

**Exhibit A**

**Title 5 – Business Licenses and Regulations**

**Chapters**

**Chapter 5.80 – Licensing and Regulation of Tobacco Retailers**

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**SECTION 5.80.010 - Definitions**

The following words and phrases, whenever used in this article, 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 between two informed and willing parties, neither of which is under any compulsion to participate in the transaction.

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- (B) “Child-Resistant Packaging” mean 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.
- (C) “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.
- (D) “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 consumers as a cigarette described herein.
- (E) “Compliance Checks” means systems the department uses to investigate and ensure that tobacco retailers are following and complying with the requirements of this article. 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.
- (F) “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 transmissions, mail, the internet, or app-based service. Delivery sale includes delivery by licenses or third parties by any means, including curbside pick-up.
- (G) “Department” means the City of Hesperia Code Enforcement Department and any agency or person designated by the Department to enforce or administer the provisions of this article.
- (H) “Electronic Smoking Device” means any 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.
- (I) “Flavored Tobacco Product” means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.
- (J) “Full Retail Price” means the price listed 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, plus all applicable taxed and fees if such taxes and fees are not included in the list price.
- (K) “Little Cigar” means any toll 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.

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- (L) “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.
- (M) “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.
- (N) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (O) “Proprietor” means a person with an ownership or 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.
- (P) “Sale” or “Sell” means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.
- (Q) “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.
- (R) “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.
- (S) “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, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
  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.
- (T) “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.
- (U) “Tobacco Retailing” means engaging, in the activities of tobacco retailer.

### **5.80.020 – 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 of Hesperia without first obtaining and maintaining a valid tobacco retailer’s license for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer’s license is declared a public nuisance.

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- 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 is issued, it shall be a violation of this code 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. **MINIMUM LEGAL SALES AGE.** No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.
- D. **ADVERTISEMENT OF FLAVORED TOBACCO PRODUCTS PROHIBITED.** It shall be unlawful for any tobacco retailer to advertise or display signage that includes any flavored tobacco product.
- E. **ADVERTISEMENT FOR PRESUMPTIVE FLAVORED TOBACCO PRODUCTS PROHIBITED.** Advertising and signage shall not include presumptive flavored tobacco products, including a public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has a taste or smell other than tobacco shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.
- F. **DISPLAY OF LICENSE.** Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- G. **POSITIVE IDENTIFICATION REQUIRED.** No person engaged in tobacco retailing shall sell a tobacco product to another person without first verifying by means of unexpired government-issued photographic identification that the recipient is at least 21 years of age.
- 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 article 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. **MOBILE VENDING.** No license may issue to authorize tobacco retailing anywhere other than a fixed location. No tobacco retail license will be issued to a moveable place of business.
- J. **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.
- K. **MINIMUM PACKAGE SIZE FOR LITTLE CIGARS AND CIGARS.** No tobacco retailer shall sell:
  - (1) little cigars unless they are sold in a package of at least 20 little cigars; or
  - (2) cigars unless they are sold in a package of at least six cigars.
- L. **DISTRIBUTION OF TOBACCO SAMPLES OR PROMOTIONAL ITEMS.** It is unlawful for any person to distribute free or nominally priced tobacco products.
- M. **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 customer to purchase a tobacco product for less than the full retail price.

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- (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.
  - (3) provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.
- N. All tobacco retailers must provide education and training to employees on local laws preventing sales to those under 21 years of age; training should include how to properly and accurately check a customer's age on a photo ID and how to refuse tobacco sales.

### **5.80.030 – Application for Tobacco Retailer License**

- 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 proprietors must be listed on one application. All applications shall be submitted on a form supplied by the City of Hesperia.
- B. A license issued contrary to this article, contrary to any other law, or on the basis of false or misleading information shall be void. Nothing in this article 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 shall contain the following information:
  - (1) The home address, name, business address, and telephone number of the location for which a license is sought.
  - (2) The business name, address, and telephone number of the location for which a license is being 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 article.
  - (4) Proof that the location for which a tobacco retailer's license is sought has been issued all necessary state licenses 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 article 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 article.
  - (7) Such other information as the City deems necessary for the administration or enforcement of this article as specified on the application form required by this section.
  - (8) All required fees.
  - (9) Authorization for the City to seek verification of the information contained within the application.
  - (10) A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

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- D. A licensed tobacco retailer shall inform the City in writing of any change in the information submitted on an application for a tobacco retailer's license within ten business days of change.
- E. An inspection will be conducted at the tobacco retail location upon application of a Tobacco Retail License. If violations are found, a Correction Notice will be sent to the applicant listing all violations. A license shall not be issued until all violations are corrected.

### **5.80.040 – License Issuance**

Upon the receipt of a complete and adequate application for a tobacco retailer's license and the license fee required by this article, the City may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.

### **5.80.050 – Denial of Tobacco Retailer License Application**

- A. The City may deny an application for a tobacco retailer's license based on any of the following:
  - (1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this article;
  - (2) The application seeks authorization for tobacco retailing at a location for which this article prohibits a license to be issued;
  - (3) The application seeks authorization for tobacco retailing for a proprietor to whom this article prohibits a license to be issued;
  - (4) The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this article, that is unlawful pursuant to any other article of this Code, or that is unlawful pursuant to any other law;
  - (5) Any other reason the granting of a license to the applicant is not consistent with the public health and welfare, including but not limited to, the applicant's history of noncompliance with this article and other laws relating to the sale of tobacco products.

### **5.80.060 – License Issuance**

- A. RENEWAL OF A LICENSE. 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 year. Each tobacco retailer shall apply for the renewal of their tobacco retailer's license and submit the license fee no later than 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 Section 5.80.060

### **5.80.070 – Licenses not Transferrable**

- 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 retailing location has a change in proprietors.

