

Chapter 8.60 TOBACCO RETAILER'S PERMIT

8.60.010 Definitions.

As used in this chapter:

- A. "Department" means the Kern County public health services department.
- B. "Director" means the director of the department or his or her designee.
- C. "Person" means any natural person, partnership, cooperative association, domestic or foreign corporation, receiver, trustee, assignee, or any other legal entity.
- D. "Tobacco product" means any product that contains tobacco, is derived from tobacco, or contains synthetically produced nicotine and is intended for human consumption. "Tobacco product" includes electronic smoking devices(s) and electronic smoking device paraphernalia, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.
- E. "Tobacco paraphernalia" means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the California Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or ingestion of tobacco products.
- F. "Tobacco retailer" means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, smoking paraphernalia, electronic smoking devices, or electronic smoking device paraphernalia. This definition applies regardless of the quantity of tobacco, tobacco products, smoking paraphernalia, electronic smoking devices, or electronic smoking device paraphernalia sold, offered for sale, exchange, or offered for exchange. "Tobacco retailing" means engaging in any of these things.
- G. "Newly established business" means a business which was not engaged in tobacco retailing within the county of Kern during the immediately preceding permit renewal period.
- H. "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.
- I. "Smoking paraphernalia" means tobacco paraphernalia, electronic smoking devices, and electronic smoking device paraphernalia.
- J. "Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substance. "Electronic smoking devices" include any such electronic smoking 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" does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

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- K. "Electronic smoking device paraphernalia" means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic smoking device batteries, electronic smoking device chargers, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices.
 - L. "Tobacco retail facility low risk" means a tobacco retail facility that has not been determined by the department to have violated the provisions of Section 8.06.090 in the previous five (5) years.
 - M. "Tobacco retail facility moderate risk" means a tobacco retail facility that has been determined by the department to have violated the provisions of Section 8.06.090 one (1) time in the previous five (5) years.
 - N. "Tobacco retail facility high risk" means a tobacco retail facility that has been determined by the department to have violated the provisions of Section 8.06.090 two (2) or more times in the previous five (5) years.

(Ord. G-7724 § 2, 2008; Ord. G-7455 § 2 (part), 2006)

(Ord. No. G-8006, § 34, 1-26-10; Ord. No. G-8495, §§ 2—4, 7-15-14; Ord. No. G-8586, §§ 2, 3, 8-11-15; Ord. No. G-8763, §§ 2, 3, 4-17-18)

8.60.020 Requirements for tobacco retailer's permit.

- A. It shall be a misdemeanor for any person, within the county, to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's permit, pursuant to this chapter, for each location at which that activity is to occur. No permit will be issued to authorize tobacco retailing at any place other than a fixed location; peripatetic tobacco retailing and tobacco retailing from vehicles are prohibited.
- B. Each day that a person offers tobacco products for sale or exchange without a valid permit shall constitute a separate violation.
- C. A tobacco retailer without a valid tobacco retailer's permit, including a person whose permit has been suspended or revoked:
 - 1. Shall not keep any tobacco products at the regulated facility. The public display of tobacco products in violation of this provision shall constitute tobacco retailing without a license under this section.
 - 2. 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.
- D. This section shall become operative July 1, 2007.

(Ord. G-7724 § 3, 2008; Ord. G-7455 § 2 (part), 2006)

8.60.030 Application procedure.

Application for a tobacco retailer's permit shall be submitted to the department in the name of the person proposing to conduct retail tobacco sales and shall be signed by each person or an authorized agent thereof. Each person shall be responsible for reviewing the conditions of conducting retail tobacco sales within the county and shall agree to abide by these conditions by signing the application under penalty of perjury. All applications shall be submitted on a form supplied by the department and shall contain the following information:

- A. The name, mailing address and telephone number of the applicant;

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- B. The business name, address and telephone number of each location for which a tobacco retailer's permit is sought.
 - C. A single name and mailing address to receive all communications and notices required by or authorized by this chapter. If such address is not provided, each permittee shall be understood to consent to the provision of notice at the business address specified in subparagraph 2 of this section.
 - D. Proof that the location for which a tobacco retailer's permit is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
 - E. Such other information as the department deems necessary for the administration or enforcement of this chapter.
 - F. Verification that the permittee has undertaken a training program in the laws relating to the sale of tobacco products in California as provided by or approved by the County's Public Health Services Department.

An application for a tobacco retailer's permit must be obtained by a newly established business on or before the last day of the month following the month in which the business started. All information submitted as part of the application process shall be updated with the department whenever the information changes. A tobacco retailer shall provide the department with any updates within ten (10) business days of a change.

