

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF HERMOSA BEACH ADDING CHAPTER 5.76 TO THE HERMOSA BEACH MUNICIPAL CODE (TOBACCO RETAILERS) REQUIRING LICENSURE OF TOBACCO RETAILERS TO REDUCE THE ILLEGAL SALE OF TOBACCO TO MINORS, AMENDING SECTION 8.40.010 TO EXPAND THE DEFINITION OF SMOKING TO INCLUDE ELECTRONIC CIGARETTES, AND AMENDING SECTION 1.10.040 TO MAKE VIOLATIONS OF CHAPTER 5.76 SUBJECT TO ADMINISTRATIVE PENALTY PROCEDURES

The City Council of the City of Hermosa Beach does hereby ordain as follows:

Section 1. A new Chapter 5.76, entitled “Tobacco Retailers” and containing Sections 5.76.010 through 5.76.170, is added to Title 5 of the Hermosa Beach Municipal Code (the “Code”) to read as follows:

Chapter 5.76

TOBACCO RETAILERS

Sections:

- 5.76.010 Title**
- 5.76.020 Purpose**
- 5.76.030 Definitions**
- 5.76.040 Tobacco retailer license required**
- 5.76.050 Limits on eligibility and location**
- 5.76.060 License application procedure**
- 5.76.070 Issuance of tobacco retailer license**
- 5.76.080 Term and renewal**
- 5.76.090 License nontransferable**
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- 5.76.160 New license after revocation**
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5.76.010 Title.

This Chapter shall be known as the “Tobacco Retailer Ordinance” of the City of Hermosa Beach.

5.76.020 Purpose.

In enacting this Chapter, it is the intent of the City Council to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those involving the sale or distribution of tobacco and nicotine products to minors. There is no intent, however, to expand or reduce the degree to which the acts regulated by Federal or State law are criminally proscribed or to alter the penalties provided therein.

5.76.030 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 a Distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted by a Tobacco Product or any byproduct produced by the Tobacco Product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.

“Cigar” means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

“Consumer” means a person who purchases a Tobacco Product for consumption and not for Sale to another.

“Electronic Smoking Device” means an electronic device, which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic Smoking Device” includes any such electronic smoking device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

“Flavored Tobacco Product” means any Tobacco Product, other than cigarettes as defined by federal law, that contains a Constituent that imparts a Characterizing Flavor.

“Little Cigar” means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three

pounds per thousand. “Little Cigar” includes, but is not limited to, any tobacco product known or labeled as “small cigar” or “little cigar.”

“Package” or “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 individual, partnership, co-partnership, firm, association, joint stock company, corporation, or combination of the above in whatever form or character.

“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 (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 share ultimate control over the day-to-day operations of a business.

“Sale” or “Sell” means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

“Self-service display” means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or retailer’s agent or employee. A vending machine is a form of self-service display.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.

“Tobacco Paraphernalia” means any item designed for the consumption, use, or preparation of Tobacco Products.

“Tobacco Product” means:

(1) Any product containing, made, 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, little cigars, chewing tobacco, pipe tobacco, snuff, snus; and

(2) Any Electronic Smoking Device, with or without nicotine.

(3) Any Flavored Tobacco Product, with or without nicotine

(4) Notwithstanding any provision of subsections (1), (2) and (3) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “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 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 Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

5.76.040 Tobacco retailer license required.

It shall be unlawful and a misdemeanor for any person to engage in tobacco retailing in the City without first obtaining and maintaining a valid tobacco retailer license pursuant to the provisions of this Chapter for each location at which that activity is to occur.

5.76.050 Limits on eligibility and location.

A. No license may be issued under this Chapter to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles is prohibited.

B. No license may be issued under this Chapter to authorize tobacco retailing at a temporary or recurring temporary event. For example, tobacco retailing at farmers’ markets or special events or from mobile carts is prohibited.

C. No license may be issued under this Chapter to authorize tobacco retailing at any location that violates any provision of the Hermosa Beach zoning ordinance.

D. Pharmacies. No license may be issued to authorize Tobacco Retailing in a Pharmacy. For the purposes of this subsection, “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.

