

1 **Attachment A**

2 Chapter 8.34 TOBACCO RETAILER LICENSE

3 **§ 8.34.010 Definitions.**

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

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

14 “City” means the City of Palm Desert.

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

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

20 “Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket,  
21 image, or other issue, whether in paper, digital, or other form, used for commercial  
22 purposes to obtain an article, product, service, or accommodation without charge or at a  
23 discounted price.

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

25 “Electronic smoking device” means any device that may be used to deliver any  
26 aerosolized or vaporized substance to the person inhaling from the device, including,  
27 but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic  
28 smoking device includes any component, part, or accessory of the device, and also  
29 includes any substance that may be aerosolized or vaporized by such device, whether  
30 or not the substance contains nicotine, and whether natural or synthetic. Electronic  
31 smoking device does not include any product that has been approved by the United  
32 States Food and Drug Administration for sale as a tobacco cessation product or for  
33 other therapeutic purposes where such product is marketed and sold solely for such an  
34 approved purpose.

35 “Flavored tobacco product” means any tobacco product that contains a  
36 constituent that imparts a characterizing flavor, as defined in California Health and  
37 Safety Code Section 104559.5(a)(1), or any tobacco product, other than looseleaf

1 tobacco, a premium cigar, or a shisha tobacco product, that is not listed on the  
2 Unflavored Tobacco List established by the California Attorney General pursuant to  
3 California Health and Safety Code Section 104559.1.

4 “Full retail price” means the price listed for a tobacco product on its packaging or  
5 on any related shelving, advertising, or display where the tobacco product is sold or  
6 offered for sale, plus all applicable taxes and fees if such taxes and fees are not  
7 included in the listed price.

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

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

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

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

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

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

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

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

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

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

4 “Pharmacy” means any retail establishment in which the profession of pharmacy  
5 is practiced by a pharmacist licensed by the State of California in accordance with the  
6 Business and Professions Code and where prescription pharmaceuticals are offered for  
7 sale, regardless of whether the retail establishment sells other retail goods in addition to  
8 prescription pharmaceuticals.

9 “Proprietor” means a person with an ownership or managerial interest in a  
10 business. An ownership interest shall be deemed to exist when a person has a ten  
11 percent or greater interest in the stock, assets, or income of a business other than the  
12 sole interest of security for debt. A managerial interest shall be deemed to exist when a  
13 person can or does have, or can or does share, ultimate control over the day-to-day  
14 operations of a business.

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

18 “Self-service display” means the open display or storage of tobacco products in a  
19 manner that is physically accessible to the general public without the assistance of the  
20 retailer or employee of the retailer and a direct face-to-face transfer between the  
21 purchaser and the retailer or employee of the retailer. A vending machine is a form of  
22 self-service display.

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

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

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

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

1 “Tobacco paraphernalia” means cigarette papers or wrappers, pipes, holders of  
2 smoking materials of all types, cigarette rolling machines, and any other item designed  
3 for the smoking or ingestion of or marketed for the consumption, use, or preparation of  
4 tobacco products, as defined in California Health and Safety Code Section  
5 104559.5(a)(17)(A)(iii).

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

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

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

#### 24 **§ 8.34.020 Requirements.**

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

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

38 C. Nothing in this chapter shall be construed to grant any person obtaining  
39 and maintaining a tobacco retailer’s license any status or right other than the right to act  
40 as a tobacco retailer at the location in the city identified on the face of the permit. For

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

9 D. It is unlawful for any person to sell, offer for sale, or possess with the  
10 intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor  
11 enhancer, except as permitted under California Health and Safety Code Section  
12 104559.5(c), (d), and (e) for flavored shisha tobacco products, premium cigars sold in  
13 cigar lounges, and looseleaf tobacco. There shall be a rebuttable presumption that a  
14 tobacco product is a flavored tobacco product if a manufacturer or any of the  
15 manufacturer's agents or employees, in the course of their agency or employment, has  
16 made a statement or claim directed to consumers or to the public that the tobacco  
17 product has or produces a characterizing flavor, including, but not limited to, text, color,  
18 and/or images on the product's labeling or packaging that are used to explicitly or  
19 implicitly communicate that the tobacco product has a characterizing flavor.

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

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

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

36 H. Nothing in this chapter shall be construed to penalize the purchase, use,  
37 or possession of a tobacco product by any person not engaged in tobacco retailing.

38 I. No tobacco retailer shall do any of the following: (1) Honor or redeem, or  
39 offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product  
40 for less than full retail price; (2) Sell any tobacco product to a consumer through a  
41 multiple package discount or otherwise provide any such product to a consumer for less

1 than the full retail price in consideration for the purchase of any tobacco product or any  
2 other item; or (3) Provide any free or discounted item to a consumer in consideration for  
3 the purchase of any tobacco product.

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

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

12 L. No tobacco retailer or other person shall sell or offer for sale any tobacco  
13 product to any consumer unless the tobacco product: (1) is sold in the original  
14 manufacturer's packaging intended for sale to consumers; (2) conforms to all applicable  
15 federal labeling requirements; and (3) conforms to all applicable child-resistant  
16 packaging requirements.

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

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

24 O. No tobacco retailer or other person shall sell or offer to sell a tobacco  
25 product to another person without first verifying by means of government-issued  
26 photographic identification that the recipient is at least 21 years of age.

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

29 Q. Kratom Regulations

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

1           5. There shall be a rebuttable presumption that a product is a synthetic  
2           kratom product if a manufacturer or any of the manufacturer's agents or  
3           employees, in the course of their agency or employment, has made a  
4           statement or claim directed to consumers or to the public that the product  
5           has or produces effects similar to a synthetic kratom product, including,  
6           but not limited to, text, color, and/or images on the product's labeling or  
7           packaging that are used to explicitly or implicitly communicate that the  
8           product is a synthetic kratom product.

9           R. It is unlawful for any person to sell, offer for sale, or distribute any kratom product  
10           to a person under twenty-one (21) years of age.

11           S. No person or tobacco retailer shall sell or offer for sale any natural kratom leaf  
12           product unless it is: (1) is sold in the original manufacturer's packaging intended  
13           for sale to consumers; (2) conforms to all applicable federal labeling  
14           requirements; and (3) conforms to all applicable child-resistant packaging  
15           requirements.

16           T. Natural kratom leaf product retailing by means of a self-service display is  
17           prohibited. All sales of natural kratom leaf products shall be conducted in person,  
18           over the counter.

19           U. Retailers selling natural kratom leaf products shall post conspicuously, at each  
20           point of purchase a notice stating that selling kratom products to anyone under  
21           21 years of age is illegal and subject to penalties. The form and content of such  
22           notice shall be subject to the approval of the department.

23           V. No retailer or other person shall sell or offer to sell a natural kratom leaf product  
24           to another person without first verifying by means of government-issued  
25           photographic identification that the recipient is at least twenty-one (21) years of  
26           age.

27  
28           **§ 8.34.030    Application procedure.**

29           Application for a tobacco retailer's license shall be submitted in the name of each  
30           proprietor proposing to conduct retail tobacco sales and shall be signed by each  
31           proprietor or an authorized agent thereof. It is the responsibility of each proprietor to be  
32           informed of the laws affecting the issuance of a tobacco retailer's license, including, but  
33           not limited to, California Health and Safety Code Section 104559.5 prohibiting the sale  
34           of flavored tobacco products and tobacco product flavor enhancers and the kratom  
35           regulations under this chapter. A license that is issued in error or on the basis of false or  
36           misleading information supplied by a proprietor may be revoked pursuant to Section  
37           8.34.090 of this chapter. No license holder may rely on the issuance of a license as a  
38           determination by the City that the license holder has complied with all laws applicable to  
39           tobacco retailing. All applications shall be submitted on a form supplied by the  
40           department and shall contain the following information:

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

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

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

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

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

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

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

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

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

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

30 **§ 8.34.040 Issuance of license.**

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

34 A. The application is incomplete or inaccurate; or

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

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

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

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

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

14 **§ 8.34.050 Display of license.**

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

17 **§ 8.34.060 Fees for license.**

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

25 **§ 8.34.070 Licenses nontransferable.**

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

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

6 **§ 8.34.080 License violation.**

7 A. Violation of Tobacco and Kratom-Related Laws. It is a violation of this  
8 chapter for a person, licensee, or his or her agent or employee to violate any local,  
9 state, or federal tobacco-related law, including, but not limited to, the prohibition on the  
10 sale, offer for sale, or possession with intent to sell flavored tobacco products or  
11 tobacco product flavor enhancers under California Health and Safety Code Section  
12 104559.5 or the kratom regulations in this chapter

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

25 **§ 8.34.090 Suspension, expiration, or revocation of license.**

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

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

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

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

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

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

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

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

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

21 **§ 8.34.100 Administrative fine.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30  
31 **§ 8.34.110 Enforcement.**

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

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

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

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

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

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

11 E. In addition to other remedies provided by this chapter or by other law, any  
12 violation of this chapter may be remedied by a civil action brought by the city attorney,  
13 including, for example, administrative or judicial nuisance abatement proceedings, civil  
14 or criminal code enforcement proceedings and suits for injunctive relief.

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

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