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### **5.80.080 – Past Violations**

- A. Notwithstanding any other provision of this article, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply at a location unless:
- (1) the location has been transferred to 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.

### **5.80.090 - License Conveys a Limited, Conditional Privilege**

Nothing in this article 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 license. Nothing in this article shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

### **5.80.100 – 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 and are nonrefundable except as may be required by law. The fee for a Tobacco Retailer License shall be in addition to, and not in lieu of, any other fees that are required.

### **5.80.110 – Compliance Monitoring and Inspections**

- A. Compliance with this article shall be monitored by the City Manager or Designee(s). All licensed premises must be open to inspection by City Officials or designated persons during regular business hours.
- B. The Department shall inspect each tobacco retailer at least one (1) time per 12-month period to ensure compliance.
- C. The Department may conduct at least one (1) compliance check 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. A fee may be charged for re-inspection as adopted via Resolution by City Council.
- E. Nothing in this section shall create a right of action in any license or other person against the City or its agents.

### **5.80.120 – Suspension or Revocation of License**

- A. In addition to any other penalty authorized by law, a tobacco retailer's license may be suspended or revoked if it is found to have violated any portion of this Chapter or any applicable State Law regarding the sale of tobacco products. Upon a finding by the Department of a first violation of this article, at a location, the license shall be suspended for 30 days.
- (1) Upon a finding by the Department of a second violation of this article at a location, the license shall be suspended for 90 days.
  - (2) Upon a finding by the Department of a third violation of this article at a location, the license shall be suspended for one year.
  - (3) Upon a finding by the Department of four or more violations of this article at a location within a five-year period, the license shall be revoked.

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- B. During the suspension or revocation period, no retailer shall be allowed to vend any tobacco product. All tobacco products shall be removed, and no tobacco product shall be displayed.
  - (1) Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this article shall constitute a separate violation of this article which will constitute further suspensions or revocation of a license.
  - (2) Each individual tobacco product that is distributed, sold, or offered for sale in violation of this article shall constitute a separate violation of this article which will constitute further suspensions or revocation of a license.
- C. If it is found that a tobacco retailer has sold tobacco or a tobacco product to a minor under 21 years of age, they will be subject to the penalties noted above, and upon the first violation of this nature, that retailer shall also apply for a Conditional Use Permit (CUP) which may result in losing the ability to sell any and all tobacco products and/or a complete revocation of the tobacco retail license.

### **5.80.130 – Appeals**

Any decision regarding the suspension or revocation of a tobacco retailer's license may be appealed to the City Council by the licensee as follows:

1. Appellant must file a written appeal with the Hesperia City Clerk within ten calendar days of the decision. The written appeal shall specify the person making the appeal, identify the decision appealed from, state the reasons for the appeal, and include any evidence in support of the appeal.
2. Notice of the time and place of an appeal hearing shall be provided to the appellant within thirty (30) days of receipt of the written appeal by the Hesperia City Clerk.
3. The appeal hearing shall be held within sixty (60) days of the filing of the written appeal with the Hesperia City Clerk, unless the 60-day time limit is waived by the appellant, or unless the city manager or designee continues the appeal hearing date for good cause and upon written notification to the appellant.
4. The City Council shall review the facts of the matter, written documents submitted for review, the basis for making the decision which is under appeal, and then determine whether the director's decision should be reversed or affirmed. The determination made shall be in writing, shall set forth the reasons for the determination, and shall be final.
5. The provisions of Sections 1094.5 and 1094.6 of the Code of Civil Procedure set forth the procedure for judicial review of any final determination.

### **5.80.170 – License Issued in Error – Voiding of a License**

Any application that is found to contain inaccurate, false, misleading, or fraudulent statements, or that omits material facts regarding the operation of the business, or the application was not accompanied by all required supporting documentation, shall void the license.

### **5.80.180 – Tobacco Retailing without a Valid License**

- A. **INELIGIBLE FOR LICENSE.** In addition to any other penalty authorized by law, if the Department finds, or if a court of competent jurisdiction determines, 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 license, either directly or through the person's agents or employees, the



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person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows. Operating without a valid license includes operating with a license that has been suspended or revoked:

- (1) After a first violation of this section at a location, no new license 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 five-year period, no new license 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 a third or subsequent violation of this section at a location within any five-year period, no new license 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 one year has passed from the date of the violation.

### **5.80.190 – Additional Remedies**

- A. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.
- B. Whenever evidence of a violation of this article is obtained in any part through the participation of a person under the age of 18 years, such a person shall not be required to appear to give testimony in any civil or administrative process brought to enforce this article, and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- C. Any violation of the provisions of this chapter shall constitute a separate offense for each and every day during which such violation is committed or continued and shall be subject to all remedies and enforcement measures authorized by the Hesperia Municipal Code, Title 1.
- D. To the fullest extent allowed under state law, any person, whether as principal, employee, agent, partner, director, officer, stockholder, or trustee or otherwise, violating or causing the violation of any of the provisions of this chapter shall be guilty of a misdemeanor, and any conviction thereof shall be punishable of not more than one thousand dollars (\$1,000.00) or by imprisonment for not more than six months, or by both such fine and imprisonment.
- E. The violation of any of the provisions of this chapter is deemed a public nuisance and may be abated by the city through civil process by means of restraining order, preliminary or permanent injunction, or in any other manner provided by law for the abatement of such nuisance. Violations of this chapter may also be punishable in accordance with the provisions of Title 1 of this code. Remedies are not exclusive of each other.