(Ord. G-7724 § 4, 2008; Ord. G-7455 § 2 (part), 2006)

8.60.040 Issuance of permit.

- A. The permit shall state on its face:
 - 1. Legal owner,
 - 2. Any fictitious business name used by the owner,
 - 3. Business address,
 - 4. Date permit issued,
 - 5. Permit number.
- B. Upon the receipt of an application for a tobacco retailer's permit, the department shall issue the permit, subject to Section 8.04.050 of this chapter and verification by the department that there is no substantial record of evidence that demonstrates one of the following bases for denial:
 - 1. The information presented in the application is incomplete, inaccurate or false; or
 - 2. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension is in effect; or
 - 3. The application seeks authorization for tobacco retailing that is unlawful pursuant to this code or any other applicable law.
 - 4. The application seeks authorization for tobacco retailing at a location for which this chapter prohibits issuance of a permit. However, this subsection shall not constitute a basis for denial of an application if the applicant provides the department with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an arm's length transaction.

(Ord. G-7455 § 2 (part), 2006)

8.60.050 Display of permit.

Each permittee shall prominently display the permit at each location where tobacco retailing occurs. The permit shall be posted at or near each entrance to the retail facility used by its patrons or in a conspicuous place approved by the director. The permit shall not be defaced, marred, camouflaged, hidden, or removed.

(Ord. G-7455 § 2 (part), 2006)

(Ord. No. G-8586, § 4, 8-11-15)

8.60.060 Fees for permit.

The environmental health permit fee for each establishment, business or activity shall be established by uncodified ordinance.

(Ord. G-7455 § 2 (part), 2006)

(Ord. No. G-8586, § 4, 8-11-15)

8.60.070 Renewal of permit—Delinquency.

Renewal of the tobacco retailer's permit shall be subject to the provisions of Sections 8.04.060 and 8.04.190 of this Code.

(Ord. G-7455 § 2 (part), 2006)

8.60.080 Permits not transferable.

A tobacco retailer's permit is non-transferable. If a new person acquired a business engaged in tobacco retailing, that person must apply for a new permit on or before the last day of the month following the month in which the tobacco retailing business is acquired. The transferee of the permit must apply for a permit in the transferee's name before acting as a tobacco retailer.

Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

- (1) The location has been fully transferred to a new owner or fully transferred to entirely new owners; and
- (2) The new owner(s) provide the county with clear and convincing evidence that the new owner(s) have acquired or are acquiring the location in an arm's length transaction.

(Ord. G-7455 § 2 (part), 2006)

8.60.090 Administrative violations.

- A. The violations set forth in this section are cumulative to, and in addition to, any other violations of state or local law and shall be punished as specified in Section 8.60.100.
- B. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a permit is issued, it shall be a violation of this chapter for a permittee, or any of the permittee's agents or employees, to:

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1. Violate any local, state, or federal law applicable to tobacco products or tobacco retailing;
 2. Sell or transfer a tobacco product to another person who is under the age of twenty-one (21) years;
 3. Sell or transfer a tobacco product 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 the recipient is at least the minimum age under state law to purchase and possess the tobacco product.
 4. Sell or permit the sale of controlled substances, dangerous drugs, or synthetic drugs. Successive sales over any continuous period of time shall be deemed evidence of permission. As used in this section, "controlled substances" includes any substance defined as a "controlled substance" either by Article 1 (commencing with Section 11000) of Chapter 1 of Division 10 of the California Health and Safety Code or by the federal Controlled Substances Act (21 U.S.C.A. section 801 et seq.). "Dangerous drugs" has the same meaning as is given to that term in Article 2 (commencing with Section 4015) of Chapter 9 of Division 2 of the California Business and Professions Code. "Synthetic drugs" includes any substance defined as a "synthetic drug" by Chapter 9.44 of this code or regulated by one (1) of the California Uniform Controlled Substances Act's synthetic drug laws (California Health and Safety Code Sections 11357.5, 11375.5, 11401).
- C. No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in tobacco retailing.

(Ord. G-7724 § 4, 2008; Ord. G-7455 § 2 (part), 2006)

(Ord. No. G-8603, § 2, 11-3-15; Ord. No. G-8645, § 2, 6-14-16)

8.60.100 Administrative penalties.

- A. Upon a determination by the department that a person has engaged in any conduct that violates the provisions of this chapter, the director may suspend a tobacco retailer's permit, impose administrative penalties, or both suspend the permit and impose administrative penalties.
- B. The department shall notify the tobacco retail facility owner that there has been an initial determination of violation under the provisions of this chapter. The initial determination notice will specify the violation and the sanction imposed, including the effective date of the suspension, if applicable. The notice shall further state that the tobacco retail facility owner may, within fifteen (15) days, submit to the department any written or documentary evidence to contest the initial determination of violation.
- C. An administrative review board shall hear the appeal of the initial determination of violation. The administrative review board shall consist of (1) the assistant director of public health or his or her designee, (2) the environmental health director or his or her designee, and (3) the chief environmental health specialist or his or her designee. Within fifteen (15) days from the tobacco retail facility owner's submission to the department of its evidence to contest the determination of violation, the administrative review board shall hear the appeal. The administrative review board shall decide the appeal by majority vote and shall report its decision and findings in support thereof to the director in writing.
- D. After receiving the report of the administrative review board, the director shall prepare a final written decision, including the determination of violation and any sanctions or penalties under paragraphs (E) and (F) of this section, and shall serve this decision upon the tobacco retailer. Upon written request, the offender shall have the right to receive copies of any records or files upon which the administrative decision is based. This final determination shall be served through certified mail within sixty (60) days of the final determination.
- E. When this chapter permits the director to suspend a permit, the following sanction may be imposed:

