

## Chapter 8.34 TOBACCO RETAILER LICENSE

### § 8.34.010 Definitions.

The following words and phrases, whenever used in this chapter, shall have the meaning defined in this section unless the context clearly requires otherwise:

“Characterizing flavor” means a distinguishable taste or aroma, or both, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product. Characterizing flavors include, but are not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice. A tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. Rather, it is the presence of a distinguishable taste or aroma, or both, that constitutes a characterizing flavor.

“City” means the City of Palm Desert

“Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

“Consumer” means a person who purchases a tobacco product for consumption.

“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.

“Department” means the Development Services Department of the city.

“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, and whether natural or synthetic. Electronic smoking device does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

“Flavored tobacco product” means any tobacco product that contains a constituent that imparts a characterizing flavor, as defined in California Health and Safety Code Section 104559.5(a)(1), or any tobacco product, other than looseleaf tobacco, a premium cigar, or a shisha tobacco product, that is not listed on the

Unflavored Tobacco List established by the California Attorney General pursuant to California Health and Safety Code Section 104559.1.

“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 taxes and fees if such taxes and fees are not included in the listed price.

“Kratom” means the plant *Mitragyna speciosa*, whether growing or not, and any compound, manufacture, salt, derivative, mixture, or preparation of that plant, including its leaves, and any product containing mitragynine, speciociliatine, speciogynine, paynantheine, or 7-hydroxymitragynine (also known as 7-OH), whether natural or synthesized.

“Kratom leaf” means the leaf of the kratom plant, also known as *Mitragyna speciosa*, in any form, but without chemical alternation beyond traditional drying or grinding.

“Kratom leaf extract” means the material obtained by extraction of kratom leaves by any means, provided that the extraction process does not introduce synthetic or chemically altered kratom alkaloids.

“Kratom product” means a product consisting of kratom leaf, kratom leaf extract, or both; any part of a leaf of the plant *Mitragyna speciosa* in fresh, dehydrated or dried form or a kratom extract or any product that contains any kratom alkaloid or metabolite.

“Labeling” means written, printed, pictorial, or graphic matter upon any tobacco product or any of its packaging.

“License” means a valid tobacco retailer’s license issued by the department to a person to act as a tobacco retailer.

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

“Natural kratom leaf product” consisting of kratom leaf, kratom leaf extract, or both, that has not been chemically altered or adulterated with synthetic or concentrated kratom alkaloids or derivatives, including, but not limited to 7-hydroxymitragynine in concentrations exceeding levels that occur naturally in kratom leaf.

“Packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold, or offered for sale, to a consumer.

“Person” means any natural person partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee or any other legal entity.

“Pharmacy” means any retail establishment in which the profession of pharmacy is practiced 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.

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

“Tobacco product” means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

“Self-service display” means the open display or storage of tobacco products in a manner that is physically accessible 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.

“Shisha tobacco product” means a tobacco product smoked or intended to be smoked in a hookah. Shisha tobacco product includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. Shisha tobacco product does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product.

“Synthesized” means an alkaloid or alkaloid derivative that has been created by chemical synthesis or biosynthetic means (include but not limited to: fermentation, recombinant techniques, yeast derived enzymatic techniques) rather than traditional food preparation techniques such as heating or extracting. It also includes alkaloids that have been further exposed to chemicals or processes that would confer a structural change in the alkaloids contained within the extract.

“Synthetic kratom alkaloid” means any kratom alkaloid or derivative that has been created, isolated, increased, or modified through chemical synthesis, biosynthesis, fermentation, recombinant techniques, enzymatic processing, or other processes that materially alter the naturally occurring alkaloid profile.

“Synthetic kratom product” means any product containing a synthetic kratom alkaloid, including synthesized or chemically altered 7-hydroxymitragynine (7-OH), regardless of labeling or marketing.

“Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of or marketed for the consumption, use, or preparation of tobacco products, as defined in California Health and Safety Code Section 104559.5(a)(17)(A)(iii).