E. Schools and Youth-Populated Areas. Tobacco Retailing is prohibited near schools and areas with youth populations as follows:

- (1) Except as provided in subsection (2), no new license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within 500 feet of a Youth-Populated Area as measured by a straight line from the nearest point of the property line of the parcel on which the Youth-Populated Area is located to the nearest point of the property line of the parcel on which the applicant’s business is located. For the purposes of this subsection, a “Youth-Populated Area” means a parcel in the City that is occupied by:

- (i) a private or public kindergarten, elementary, middle, junior high, or high school;
 - (ii) a library open to the public;
 - (iii) a playground open to the public;
 - (iv) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
 - (v) a licensed child-care facility or preschool as defined in California Health & Safety Code § 1596.78;
- (2) A Tobacco Retailer operating lawfully on the effective date of this ordinance that is ineligible to receive or renew a Tobacco Retailer's license for a location pursuant to subsection (1), and any Tobacco Retailer operating lawfully that becomes ineligible to receive or renew a Tobacco Retailer's license due to the creation of a new Youth-Populated Area, may apply for and receive a one-time, non-renewable license for the location pursuant to the standard licensing application procedure.

F. Proximity to Other Tobacco Retailers. No license may issue to authorize Tobacco Retailing within 500 feet of a Tobacco Retailer location already licensed pursuant to this Chapter as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing licensee's business is located.

G. Bars and Restaurants. No license may issue to authorize Tobacco Retailing at any location that is (i) licensed under state law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" license issued by the California Department of Alcoholic Beverage Control); or (ii) offering food for sale for consumption on the premises. For example, and without limitation, Tobacco Retailing is prohibited in bars and restaurants.

H. Smoking on Premises. No license may issue to authorize Tobacco Retailing at any location where Smoking is permitted inside the premises or in any adjacent outdoor area owned, leased, or operated by the Person to be licensed. In addition, no license may issue to authorize Tobacco Retailing at any location where Smoking is permitted within twenty-five (25) feet of any doorway, window, opening, or other vent into the licensed premises.

I. Notwithstanding the forgoing, a Tobacco Retailer operating lawfully on the effective date of this ordinance that otherwise would be eligible for a Tobacco Retailer license for the location for which a license is sought may receive or renew a license for that location so long as: (i) the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension); (ii) the Tobacco Retailer is not closed for business or otherwise suspends Tobacco Retailing for more than sixty (60) consecutive days; (iii) the Tobacco Retailer does not substantially change the business premises or business operation; and (iv) the Tobacco Retailer

retains the right to operate under other applicable laws, including without limitation the zoning ordinance, building codes and business license tax ordinance.

5.76.060 License application procedure.

A. Any person seeking a license pursuant to this Chapter shall submit a completed application, on a City-approved form, to the Finance Department.

B. The application for a license under this Chapter 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.

C. Said application shall contain the following information:

1. The name, address, and telephone number of each proprietor of the business seeking a license.
2. The business name, address, and telephone number of the single, fixed location for which a license is sought.
3. A single name and mailing address of an agent authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this Chapter. If an authorized agent is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph 2 above.
4. Proof that the location for which a tobacco retailer license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization, if required for the business.
5. Whether any proprietor or any agent of the proprietor was previously issued a license pursuant to this Chapter which was at any time suspended or revoked, and, if so, the dates of the suspension period or the date of the revocation.
6. Whether any proprietor or any agent of the proprietor has admitted violating or has been determined to have violated any provision of this Chapter or any State or Federal tobacco-related law, and, if so, the dates of all such violations within the preceding five (5) years.
7. Such other information as the Finance Department deems necessary for the administration or enforcement of this Chapter as specified on the application form required by this Chapter.

D. The City Council may establish by resolution the amount of an application fee for the tobacco retailer license in an amount not to exceed the City's reasonable cost of providing the services required by this Chapter, in which case the City shall accept no application unless accompanied by payment of such fee.

E. An applicant or agent thereof shall inform the Finance Department in writing of any change in the information submitted on an application for a tobacco retailer registration within ten (10) business days of a change.