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1. For the first violation in any five-year period, the tobacco retailer shall receive a notice of violation from the department.
 2. For the second violation in any five-year period, the person's tobacco retailer's permit shall be suspended for up to thirty (30) days.
 3. For a third violation in any five-year period, the person's tobacco retailer's permit shall be suspended for up to ninety (90) days.
 4. For a fourth or subsequent violation in any five-year period, the person's tobacco retailer's permit shall be suspended for up to one hundred eighty (180) days and/or revoked.
- F. When this chapter allows the director to impose an administrative penalty, the following penalty may be imposed:
1. For the first violation, a penalty in the amount of two hundred fifty dollars (\$250.00);
 2. For the second violation within five (5) years from the date of the first violation, a penalty in the amount of five hundred dollars (\$500.00);
 3. For the third and each subsequent violation within five (5) years from the date of the first violation, a penalty in the amount of one thousand dollars (\$1,000.00).
- G. Upon determination by the department that a tobacco retailer has violated any provision of this chapter and that the tobacco retailer did not violate any provision of this chapter in the five (5) years immediately preceding the violation, the director may suspend the imposition of any sanction under subsection (E) or penalty under subsection (F) for a period of six (6) months.
1. Within fifteen (15) days of the director's decision to suspend the imposition of any sanction or penalty pursuant to this subsection, the tobacco retailer shall pay a fee of five hundred dollars (\$500.00) for the cost of inspections during the six-month period. Failure to pay this fee shall immediately restore the imposition of any sanction under subsection (E) or penalty under subsection (F).
 2. During the six-month period, the department shall inspect the tobacco retail facility for compliance as deemed necessary by the department.
 3. A determination by the department that the tobacco retailer has engaged in any conduct that violates the provisions of this chapter during the six-month period shall restore the imposition of any sanction under subsection (E) or penalty under subsection (F) immediately and without further right to appeal.
 4. If and only if the tobacco retailer completes the six-month period without violating the provisions of this chapter as determined by the department, the sanction under subsection (E) or penalty under subsection (F) previously imposed shall be permanently stayed.

(Ord. G-7724 § 5, 2008; Ord. G-7455 § 2 (part), 2006)

(Ord. No. G-8586, §§ 4, 5, 8-11-15; Ord. No. G-8763, § 4, 4-17-18)

8.60.110 Right to administrative review and procedures.

- A. The tobacco retailer shall have the right to appeal the decision of the department to the board of supervisors. To obtain a review of the final determination, the tobacco retailer must file with the clerk of the board of supervisors within fifteen (15) days of the date of the final determination, a written request for a hearing. The timely filing of a request for hearing shall hold in abeyance any license suspension until the administrative review is heard and decided.

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- B. If a review is requested, the clerk of the board of supervisors shall provide written notice, within thirty (30) days of its receipt of the request, to the tobacco retailer of the date, time and place of the hearing on the appeal.
 - C. At the time fixed in the notice, the board of supervisors shall proceed to hear testimony from any interested person regarding the specified violation deemed by the department to be the basis for the proposed administrative penalty, and any other matter which the board of supervisors may deem pertinent thereto.
 - D. Upon the conclusion of the hearing the board of supervisors will make a determination based on the evidence presented at the hearing, and may impose a suspension penalty without regard to the limits in Section 8.60.100.
 - E. The decision of the board of supervisors shall be final.

(Ord. G-7455 § 2 (part), 2006)

8.60.120 Youth decoys.

The county shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

- A. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the county; or
- B. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the department or the California Department of Public Health.

(Ord. G-7455 § 2 (part), 2006)

(Ord. No. G-8586, § 6, 8-11-15)

8.60.130 Inspections.

- A. 1. The director, his agent, any employee of the department, peace officers listed in Section 830.1 of the California Penal Code, and those officers listed in Section 830.6 of the California Penal Code while acting in the course and scope of their employment as peace officers, upon presenting appropriate credentials, may enter any location described in paragraph (3) and may conduct inspections in accordance with the following paragraphs for the purposes of enforcing any provision of this chapter.
 - 2. Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.
 - 3. Inspections may be at any location operating under a tobacco retailer's permit.
 - 4. Inspections shall be requested or conducted no more than once in a twenty-four-hour period.
- B. Refusal to allow an inspection under this section is a violation of this chapter subject to administrative penalties and permit revocation under Section 8.60.100 and is punishable as a misdemeanor.

(Ord. No. G-8603, § 3, 11-3-15)

8.60.140 Severability.

If any subsection, sentence, clause, or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction or preempted by state or federal legislation, that decision or legislation shall not affect the validity of the remaining portions of this chapter. The board of supervisors declares that it would have passed this chapter and each and every subsection, sentence, clause, or phrase not declared invalid or unconstitutional notwithstanding any such decision or legislation.

(Ord. No. G-8603, § 3, 11-3-15)