be issued to a moveable place of business.
- B. *Licensed cannabis businesses.* No license may be issued, and no existing license may be renewed, to authorize tobacco retailing at a location licensed for commercial cannabis activity by the State of California under Business and Professions Code Division 10.
- C. *Pharmacies.* One year after the effective date of this ordinance, no license may be issued, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.
- D. *Proximity to youth-oriented facilities.* No newly established business requesting to be licensed for the sale of tobacco may be within 1,000 feet of a youth-oriented facility as measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.
- E. *Proximity to other tobacco retailers.* No newly established business requesting to be licensed for the sale of tobacco may be within 1,000 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. *Proximity to cannabis retailers.* No new license may be issued to authorize tobacco retailing within [ 1,000 ] feet of an existing cannabis retailer 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 cannabis retailer is located.
- G. *Measure of distance.* The distance between any tobacco retail store and any school, playground, recreation center or facility, childcare center, library, or other tobacco retailer, or cannabis retailer, 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.
- H. *Population and density.* The issuing of tobacco retailer licenses is limited as follows:
1. The total number of tobacco retailer licenses within the city shall be limited to one for each 800 inhabitants of the city.
  2. For the purposes of this subsection, the total population of the city shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed.
  3. 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).
- I. *Existing retailers.* A tobacco retailer operating lawfully on the date this ordinance is adopted may receive an exemption from Subsection D, E, F, and H, as long as all of the following conditions are met:
1. the license is timely obtained and is renewed without lapse or revocation;
  2. the tobacco retailer is not closed for business or otherwise suspends Tobacco Retailing for more than sixty (60) consecutive days;
  3. the tobacco retailer retains the right to operate under other applicable laws.
- J. *Change of business dispute.* If the City determines that a tobacco retailer has substantially changed their business premises or operation and the tobacco retailer disputes this determination, the Tobacco Retailer bears the burden of proving by a preponderance of evidence that such change(s) do not constitute a substantial change.

**Section 9.38.050      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 non-alcoholic beverage display inside a tobacco retail store located within one thousand feet (1,000) of any youth-oriented facility.
- B. Except as allowed in subsection A, it is unlawful for any person to advertise tobacco products within one thousand feet (1,000) of any youth-oriented facility.
- C. Subsection A does not apply to commercial establishments where access to the premises by persons under twenty-one years of age is prohibited by law.

**Section 9.38.060      Sale of flavored tobacco products prohibited.**

The sale of flavored tobacco products shall be regulated by state law.

**Section 9.38.070 Tobacco product pricing and packaging.**

- A. *Packaging and labeling.* No tobacco retailer shall sell any tobacco product to any consumer unless the tobacco product: (1) is sold in the manufacturer's packaging intended for sale to consumers; (2) conforms to all applicable federal labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements. Upon request by the City, a licensee must provide a copy of the certificate of compliance or full laboratory testing report for the packaging used.
- B. *Display of price.* The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.
- C. *Distribution of tobacco samples or promotional items.* It is unlawful for any person to distribute free or nominally priced tobacco products.
- D. *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.
- E. *Prohibition on the sale of individual cigarettes.* No tobacco retailer shall sell cigarettes individually or in packages containing less than 20 cigarettes.

**Section 9.38.080 License application procedure.**

- A. An application for a 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. All applications shall be submitted on a form supplied by the Department.
- B. A license issued contrary to this Chapter, contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to 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. Applicant submissions must contain the following information:
  - 1. The name, address, and telephone number of each proprietor of the business seeking a license.
  - 2. The business name, address and telephone number of the location for which a license is sought.
  - 3. The name and mailing address authorized by each proprietor to receive all communications and

notices required by, authorized by, or convenient to the enforcement of this Chapter.

4. Proof that the location for which a tobacco retailer's license is sought has been issued all necessary 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 or any other local, state, or federal law governing the sale of tobacco products and, if so, the dates and locations of all such violations within the previous five years.
  6. A signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product without a license required by this Chapter.
  7. Such other information as the Department deems necessary for the administration or enforcement of this Chapter as specified on the application form required by this section.
  8. 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.
- D. *Change in information.* 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 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.

**Section 9.38.090 License issuance and renewal.**

- A. *Issuance of license.* Upon the receipt of a complete and adequate application for a tobacco retailer's license and the license fee required by this chapter, the Department may grant or deny the application for license, or it may delay action for a reasonable period of time to complete any investigation of the application of the applicant deemed necessary.
- B. *Denial of application.* The Department may deny an application for a tobacco retailer's license based on any of the following reasons:
1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate information shall be a violation of this chapter;
  2. The application seeks authorization for tobacco retailing at a location for which this chapter prohibits a license to be issued;
  3. The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued; or
  4. The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this chapter, that is unlawful pursuant to any other chapter of this Code, or that is unlawful pursuant to any other law.
  5. Any other suitable reason the granting of a license to the applicant is not consistent with the public health and welfare, including the applicant's history of noncompliance with this Chapter and other laws relating

to the sale of tobacco products.

6. The applicant is under the age of twenty-one.

**Section 9.38.100 License renewal and expiration.**

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 license is one (1) year. Each tobacco retailer will 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 current license. A retailer that fails to timely submit a renewal application and fee is ineligible for license renewal and must submit a new application pursuant to this Chapter.

**Section 9.38.110 Licenses not transferrable, past violations at retail location.**

- A. *Licenses not transferrable.* 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 retailer has a new tobacco retailing location or a location has a change in proprietors.
- B. *Past violations.* 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 the location unless:
  1. The location has been transferred to the new Proprietor(s) in an Arm's Length Transaction; and
  2. The new proprietor(s) provide the City with clear and convincing evidence that the new Proprietor(s) have acquired the location in an Arm's Length Transaction.

**Section 9.38.120 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. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law

**Section 9.38.130 Fee for license**

The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the City Council. The fee shall be calculated so as to recover the total cost of administration and enforcement of this chapter, including, but not limited to, issuing a license, administering the I 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.

**Section 9.38.140 Compliance monitoring.**

- A. Compliance with this chapter shall be monitored by the Department. In addition, the City may designate additional persons to monitor compliance with this chapter. All licensed premises must be open to inspection by city staff or designated persons during regular business hours.
- B. The Department shall inspect each tobacco retailer at least one (1) time per 12-month period.

- C. The city shall conduct up to two compliance checks per 12-month period that involves the participation of persons between the ages of 18 and 20 to enter licensed premises to attempt to purchase tobacco products.
- D. Nothing in this section shall create a right of action in any licensee or other person against the city or its agents

**Section 9.38.150 Suspension or revocation of permit.**

- A. *Notice.* Upon discovery of a suspected violation, the Department shall issue the alleged violator, either personally or by first class mail addressed to the authorized address, an administrative citation that sets forth the alleged violation and which shall inform the alleged violator of their right to be heard on the accusation. The administrative citation shall comply with the requirements of Section 1.44.030 of the National City Municipal Code.
- B. *Hearings.* Upon issuance of an administrative citation, a person accused of violating this Ordinance may request in writing a hearing on the matter in accordance with the procedures set forth in Sections 1.44.070 – 1.44.120 of the National City Municipal Code.
- C. *Costs.* If this administrative citation is upheld by the hearing officer, the city's actual expenses in holding the hearing up to a maximum of one thousand dollars (\$1,000) must be paid by the person requesting the hearing.
- D. *Continued violation.*
  - 1. Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this Chapter shall constitute a separate violation of this Chapter; and
  - 2. Each individual tobacco product that is distributed, sold, or offered for sale in violation of this Chapter shall constitute a separate violation of this Chapter.
- E. *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 this Chapter 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 this Chapter existed at the time the renewal permit was issued. Notice and appeal of the revocation shall be conducted in accordance with this section.
- F. If a license issued under this chapter is suspended or revoked, all tobacco products 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 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.

**Section 9.38.160 Violations and penalties.**

- A. Any licensee who is found to be in violation of this Ordinance, whether such violation is determined by a hearing officer or superior court; or the Licensee has pleaded guilty, "no contest," or its equivalent, or admitted to a violation, will be charged an administrative fine and as well as their license suspended or

revoked follows:

1. Upon a finding by the Department of a first violation of this chapter at a location, the Licensee shall be issued a warning.
2. Upon a finding by the Department of a second violation of this chapter at a location within any 36-month period, the licensee will be charged an administrative fine of \$300 and the license shall be suspended for 90 days.
3. Upon a finding by the Department of a third violation of this chapter at a location within any 36-month period, the licensee will be charged an administrative fine of \$600 and the license shall be suspended for one year.
4. Upon a finding by the Department of a fourth violation of this chapter at a location within any 36-month period, the licensee will be charged an administrative fine of \$1,000 and the license shall be revoked.

B. *Tobacco retailing without a valid license.* In addition to any other penalty authorized by law, if 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 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 36-month period, no new permit may be issued for the person or the location (unless proprietorship 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.
2. After a second violation of this section at a location within any 36-month period, no new permit may be issued for the person or the location (unless proprietorship of the business at the location has been transferred in an Arm's Length Transaction), until 180 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 36-month period, no new license may be issued for the person or the location (unless Proprietorship 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.

C. 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 preponderance of the evidence presented.

D. All tobacco retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product shall be considered an act of the tobacco retailer.

E. Tobacco products offered for sale in violation of this Chapter are subject to seizure by the Department or its designee and shall be forfeited after the licensee or any other owner of the tobacco products seized is given reasonable notice and an opportunity to demonstrate that the tobacco products were not offered for sale in violation of this Chapter. The decision by the Department may be appealed pursuant to the procedures set

forth in Section 9.38.150. Forfeited tobacco products shall be destroyed and properly disposed of at the cost of the seller 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.

- F. Violations of this Chapter may, at the discretion of the City Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require.
- G. Violations of this Chapter are hereby declared to be public nuisances.
- H. 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 City Attorney, including administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.
- I. 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.

**Section 9.38.170 Exceptions.**

- A. Nothing in this Chapter prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious or spiritual ceremony or practice.
- B. Nothing in this Chapter shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

**Section 9.38.180 Construction and severability.**

It is the intent of the City Council to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this Chapter, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**Section 9.38.190 Public records.**

All information provided to the Department by a licensee or license applicant pursuant to this Chapter shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 et seq.) or any other applicable law.

**Section 3.** Severability. If any section, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

**Section 4.** This Ordinance shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published

once, with the names of the members of the City Council voting for and against the same in the Star News, a newspaper of general circulation published in the County of San Diego, California.

**INTRODUCED this 19<sup>th</sup> day of August, 2025.**

**PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2025.**

\_\_\_\_\_  
Ron Morrison, Mayor

**ATTEST:**

\_\_\_\_\_  
Shelley Chapel, MMC, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Barry J. Schultz  
City Attorney