F. All information specified in an application pursuant to this section that is subject to disclosure under the California Public Records Act (California Government Code section 6250, et seq.) or any other applicable law will be disclosed, except where exempt under the applicable law.

5.76.070 Issuance of tobacco retailer license.

A. Upon the receipt of a completed application for a tobacco retailer license and the corresponding application fee, if any, the Finance Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this Chapter.
2. The application seeks authorization for tobacco retailing at a location prohibited by Section 5.76.050 of this Chapter.
3. The applicant has had a license issued pursuant to this Chapter revoked within the preceding twelve (12) months.
4. The application seeks authorization for tobacco retailing that is otherwise prohibited pursuant to this Chapter, that is unlawful pursuant to this Code (including without limitation the Hermosa Beach zoning ordinance and business license regulations), or that is unlawful pursuant to any other law.
5. The applicant has violated any provision of this Chapter or any state law related to the sale of tobacco.
6. The applicant is indebted to the City for any unpaid fee or fine.

B. Any applicant aggrieved by a decision denying a license pursuant to this Chapter may contest the decision in the same manner as the challenge of an administrative citation pursuant to the provisions of Section 1.10.090 of this Code.

5.76.080 Term and renewal.

A. A tobacco retailer license issued pursuant to this Chapter shall be valid for one (1) year after the date of issuance, unless it is revoked earlier in accordance with the provisions of this Chapter. The expiration date of each tobacco retailer license shall be shown on the license itself and each tobacco retailer license shall expire at midnight on the expiration date.

B. Each tobacco retailer who seeks to renew a license issued pursuant to this Chapter shall submit a renewal application on a City-approved form and tender any applicable fees to the Finance Department no later than thirty (30) calendar days prior to the expiration of the license. Any license issued pursuant to this Chapter that is not timely renewed shall expire and become null and void at the end of its term.

C. An application to renew a license issued pursuant to this Chapter may be denied by the Finance Department upon the grounds set forth in Section 5.76.070 of this Chapter.

5.76.090 License nontransferable.

A. No person shall operate under a name, or conduct business under a designation not specified on the license.

B. A license issued pursuant to this Chapter may not be transferred from one person to another or from one location to another. A change in proprietor, business name, or location, or a change in any other information from that which is shown on the license application shall render the license null and void, and shall require a new license to be obtained in accordance with the provisions of this Chapter.

5.76.100 License conveys a limited, conditional privilege.

Nothing in this Chapter shall be construed to grant any tobacco retailer obtaining and maintaining a license under this Chapter 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 tobacco retail license. 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, or any condition or limitation on smoking in an enclosed place of employment pursuant to state law.

5.76.110 Operating requirements.

The following operating requirements shall be deemed conditions of any tobacco retailer license issued pursuant to the provisions of this Chapter, and failure to comply with any such requirement shall be grounds for suspension, revocation, and/or the imposition of administrative fines in accordance with Section 5.76.130 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.

A. Knowledge of applicable laws. It is the responsibility of each proprietor to be informed of the laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retailer license. No person may rely on the issuance of a license as a determination by the City that the proprietor has complied with all laws applicable to tobacco retailing. A license issued contrary to this Chapter, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 5.76.130 of this Chapter. Nothing in this Chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer license any status or right to act as a tobacco retailer in contravention of any provision of law.

B. Lawful business operation. In the course of tobacco retailing or in the operation of the business or maintenance of the premises for which a license is issued pursuant to this Chapter, it shall be a violation of this Chapter for any tobacco retailer to violate any Federal, State, or local law applicable to tobacco products, tobacco paraphernalia or tobacco retailing.

C. Posting of license. Each license issued pursuant to this Chapter shall be prominently displayed in a publicly visible location at the permitted location.

D. Retail sales to persons under eighteen prohibited. No person engaged in tobacco retailing shall sell or offer to sell, give or offer to give, or transfer or offer to transfer any electronic tobacco product to any person who is under the legal age under state law to purchase and possess tobacco products.