“Tobacco product” means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco product as defined in California Health and Safety Code Section 104559.5(a)(17), including, but not limited to, any product containing, made, or derived from tobacco or nicotine intended for human consumption, electronic devices that deliver nicotine or other vaporized liquids, and any component, part, or accessory of a tobacco product. Tobacco product does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

“Tobacco product flavor enhancer” means a product designed, manufactured, produced, marketed, or sold to produce a characterizing flavor when added to a tobacco product, as defined in California Health and Safety Code Section 104559.5(a)(18).

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

#### **§ 8.34.020 Requirements.**

A. It is unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer’s license pursuant to this chapter for each location at which that activity is to occur. No license may issue to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited. No license may be issued to authorize sales of tobacco products at a temporary event, such as a festival or farmers’ market.

B. The payment of the license fee designated in Section 8.34.060 confers paid status upon a license for a term of one year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer’s license no later than thirty (30) days prior to expiration of the payment term. A license that is not renewed in a timely manner shall expire at the end of its term, and the tobacco retailer must obtain a new license prior to any further sale, offer for sale, or distribution of any tobacco product.

C. 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 right to act as a tobacco retailer at the location in the city identified on the face of the permit. For

example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by California Labor Code Section 6404.5 or the prohibition on the sale of flavored tobacco products and tobacco product flavor enhancers under California Health and Safety Code Section 104559.5. All licenses are issued subject to the city's right to amend this chapter from time to time, and tobacco retailers shall comply with all provisions of this chapter, as amended.

D. It is unlawful for any person to sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer, except as permitted under California Health and Safety Code Section 104559.5(c), (d), and (e) for flavored shisha tobacco products, premium cigars sold in cigar lounges, and looseleaf tobacco. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor.

E. A tobacco retailer's permit issued to a hookah tobacco retailer shall only authorize the sale of flavored shisha tobacco products if the retailer complies with all conditions set forth in California Health and Safety Code Section 104559.5(c), including maintaining a valid state cigarette and tobacco products retailer license issued by the California Department of Tax and Fee Administration, prohibiting persons under 21 years of age from entering the premises at any time, and operating in accordance with all state and local laws related to tobacco sales and consumption, including, but not limited to, California Labor Code Section 6404.5.

F. No tobacco retailer shall violate, or cause or allow the tobacco retailer's agents or employees to violate, any provision of this chapter or any other local, state, or federal law applicable to tobacco products or tobacco retailing.

G. Tobacco retailers are responsible for the actions of their employees and agents relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer, and the license holder shall be responsible for any monetary penalties levied.

H. 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.

I. No tobacco retailer shall do any of the following: (1) Honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than 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.

J. No person or tobacco retailer shall sell or offer to sell any electronic smoking device that delivers natural or synthetic nicotine or any other substance(s) to the person inhaling from the device. This includes any component, part, or accessory intended or reasonably expected to be used with the electronic smoking device, whether or not sold separately.

K. No pharmacy or pharmacy employee or agent shall sell or offer to sell any tobacco product. The department shall not issue any new, or renew any existing, license for any pharmacy.

L. No tobacco retailer or other person shall sell or offer for sale any tobacco product to any consumer unless the tobacco product: (1) is sold in the original 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.

M. Tobacco retailing by means of a self-service display is prohibited. All sales of tobacco products and tobacco paraphernalia shall be conducted in person, over the counter, at the permitted location.

N. Tobacco retailers shall post conspicuously, at each point of purchase, a notice stating that selling tobacco products to anyone under 21 years of age is illegal and subject to penalties. The form and content of such notice shall be subject to the approval of the department.

O. No tobacco retailer or other person shall sell or offer to 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.

P. No tobacco retailer shall allow, at its retail location, any individual who is younger than 21 years of age to sell or offer to sell tobacco products.

