

## Title 5. Business Licenses and Regulations

### Chapter 5.67. TOBACCO RETAILER REGISTRATION

#### § 5.67.010. Title.

This chapter shall be known as the "tobacco retailer registration ordinance" of the city of Stanton. (Ord. 1095 § 4, 2019)

#### § 5.67.020. Definitions.

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

"Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.

"Characterizing flavor" 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 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. 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, as described in the first sentence of this definition, that constitutes characterizing flavor.

"Department" means the public safety services department, and any other agency or person tasked by the city manager with administration and enforcement of this chapter.

"Director" and "public safety director" mean the public safety director of the city and any other person tasked by the city manager with enforcement of this chapter.

"Electronic cigarette paraphernalia" means cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, electronic cigarette batteries, electronic cigarette chargers, and any other item designed for the preparation, storing, charging, or use of electronic cigarettes.

"Electronic smoking device" means an electronic and/or battery-operated device that can be used to deliver an inhaled dose of nicotine, or any other substance, including any component, part, or accessory of such a device, whether or not sold separately. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

"Flavored tobacco product" means any tobacco product that imparts a characterizing flavor. There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has: (i) made a public statement or claim that the tobacco product imparts a characterizing flavor; (ii) used text and/or images on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor; or (iii) taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.

"Pharmacy" has the same meaning as **Business and Professions Code** Section 4037 and is 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** Section 4036, and is 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 10% or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or shares ultimate control over the day-to-day operations of a business.

"School" means any public, private, or charter school providing instruction in pre-school, transitional kindergarten, kindergarten, or grades 1 through 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

"Self-service display" means the open display or storage of tobacco products or tobacco paraphernalia 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 person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

"Smoking" means the release of gases, particles, or vapors into the air as the result of combustion electrical ignition, or vaporization and/or inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product, including, but not limited to, tobacco and marijuana, intended for human inhalation.

"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, preparation, storing, or consumption of tobacco products.

"Tobacco product" means any product or substance containing, made of, or derived from tobacco or nicotine that is intended for human consumption whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco; but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. "Tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately.

"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, as displayed for sale or exchange, in the retail establishment. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia actually sold or exchanged.  
(Ord. 1095 § 4, 2019; Ord. 1153, 11/26/2024)

## § 5.67.030. Requirements and prohibitions.

- A. Tobacco Retailer Registration Required. It is unlawful for any person to act as a tobacco retailer in the city without first obtaining and maintaining a valid tobacco retailer's registration pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer's registration is a public nuisance as a matter of law. All permitting requirements and any other regulatory provisions of this chapter relating to tobacco retailing shall apply the same to the retailing of electronic cigarettes and electronic cigarette paraphernalia.
- 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 registration issued, it shall be a violation of this chapter for a registered tobacco retailer, or any of the registered tobacco retailer's agents or employees, to violate any local, state, or federal law applicable to tobacco products, tobacco paraphernalia, electronic smoking devices, electronic cigarette paraphernalia or tobacco retailing.
- C. Display of Registration. Each tobacco retailer registration shall be prominently displayed in a publicly visible location at the registered location.
- D. Positive Identification Required. No person engaged in tobacco retailing shall sell or transfer a tobacco product, tobacco paraphernalia, electronic smoking device, or electronic cigarette paraphernalia to another person who appears to be under the age of twenty-seven years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco product, tobacco paraphernalia, electronic smoking device, or electronic cigarette paraphernalia.
- E. Minimum Age for Persons Selling Tobacco. No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in tobacco retailing.
- F. Self-Service Displays Prohibited. Tobacco retailing by means of a self-service display is prohibited.
- G. False and Misleading Advertising Prohibited. A tobacco retailer or proprietor without a valid tobacco retailer registration, including, for example, a person whose registration has been revoked:
  - 1. Shall keep all tobacco products, tobacco paraphernalia, electronic smoking devices, and electronic cigarette paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a registration under Section **5.67.130**; and
  - 2. Shall not display any advertisement relating to tobacco products, tobacco paraphernalia, electronic smoking devices, or electronic cigarette paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.
- H. Flavored Tobacco Products. Flavored Tobacco Products Prohibited. No tobacco retailer, nor any of the retailer's agents or employees, shall sell or offer for sale, or possess with intent to sell or offer for sale, any flavored tobacco product.
- I. Minimum Pack Size for Cigars. Notwithstanding any other provision of this section, it shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:
  - a. Any single cigar, whether or not packaged for individual sale;
  - b. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer; or
  - c. Any package of cigars containing fewer than five cigars.
- J. No tobacco retailer shall sell any tobacco product to any consumer unless such product: (1) is sold in the original manufacturer's packaging intended for sale to consumers; and (2) conforms to all applicable federal labeling requirements.

- K. Signage. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a registration issued, it shall be a violation of this chapter for a registered tobacco retailer, or any of the registered tobacco retailer's agents or employees, to cover more than fifteen percent of the area of each window and clear door of the location with signs of any sort, excluding signage mandated by local, state, or federal law. For the purposes of this subsection, the area covered shall be computed to include: (1) all clear areas within signs; and (2) signs that are not attached to windows or clear doors but are visible from exterior public rights of way in the same manner as if they were attached to windows or clear doors. All signs shall be placed and maintained to ensure law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from exterior public rights of way or from the entrance. However, this subsection shall not apply to premises where there are no windows, or where the design or location of windows or landscaping precludes a view of the interior of the premises from exterior public rights of way or from the entrance.
- L. Requirements Are Conditions of Registration. The operating requirements of this section shall be deemed conditions of any tobacco retailer registration issued pursuant to the provisions of this chapter. Sufficient evidence of failure to comply with any such requirement may be grounds for suspension, revocation, and/or the imposition of administrative fines in accordance with Section **5.67.120** of this chapter. The provisions of this chapter are intended to provide a minimum level of public health, safety and welfare protection at businesses engaging in tobacco retailing. Nothing in this chapter is intended nor shall prevent the city from imposing more stringent, site-specific operating requirements and conditions through other applicable permitting and approval processes, including, without limitation, environmental or land use approvals or permits. In the event of a conflict between an operating regulation set forth in this chapter and a requirement or condition contained in any other applicable permit or approval, the more stringent or restrictive requirement or condition shall apply.

(Ord. 1095 § 4, 2019)

## § 5.67.040. Limits on eligibility and location for a tobacco retailer registration.

- A. No registration may be issued under this chapter to authorize tobacco retailing at other than a fixed location. Tobacco retailing by persons on foot or from vehicles is prohibited.
- B. No registration may be issued under this chapter to authorize any portion of a building that includes a tobacco retailer within five hundred feet of a building or outdoor play area related to a school or a day care center, as defined in **Health and Safety Code** Section 1596.76, that is in existence at the time of date of the application for a tobacco retailer's registration. For purposes of this section, all distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the tobacco retailer is or will be located to the nearest building or outdoor play area related to a school or day care center.
- C. No registration may be issued under this chapter to authorize tobacco retailing at a temporary or recurring temporary event, such as farmers' markets, special events, or mobile carts.
- D. No registration may be issued under this chapter to authorize tobacco retailing at any location that violates any provision of the city zoning ordinance.
- E. Pharmacies. No license may be issued to authorize tobacco retailing in a pharmacy.

(Ord. 1095 § 4, 2019)

## § 5.67.050. Application procedure.

- A. Application for a tobacco retailer's registration shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales for each location at which retail tobacco sales are being proposed and shall be signed by each proprietor or an authorized agent thereof.

- B. It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retailer's registration. No person may rely on the issuance of a registration as a determination by the city that the proprietor has complied with all laws applicable to tobacco retailing. A registration issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor may be revoked pursuant to Section **5.67.120(D)** of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's registration any status or right to act as a tobacco retailer in contravention of any provision of law.
- C. All applications shall be submitted on a form supplied by the department and shall contain the following information:
1. The name, address, and telephone number of each applicant seeking a registration;
  2. The business name, address, and telephone number of the single, fixed location for which a registration is sought;
  3. A single name and mailing address authorized by the proprietor to receive all communications and notices (the "authorized address") required by, authorized by or convenient to the enforcement of this chapter. 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 paragraph 2 above;
  4. Proof that the location for which a tobacco retailer's registration is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization;
  5. A map showing that any portion of the building that includes the proposed tobacco retailer is located at least five hundred feet away from any building or outdoor play area related to a school or a day care center, as defined in **Health and Safety Code Section 1596.76**, that is in existence at the time of date of the application. For purposes of this section, all distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the tobacco retailer is or will be located to the nearest building or outdoor play area related to a school or day care center;
  6. Whether or not any proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years;
  7. Whether or not any proprietor has been convicted in a court of competent jurisdiction of any crime or misdemeanor or felony offense which directly relates to the operation or conduct of a tobacco retail business or substantially the same type of business in the five years immediately preceding the date of the application, and whether any proprietor has been convicted in a court of competent jurisdiction of any crime or misdemeanor or felony offense related to the unlawful sale, distribution, possession, or manufacture of a controlled substance within the past five years immediately preceding the date of the application, unless that conviction has been dismissed, withdrawn, expunged, or set aside pursuant to **Penal Code Section 1203.4, 1000 or 1385**;
  8. Whether any proprietor has had revoked any business license, permit or similar approval for a tobacco retail business or a business of the same or substantially same type within the past three years preceding the date of the application;
  9. That the proprietor has read the requirements of this chapter, and if issued a tobacco retailer's registration, will comply with all of the chapter's requirements;
  10. A signed statement that if a tobacco retailer's registration is issued to the applicant, then the applicant agrees to indemnify the city for the issuance of the registration and any acts or omissions related to the registration and business operations; and
  11. Such other information as the department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.

- D. A registered tobacco retailer shall inform the department in writing of any change in the information submitted on an application for a tobacco retailer's registration within ten business days of a change.
  - E. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California **Government Code** Section 6250 et seq.) or any other applicable law, subject to the laws' exemptions.
  - F. The city council shall establish by resolution the amount of an application fee for the tobacco retailer's registration in an amount not to exceed the city's reasonable cost of providing the services required by this chapter, in which case no application shall be accepted by the city unless accompanied by payment of such fee.
- (Ord. 1095 § 4, 2019; Ord. 1153, 11/26/2024)

## § 5.67.060. Issuance of registration.

Upon the receipt of a complete application for a tobacco retailer's registration, the department shall issue a registration unless substantial evidence demonstrates that one or more of the following bases for denial exists:

- A. The information presented in the application is inaccurate or false or a material fact has been omitted. Supplying inaccurate or false information or omitting a material fact shall be a violation of this chapter.
- B. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter, that is unlawful pursuant to this code, or that is unlawful pursuant to any other law.
- C. The location for which a tobacco retailer's registration is sought lacks a valid state tobacco retailer's license by the California Board of Equalization.
- D. Any portion of the building that includes the proposed tobacco retailer is located less than five hundred feet away from any building or outdoor play area related to a school or a day care center, as defined in **Health and Safety Code** Section 1596.76, that is in existence at the time of date of the application.
- E. Any proprietor has been convicted in a court of competent jurisdiction of any crime or misdemeanor or felony offense which directly relates to the operation or conduct of a tobacco retail business or substantially the same type of business in the five years immediately preceding the date of the application, or any proprietor has been convicted in a court of competent jurisdiction of any crime or misdemeanor or felony offense related to the unlawful sale, distribution, possession, or manufacture of a controlled substance within the past five years immediately preceding the date of the application, unless that conviction has been dismissed, withdrawn, expunged, or set aside pursuant to **Penal Code** Section 1203.4, 1000 or 1385.
- F. Any proprietor has had revoked any business license, permit or similar approval for a tobacco retail business or a business of the same or substantially same type within the past three years preceding the date of the application.

(Ord. 1095 § 4, 2019)

## § 5.67.070. Registration renewal and expiration.

- A. **Renewal of Registration.** A tobacco retailer's registration is invalid if its term has expired. The term of a tobacco retailer registration is one year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's registration no later than thirty days prior to expiration of the term.
- B. Registration renewal applications shall contain all the information required for new applications, and shall be subject to the same approvals required for new applications.

- C. Notwithstanding an approval for a tobacco retailer registration the director may add, delete or modify registration conditions if it is determined to be necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety or welfare.

(Ord. 1095 § 4, 2019)

## § 5.67.080. Appeals for denial or non-renewal of tobacco retailer registration.

- A. A proprietor may appeal the denial of a tobacco retailer registration or renewal thereof to a hearing officer by filing with the city clerk a notice of appeal within fifteen days from the date the notice of denial was issued. The appeal shall set forth the reasons why the notice of denial should be overturned and shall also be filed with any applicable appeal fee, as adopted via council resolution. Upon receiving the appeal request, a hearing officer shall be selected using the criteria in Chapter **1.12**. The hearing officer shall set a time and place for hearing the appeal and notify each proprietor and the city. At the de novo appeal hearing, the city and each proprietor or agent thereof may each provide testimony and evidence relating to why the appeal should be affirmed or denied. Within seven days of the conclusion of the hearing or any continued hearing, the hearing officer shall render a decision affirming or denying the business license denial, based on whether substantial evidence demonstrates that the grounds set forth in Section **5.67.060** have been met. The proprietor or representative thereof, shall be given written notice of the hearing officer's decision by registered mail, and the notice shall state with specificity the reasons for the hearing officer's decision.

- B. The action of the hearing officer shall be final and appealable to the Superior Court of the state of California pursuant to Code of Civil Procedure Section 1094.5.

(Ord. 1095 § 4, 2019)

## § 5.67.090. Registrations nontransferable.

- A. A tobacco retailer's registration may not be transferred from one person to another or from one location to another. A new tobacco retailer's registration is required to accomplish either change.
- B. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and registration ineligibility periods shall continue to apply to a location unless:
1. The location has been fully transferred to a new proprietor or fully transferred to entirely new proprietors; and
  2. The new proprietor(s) provide the city with clear and convincing evidence that the new proprietor(s) have acquired or is acquiring the location in an arm's length transaction.

(Ord. 1095 § 4, 2019)

## § 5.67.100. Registration conveys a limited, conditional privilege.

Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's registration 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 registration. 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, but not limited to, any provision of this code, and any condition or limitation on smoking in an enclosed place of employment pursuant to California **Labor Code** Section 6404.5 (e.g., obtaining a tobacco retailer registration does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California **Labor Code** Section 6404.5).

(Ord. 1095 § 4, 2019)

## § 5.67.110. Compliance monitoring.

- A. Compliance with this chapter shall be monitored by the department. In addition, any peace officer may enforce the penal provisions of this chapter. The city may designate any number of additional persons to monitor compliance with this chapter.
- B. Compliance checks shall be conducted at a minimum of two times within every calendar year so as to allow the department to determine, at a minimum, if a tobacco retailer is complying with laws regulating youth access to tobacco, gambling, and cannabis sales or transactions. When the department deems appropriate, the compliance checks shall determine compliance with other laws applicable to tobacco retailing.
- C. The city shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:
  - 1. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the city;
  - 2. The youth decoy is acting as an agent of a person designated by the city to monitor compliance with this chapter; or
  - 3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the city or the California Department of Health Services.
- D. During business hours, the department or other person designated to enforce the provisions of this chapter shall have the right to enter any place of business for which a registration is required by this chapter for the purpose of making reasonable inspections to observe and enforce compliance with the provisions of this chapter and any other applicable regulations, laws, and statutes. Inspections may be conducted at any portion of the business premises, including, without limitation, back rooms, storage areas, drawers, cabinets, and storage containers. Failure to grant full and unobstructed access to any portion of the business shall constitute a violation of this chapter subject to the penalties and other remedies set forth in Sections **5.67.120** and **5.67.140**.

(Ord. 1095 § 4, 2019; Ord. 1153, 11/26/2024)

## § 5.67.120. Revocation of registration.

- A. **Revocation or Suspension of Registration for Violation.** In addition to any other penalty authorized by law, a tobacco retailer's registration shall be revoked or, where circumstances warrant, suspended if any court of competent jurisdiction determines, or the department finds based on a preponderance of the evidence, after the registered tobacco retailer is afforded notice and an opportunity to be heard, that the registered tobacco retailer, or any of the registered tobacco retailer's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to, a violation of any law designated in Section **5.67.030**.
- B. **Administrative Penalties.** The remedies provided by these provisions are cumulative and in addition to any other remedies available at law or in equity. Upon a determination by the department that a tobacco retailer has engaged in any conduct that violates the provisions of this chapter, the department may impose the following administrative penalties:
  - 1. Upon a finding by the department of a first registration violation within any thirty-six-month period, the department shall impose a fine of five hundred dollars.
  - 2. Upon a finding by the department of a second violation of this chapter at a location within any sixty-month period, the tobacco retailer registration shall be revoked or suspended up to thirty days.

3. Upon a finding by the department of a third violation of this chapter at a location within any sixty-month period, the tobacco retailer registration shall be revoked or suspended for up to sixty days.
  4. Upon a finding by the department of four or more violations of this chapter at a location within any sixty-month period, the tobacco retailer registration shall be revoked or suspended for up to one hundred eighty days.
- C. Appeal of Revocation or Suspension. A decision of the department to revoke a registration is appealable pursuant to the procedures provided in Section **5.67.080**. If such an appeal is made, it shall stay enforcement of the appealed action. An appeal to the director is not available for a revocation made pursuant to subsection **D**.
- D. Revocation of Registration Wrongly Issued. A tobacco retailer's registration shall be revoked if the department finds, after the registered tobacco retailer is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a registration under Section **5.67.060** existed at the time application was made or at any time before the registration issued. The decision by the department shall be the final decision of the city not subject to administrative appeal.
- E. If a proprietor has had a tobacco retailer registration revoked, such proprietor shall be prohibited from applying for a new tobacco retailer registration within the city for two years following the revocation.

(Ord. 1095 § 4, 2019)

## § 5.67.130. Tobacco retailing without a registration.

- A. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's registration, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailing registration as follows:
1. After a first violation of this section at a location within any sixty-month period, no new registration may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction) until thirty days have passed from the date of the violation.
  2. After a second violation of this section at a location within any sixty-month period, no new registration may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction) until ninety days have passed from the date of the violation.
  3. After of a third or subsequent violation of this section at a location within any sixty-month period, no new registration may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction) until five years have passed from the date of the violation.
- B. Tobacco products, tobacco paraphernalia, electronic smoking devices, or electronic cigarette paraphernalia offered for sale or exchange in violation of this section are subject to seizure by the department or any peace officer and shall be forfeited after the tobacco retailer and any other owner of the tobacco products, tobacco paraphernalia, electronic smoking devices, or electronic cigarette paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the tobacco products, tobacco paraphernalia, electronic smoking devices, or electronic cigarette paraphernalia were not offered for sale or exchange in violation of this chapter. The decision by the department may be appealed pursuant to the procedures set forth in Section **5.67.080**. Forfeited tobacco products and tobacco paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California **Code of Civil**

**Procedure** Section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

- C. For the purposes of the civil remedies provided in this chapter:
1. Each day on which a tobacco product, tobacco paraphernalia, electronic smoking device, or electronic cigarette paraphernalia is offered for sale in violation of this chapter; or
  2. Each individual retail tobacco product, tobacco paraphernalia, electronic smoking device, or electronic cigarette paraphernalia that is distributed, sold, or offered for sale in violation of this chapter; shall constitute a separate violation of this chapter.

(Ord. 1095 § 4, 2019)

## § 5.67.140. Enforcement.

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available by this code or otherwise at law or in equity.
- B. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- C. Violations of this chapter are subject to a civil action brought by the district attorney or the city attorney, punishable by a civil fine of one thousand dollars per violation.
- D. Violations of this chapter may, in the discretion of the city attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require.
- E. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- F. Violations of this chapter are hereby declared to be public nuisances.
- G. Violations of this chapter shall be grounds for denial for renewal of registration as set forth in Section **5.67.070**.
- H. In addition to other remedies provided by this chapter, by another provision of this code, 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.

(Ord. 1095 § 4, 2019)

## § 5.67.150. Implementing rules and regulations.

The city manager is hereby authorized to make and promulgate any rules and regulations necessary to implement the requirements of this chapter. The rules and regulations shall be in addition to the requirements set forth in this chapter.

(Ord. 1095 § 4, 2019)