E. Positive identification required. No tobacco retailer shall sell or transfer a tobacco product to any person who appears to be under the age of thirty (30) years old without first examining the identification of that person to confirm that person is at least the minimum age under state law to purchase and possess the product. The tobacco retailer or agent thereof shall refuse the sale or transfer of any tobacco product to any person who appears to be under the age of thirty (30) years old, who fails to present valid, legal photo identification prior to the sale or transfer.

F. 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.

G. Self-service displays prohibited. Tobacco retailing by means of a self-service display is prohibited.

H. Signage.

1. In the course of Tobacco Retailing or in the operation of a business or maintenance of a location for which a license issued, it shall be a violation of this Chapter for a licensee, or any of the licensee's agents or employees, to cover more than 15 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 (i) all clear areas within signs; and (ii) 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.
2. 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.

I. Packaging and Labeling. 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.

J. Minimum Package Size for Little Cigars and Cigars. No Tobacco Retailer shall Sell to a Consumer:

1. Any Little Cigar unless it is sold in a Package of at least twenty Little Cigars.
2. Any Cigar unless it is sold in a Package of at least twenty (20) Cigars; provided, however, that this subsection shall not apply to a Cigar that has a price of at least \$15.00 per Cigar, including all applicable taxes and fees.
3. Compliance with State-mandated sign requirements. Tobacco retailers shall post and maintain all signage required by the California Labor Code, California Business & Professions Code, California Penal Code, and any other applicable Federal, State, or local law.

4. False and misleading advertising prohibited. A tobacco retailer who does not have a valid license pursuant to this Chapter or whose license has been suspended or revoked shall not display any item or advertisement relating to tobacco products that promotes the sale or distribution of such products from the premises or that could lead a reasonable consumer to believe that tobacco products can be obtained at that location. Such display or advertisement in violation of this provision shall constitute tobacco retailing without a valid license.

5.76.120 Compliance monitoring and enforcement.

A. Compliance checks shall be conducted so as to allow the Chief of Police to determine, at a minimum, if a tobacco retailer is complying with laws regulating youth access to tobacco. The Chief of Police may also conduct compliance checks to determine compliance with other laws applicable to tobacco retailing.

B. The Chief of Police shall inspect each Tobacco Retailer at least two (2) times per twelve (12) month period. Nothing in this paragraph shall create a right of action in any licensee or other Person against the City or its agents.

C. The Chief of Police shall have the right to enter, free of charge or restriction, at any time, any place of business for which a license is required by this Chapter, and to demand the exhibition of such license for the current term by any person engaged or employed in the transaction of such business.

D. The Hermosa Beach Police Department and/or the Department (or designee thereof) may promulgate and adopt policies, procedures and/or guidelines for the participation of persons under the minimum legal age for tobacco purchases in compliance checks pursuant to this Chapter (“Youth Decoys”).

E. The City shall not enforce any law establishing a minimum age for tobacco purchases or possession against a Youth Decoy if the potential violation occurs when:

1. The Youth Decoy is participating in a compliance check supervised by the Chief of Police or other enforcement agency;
2. The Youth Decoy is acting as an agent of the Chief of Police or other enforcement agency.

5.76.130 Violations.

A. Administrative fine. In addition to any other penalty authorized by law, violations of this Chapter are subject to the administrative citations and penalties provisions in Title 1, Chapter 1.10 of this Code.

B. Suspension or revocation.

1. In addition to any other penalty authorized by law, a Tobacco Retailer's license shall be suspended or revoked if any court of competent jurisdiction determines, or the City finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, if it is determined that any of the following has occurred:
 - a. The licensee or his/her agent or employee has violated any provision of this Chapter;
 - b. The licensee or his/her agent or employee has continued to operate as a tobacco retailer after a license issued pursuant to this Chapter has been suspended; or
 - c. The licensee or his/her agent or employee has failed to timely renew a license issued pursuant to this Chapter subject to the requirements of Section 5.76.080.

2. Upon a finding by the City of:
 - a. A first violation of this Chapter at a location within any sixty-month (60) period, the license shall be suspended for thirty (30) days.
 - b. A second violation of this Chapter at a location within any sixty-month (60) period, the license shall be suspended for ninety (90) days.
 - c. A third violation of this Chapter at a location within any sixty-month (60) period, the license shall be suspended for one (1) year.
 - d. Four or more violations of this Chapter at a location within any sixty-month (60) period, the license shall be revoked.