Q. Kratom Regulations

1. No person or business shall sell, offer for sale, or distribute any synthetic kratom product within the City.
2. This chapter shall not prohibit the sale or distribution of natural kratom leaf products that do not contain synthetic or chemically altered kratom alkaloids.
3. No person under twenty-one (21) years of age shall possess any kratom or kratom product within the City.
4. This chapter shall not apply to possession of kratom or kratom products by persons twenty-one (21) years of age or older, provided such products are otherwise lawful under this chapter.

5. There shall be a rebuttable presumption that a product is a synthetic kratom product if a manufacturer or any of the manufacturer's agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the product has or produces effects similar to a synthetic kratom product, including, but not limited to, text, color, and/or images on the product's labeling or packaging that are used to explicitly or implicitly communicate that the product is a synthetic kratom product.
- R. It is unlawful for any person to sell, offer for sale, or distribute any kratom product to a person under twenty-one (21) years of age.
- S. No person or tobacco retailer shall sell or offer for sale any natural kratom leaf product unless it is: (1) is sold in the original 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.
- T. Natural kratom leaf product retailing by means of a self-service display is prohibited. All sales of natural kratom leaf products shall be conducted in person, over the counter.
- U. Retailers selling natural kratom leaf products shall post conspicuously, at each point of purchase a notice stating that selling kratom products to anyone under 21 years of age is illegal and subject to penalties. The form and content of such notice shall be subject to the approval of the department.
- V. No retailer or other person shall sell or offer to sell a natural kratom leaf product to another person without first verifying by means of government-issued photographic identification that the recipient is at least twenty-one (21) years of age.

#### **§ 8.34.030 Application procedure.**

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. It is the responsibility of each proprietor to be informed of the laws affecting the issuance of a tobacco retailer's license, including, but not limited to, California Health and Safety Code Section 104559.5 prohibiting the sale of flavored tobacco products and tobacco product flavor enhancers and the kratom regulations under this chapter. A license that is issued in error or on the basis of false or misleading information supplied by a proprietor may be revoked pursuant to Section 8.34.090 of this chapter. No license holder may rely on the issuance of a license as a determination by the City that the license holder has complied with all laws applicable to tobacco retailing. All applications shall be submitted on a form supplied by the department and shall contain the following information:

- A. The name, address, and telephone number of each proprietor;

B. The business name, address, and telephone number of the single fixed location for which a tobacco retailer's license is sought;

C. The name and mailing address authorized by each proprietor to receive all license-related communications and notices (the "authorized address"). If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (B) of this section;

D. Whether or not any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation;

E. A statement signed by each proprietor affirming that the business will comply with all state and local laws related to the sale of tobacco products, including the prohibition on flavored tobacco products and tobacco product flavor enhancers under California Health and Safety Code Section 104559.5 and the kratom regulations under this chapter;

F. For applications by hookah tobacco retailers intending to sell flavored shisha tobacco products, a certification that the business meets all conditions set forth in California Health and Safety Code Section 104559.5(c);

G. Proof that the location for which a license is sought has been issued a valid state license for the sale of tobacco products, if the tobacco retailer sells products that require such license;

H. A statement whether or not the tobacco retailer or any agent of the tobacco retailer has been found to have violated this chapter or other applicable law governing tobacco products or tobacco retailing and, if so, the dates and locations of all such violations within the previous five (5) years;

I. An application for a new or renewal license will be denied if there are any outstanding fines or late fees issued by the department, or during any period of suspension; and

J. Such other information as the department deems necessary for the administration or enforcement of this chapter.

#### **§ 8.34.040 Issuance of license.**

Upon the receipt of an application for a tobacco retailer's license and the license fee, the department shall issue a license unless substantial record evidence demonstrates one of the following bases for denial:

A. The application is incomplete or inaccurate; or

B. The application seeks authorization for tobacco retailing by a proprietor for which or whom a suspension is in effect pursuant to Section 8.34.080 of this chapter; or

by a proprietor which or who has had a license revoked pursuant to Section 8.34.090 of this chapter; or

C. The application seeks authorization for tobacco or kratom retailing that is prohibited pursuant to Section 8.34.020 of this chapter (e.g., mobile vending), that is unlawful pursuant to this Palm Desert code (e.g., the zoning code), or that is unlawful pursuant to any other local, state or federal law, including, but not limited to, the prohibition on the sale of flavored tobacco products and tobacco product flavor enhancers under California Health and Safety Code Section 104559.5.

D. For applications by hookah tobacco retailers intending to sell flavored shisha tobacco products, the application fails to demonstrate compliance with all conditions set forth in California Health and Safety Code Section 104559.5(c).

E. The sale of tobacco products and accessories is prohibited in City-owned structures and in any area of a structure leased by the City.

#### **§ 8.34.050 Display of license.**

Each license shall be prominently displayed in a publicly visible location at the licensed premises.

#### **§ 8.34.060 Fees for license.**

The fee to issue or to renew a tobacco retailer's license shall be established by resolution of the city council of Palm Desert, California. The fee shall be calculated so as to recover no more than the total cost of license administration and enforcement, including, for example, but not limited to, issuing the license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators. Fees are nonrefundable except as may be required by law.

#### **§ 8.34.070 Licenses nontransferable.**

A tobacco retailer's license is nontransferable. If the information required in the license application pursuant to Section 8.34.030, subsections (A) through (C), changes a new tobacco retailer's license is required before the business may continue to act as a tobacco retailer. For example, if a proprietor to whom a license has been issued changes business location, that proprietor must apply for a new license prior to acting as a tobacco retailer at the new location. Or if the business is sold, the new owner must apply for a license for that location before acting as a tobacco retailer. Any attempted transfer shall render the license null and void. Notwithstanding any other provision of this chapter, prior violations of this chapter at a location shall continue to be counted against that location and license ineligibility and suspension periods shall continue to apply to that location unless: (1) One hundred percent of the interest in the stock, assets, or income of the business, other than a security interest for the repayment of debt, has been transferred to the new owner(s); and (2) the City is provided with clear and convincing evidence, including an affidavit, that the business has been acquired in

an Arm's Length Transaction. An Arm's Length Transaction, for the purposes of this section, means a transaction in which two or more unrelated and unaffiliated parties agree on the transfer in question; the parties act independently and in their own self-interest; and the parties have equal bargaining power and symmetric information, leading the parties to agree upon fair-market terms.

**§ 8.34.080 License violation.**

A. Violation of Tobacco and Kratom-Related Laws. It is a violation of this chapter for a person, licensee, or his or her agent or employee to violate any local, state, or federal tobacco-related law, including, but not limited to, the prohibition on the sale, offer for sale, or possession with intent to sell flavored tobacco products or tobacco product flavor enhancers under California Health and Safety Code Section 104559.5 or the kratom regulations in this chapter

B. License Compliance Monitoring. Compliance with this chapter shall be monitored by the code compliance division. The city council anticipates that compliance checks of a sample of tobacco retailers selected or based on complaints will be conducted as necessary during each twelve-month period. Compliance checks shall take place during normal business hours, with or without notice. If a violation has occurred, the tobacco retailer shall be inspected as needed to ensure compliance. All permitted premises must be open to inspection by the department during regular business hours and may include the use of audio or video recording equipment to document illegal sales or attempted sales. The department shall coordinate with the California Department of Public Health and the California Department of Tax and Fee Administration to ensure compliance with state tobacco laws, including the flavored tobacco sales restrictions under California Health and Safety Code Section 104559.5.

**§ 8.34.090 Suspension, expiration, or revocation of license.**

A. Suspension or Revocation of License for Violation. In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended or revoked if the department finds, after notice to the licensee and opportunity to be heard, that the licensee or his or her agents or employees has or have violated the requirements of this chapter or other conditions of the license imposed pursuant to Section 8.34.080.

1. Upon a finding by the department of a first license violation within any sixty-month period, the license shall be suspended for thirty (30) days.

2. Upon a finding by the department of a second license violation within any sixty-month period, the license shall be suspended for ninety (90) days.

3. Upon a finding by the department of a third license violation within any sixty-month period, the license shall be suspended for one (1) year.

4. Upon a finding by the department of a fourth license violation within any sixty-month period, the license shall be revoked and the proprietor or proprietors who had been issued the license shall never again be issued a tobacco retailer's license pursuant to this chapter.

B. Expiration of License for Failure to Pay Renewal Fee. A tobacco retailer's license that is not timely renewed pursuant to Section 8.34.020(B) shall automatically expire at the end of its term, and the tobacco retailer must obtain a new license prior to any further sale, offer for sale, or distribution of any tobacco product.

C. Revocation of License Issued in Error. A tobacco retailer's license shall be revoked if the department finds, after notice and opportunity to be heard, that one or more of the bases for denial of a license under Section 8.34.040 existed at the time application was made or at any time before the license issued. The revocation shall be without prejudice to the filing of a new application for a license.

D. Appeal of Suspension or Revocation. A decision of the department to revoke or suspend a license is appealable to the city council and must be filed with the city clerk within ten (10) days of mailing of the department's decision. An appeal shall stay all proceedings in furtherance of the appealed action. A suspension or revocation pursuant to subsection (B) is not subject to appeal.

E. Coordination with State Penalties. In addition to the penalties described in this section, violations of California Health and Safety Code Section 104559.5, including the sale of flavored tobacco products or tobacco product flavor enhancers, may result in civil penalties and license suspension or revocation by the California Department of Tax and Fee Administration as prescribed in California Business and Professions Code Sections 22974.2 and 22958.

#### **§ 8.34.100 Administrative fine.**

A. Grounds for Fine. If the department finds, based on substantial evidence, that (1) any unlicensed person, including a person named on a revoked or suspended license, has engaged in tobacco retailing in violation of Section 8.34.020 of this chapter; or (2) that any person has violated the kratom regulations in Section 8.34.020 of this chapter, the department shall fine that person as follows:

1. A fine not exceeding one hundred dollars (\$100) for a first violation in any twelve-month period;

2. A fine not exceeding two hundred dollars (\$200) for a second violation in any twelve-month period; or

3. A fine not exceeding five hundred dollars (\$500) for a third or subsequent violation in any twelve-month period.

Each day that such a person engages in tobacco retailing or unlawful sale of kratom shall constitute a separate violation. A fine shall be imposed in the amounts set forth in this subsection upon findings made by the department that the person, or any agent or employee of the person, has violated any provision of this chapter. Any administrative fine shall be imposed solely against the tobacco retailer and/or seller of kratom, not the tobacco retailer's or seller of kratom's employees or agents.

B. Notice of Violation. A notice of violation and of intent to impose a fine shall be personally served on, or sent by certified mail to, the person or persons subject to the fine. The notice shall contain a description of the facts upon which the asserted violation is based and include an advisement of the right to request a hearing to contest the fine. Any request for a hearing must be in writing and must be received by the department within ten (10) calendar days of personal service of the notice on the person or persons subject to a fine or within fifteen (15) calendar days if the person or persons subject to a fine are served by mail.

C. Imposition of Fine. If no request for a hearing is timely received, the department's determination on the violation and the imposition of a fine shall be final and payment shall be made within thirty (30) calendar days of written demand made in the manner specified above for a notice of violation. If the fine is not paid within that time, the fine may be collected, along with interest at the legal rate, in any manner provided by law. In the event that a judicial action is necessary to compel payment of the fine and accumulated interest, the person or persons subject to the fine shall also be liable for the costs of the suit and attorney's fees incurred by the city in collecting the fine.

D. Notice of Hearing. If a hearing is requested pursuant to subsection (B) of this section, the department shall provide written notice, within forty-five (45) calendar days of its receipt of the hearing request, to the person or persons subject to a fine of the date, time, and place of the hearing in the manner specified above for a notice of violation.

E. Hearing Decision. The hearing officer shall render a written decision and findings within twenty (20) working days of the hearing. Copies of the decision and findings shall be provided to the person or persons subject to a fine in the manner specified above for a notice of violation.

F. Finality of the Hearing Officer's Decision. The decision of the hearing officer shall be the final decision of the city.

G. Appeal to Superior Court of Limited Jurisdiction. Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure, within twenty (20) days after personal service of the hearing officer's decision and findings, or within twenty-five (25) days if served by mail, any person subject to a fine may seek review of the hearing officer's decision and findings by the superior court of limited jurisdiction. A copy of the notice of appeal to the superior court shall be timely served in person or by first-class mail upon the department by the contestant. The appeal shall be heard de novo, except that the contents of the department's file in the case shall be received in evidence. A copy of the records of the department of the notices of the violation and of the hearing officer's decision and findings shall be admitted into evidence as prima facie evidence of the facts stated therein.

H. Failure to Pay Fine. If no timely notice of appeal to the superior court is filed, or the department is not timely served with a copy of a notice of appeal, the

hearing officer's decision and findings shall be deemed confirmed and the fine shall be collected pursuant to subsection (C) of this section.

I. A tobacco retailer without a current valid license shall: (1) Keep all tobacco and/or natural kratom leaf products out of public view. The public display of tobacco products in violation of this provision shall constitute tobacco retailing without a license; and (2) Not display any advertisement relating to tobacco products that offers the sale of such products from the tobacco retailer's location.

J. State Penalties. Administrative fines imposed under this section are in addition to any civil penalties or license suspension or revocation imposed by the California Department of Public Health, the California Department of Tax and Fee Administration, or other enforcing agencies under California Health and Safety Code Section 104559.5 or Business and Professions Code Sections 22974.2 and 22958 for violations of state tobacco laws, including the sale of flavored tobacco products or tobacco product flavor enhancers.

K. Infraction. The city may issue an infraction citation to any property owner, manager, agent, employee or operator, pursuant to the provisions set forth in Chapter 1.08, Citations for Code Violations, including, but not limited to, the imposition of any and all criminal penalties set forth therein if there is any violation of this chapter committed, caused or maintained by any of the above parties. Unless otherwise provided herein, any person convicted of an infraction shall, for each separate violation of this chapter be subject to:

(1) a fine in an amount not to exceed one hundred dollars (\$100) for a first conviction of an offense;

(2) a fine in an amount not to exceed two hundred dollars (\$200) for a second conviction of the same offense within a twelve-month period of the date of the first offense; and

(3) a fine in an amount not to exceed five hundred dollars (\$500) for the third conviction of the same offense within a twelve-month period of the date of the first offense.

#### **§ 8.34.110 Enforcement.**

The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

A. Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall constitute a violation.

B. In addition to the administrative enforcement procedures provided by Section 8.34.090 of this chapter, violations of this chapter may, in the discretion of the

prosecutor, be prosecuted as infractions or as otherwise provided by state law, including California Health and Safety Code Section 104559.5 and Business and Professions Code Sections 22974.2 and 22958.

C. Violations of this chapter are declared to be public nuisances, subject to all applicable civil, administrative, and criminal remedies and penalties according to the provisions and procedures contained in this Municipal Code and state law, including, but not limited to, an action for abatement or injunctive relief.

D. Violations of this chapter are hereby declared to be unfair business practices and are presumed to at least nominally damage each and every resident of the community in which the business operates.

E. 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 the city attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings and suits for injunctive relief.

F. Any person acting for the interests of itself, its members or the general public may bring an action for injunctive relief to prevent future such violations or to recover such actual damages as he or she may prove.

G. The department shall coordinate with the California Department of Public Health, the California Department of Tax and Fee Administration, and other state or local enforcing agencies to report suspected violations of state tobacco laws, including the sale of flavored tobacco products or tobacco product flavor enhancers, and to facilitate the seizure of illegal products as authorized by California Business and Professions Code Section 22974.2.