3. Notwithstanding the foregoing, a license may be revoked if it is determined that one or more grounds for denial of a license under Section 5.76.070 of this Chapter existed at the time the application was made or at any time before the license was issued. No administrative fine shall accompany a revocation of a wrongly issued license.

4. Any applicant aggrieved by a decision revoking or suspending a license pursuant to this Chapter may contest the decision in the same manner as a challenge of an administrative citation, pursuant to the provisions of Section 1.10.090 of this Code.

5.76.140 Tobacco Retailing Without a Valid License

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 license, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:

1. After a first violation of this section at a location, no new license 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 (30) days have passed from the date of the violation.
2. After a second violation of this section at a location within any sixty-month (60) period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until ninety (90) 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 (60) period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until five (5) years have passed from the date of the violation.

B. Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in violation of this section are subject to seizure by the Chief of Police and shall be forfeited after the Person and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of this Chapter. The decision by the Chief of Police may be appealed pursuant to the procedures set forth in Section **5.76.135 C**. 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. Any applicant aggrieved by a decision revoking or suspending a license pursuant to this Chapter may contest the decision in the same manner as a challenge of an administrative citation, pursuant to the provisions of Section 1.10.090 of this Code.

5.76.150 Agreed Penalty in Lieu of Hearing

A. For a first or second alleged violation of this Chapter within any sixty-month (60) period, the Chief of Police may allow a Tobacco Retailer alleged to have violated this Chapter to agree to the penalties provided in this section in lieu of the penalties that

would otherwise apply under this Chapter and to forego a hearing on the allegations. Notice of any agreement shall be provided to the Chief of Police and no hearing shall be held. Agreements shall not be confidential and shall contain the following terms as well as any other non-criminal provisions established by the City Manager in the interests of justice:

1. After a first alleged violation of this Chapter at a location:
 - (a) an agreement to stop acting as a Tobacco Retailer for one (1) day;
 - (b) an administrative penalty of one thousand (\$1,000) dollars; and
 - (c) a written admission that the violation occurred and an acknowledgment that the violation will be considered in determining the fine or penalty for any future violation.
2. After a second alleged violation of this Chapter at a location within any sixty-month (60) period:
 - (a) an agreement to stop acting as a Tobacco Retailer for ten (10) days;
 - (b) an administrative penalty of at least five thousand (\$5000) dollars; and
 - (c) a written admission that the violation occurred and an acknowledgment that the violation will be considered in determining the fine or penalty for any future violations.

5.76.160 New license after revocation.

Notwithstanding any other provision of this Chapter, no tobacco retailer's license shall be issued to a tobacco retailer (or proprietor thereof) whose license has previously been revoked pursuant to this Chapter for a period of twelve (12) months from the date of the prior revocation, unless ownership of the business at the location has been transferred in an arm's length transaction.

5.76.170 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. In the event of a conflict between a provision set forth in this Chapter and a rule or regulation promulgated by the City Manager pursuant to this section, the more stringent or restrictive requirement or condition shall apply.

Section 2. Administrative Citations and Penalties. Section 1.10.040 of Chapter 1.10 of Title 1 the HBMC is hereby amended to add subparagraph (A)(20) to read as follows:

“20. Chapter 5.76: Tobacco Retailer License”

Section 3. Application of Prohibition of Smoking in Public Places to Electronic Cigarettes. Section 8.40.010(J) of Chapter 8.40 of Title 8 of the HBMC shall be amended to read as follows:

“Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, Electronic Smoking Device, or any plant product intended for human inhalation.

Section 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Hermosa Beach hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 5. Effective Date. This ordinance shall take effect thirty days after its passage and adoption pursuant to California Government Code section 36937.

Section 6. Certification. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Hermosa Beach’s book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

PASSED, APPROVED and ADOPTED this ____ day of _____ 2015.

VOTE: AYES:
 NOES:
 ABSTAIN:
 ABSENT:

PRESIDENT of the City Council and **MAYOR** of the City of Hermosa Beach,
California

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney