

ORDINANCE NO. 19-1937

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING SECTION 3501 (TOBACCO DISTRIBUTION) OF CHAPTER 5 (BUSINESS REGULATIONS) OF ARTICLE III (PUBLIC SAFETY) AND SECTIONS 63150.5 ET SEQ. (TOBACCO AND ELECTRONIC CIGARETTE PERMIT) OF CHAPTER 3 (BUSINESS, PROFESSIONS AND TRADES) OF ARTICLE VI (TAXES AND LICENSES) OF THE CARSON MUNICIPAL CODE TO PROHIBIT THE RETAIL SALE OF TOBACCO PRODUCTS (INCLUDING ELECTRONIC CIGARETTES) AND TOBACCO PARAPHERNALIA, AND MAKING A FINDING OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health threat. According to the Centers for Disease Control and Prevention (“CDC”), 480,000 people die prematurely in the United States from smoking-related diseases every year, making tobacco use the leading cause of preventable death. According to the Surgeon General, Tobacco use can cause disease in nearly all organ systems and is responsible for 87 percent of lung cancer deaths, 79 percent of all chronic obstructive pulmonary disease deaths, and 32 percent of coronary heart disease deaths. The World Health Organization estimates that tobacco accounts for more than 8 million deaths per year.

WHEREAS, according to the CDC, cigarette smoking remains the leading cause of preventable death and disability in the United States, despite a significant decline in the number of people who smoke. Over 16 million Americans have at least one disease caused by smoking.

WHEREAS, according to the CDC, secondhand smoke causes stroke, lung cancer, and coronary heart disease in adults; in addition, it increases risks for sudden infant death syndrome, middle-ear disease, respiratory symptoms, and slows lung growth in children.

WHEREAS, the City Council recognizes that the use of tobacco products has devastating health consequences.

WHEREAS, the City Council recognizes that young people are particularly susceptible to the addictive properties of tobacco products, and are particularly likely to become lifelong users.

WHEREAS, an estimated 5.6 million youth aged 0 to 17 are projected to die prematurely from a tobacco-related illness if prevalence rates do not change.

WHEREAS, national data show that about 95 percent of adult smokers begin smoking before they turn 21. The ages of 18 to 21 are a critical period when many smokers move from experimental smoking to regular, daily use.

WHEREAS, the City Council anticipates that reducing access to tobacco products and tobacco paraphernalia in the City will lead to fewer people smoking or ingesting tobacco products in the City, thereby promoting the public health, safety and welfare, and will also increase compliance with the City’s Secondhand Smoke Control ordinance codified in Chapter 11 (commencing with Section 41100) of Article 4 of the Carson Municipal Code.

WHEREAS, the City Council recognizes that the field of drug paraphernalia is preempted by state law, and does not, by this ordinance, seek to regulate or prohibit the sale of any items or materials that constitute drug paraphernalia within the meaning of the applicable state law regulatory scheme;

WHEREAS, it is the intent of the City Council to protect the public health, safety and welfare by preventing access to tobacco products (including electronic cigarettes) and tobacco paraphernalia sold at retail in the City, and thereby protecting youth and others from commencing the inherently dangerous activity of smoking, while balancing the interests of existing City businesses.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein.

SECTION 2. This Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) because: (1) it does not constitute a “project” under CEQA Guidelines Section 15378(b)(2) in that it constitutes general policy and procedure making; (2) it does not constitute a “project” under CEQA Guidelines Section 15378(b)(5) in that it has no potential for resulting in physical change to the environment, either directly or indirectly, and (3) in the alternative, it is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment, because the Ordinance merely prohibits the sale of tobacco products and tobacco paraphernalia.

SECTION 3. Section 3501 (Tobacco Distribution) of Chapter 5 (Business Regulations) of Article III (Public Safety) of the Carson Municipal Code is hereby amended to read in its entirety as follows (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~):

“3501 Tobacco Distribution.

~~(a) Except as provided in Section 63150.5, no~~ ***Except as provided in Section 63150.5, no*** person shall sell, permit to be sold or offer for sale any tobacco product, ***as that term is defined in Section 63150.5.1.*** ~~by means other than vendor-assisted sales. This prohibition shall preclude the selling and offering for sale of tobacco products by vending machines and self service displays; provided, however, that this prohibition shall not apply to tobacco shops, cigar lounges and similar establishments. For~~

~~purposes of this Section, the term “self-service display” shall mean the display of tobacco products in such a manner that the products are accessible by the public without the intervention of the vendor.~~

~~(b) No person shall sell, permit to be sold, or offer for sale any tobacco product to a buyer who reasonably appears to be less than twenty-seven (27) years of age unless such buyer has first presented photographic identification establishing that the buyer is not less than eighteen (18) years of age.”~~

SECTION 4. Section 63150.5 *et seq.* (Tobacco and Electronic Cigarette Permit) of Chapter 3 (Businesses, Professions and Trades) of Article VI (Taxes and Licenses) of the Carson Municipal Code is hereby amended to read in its entirety as follows (additions shown in ***bold italics***, deletions shown in ~~strikethrough~~):

“63150.5 Tobacco and Electronic Cigarette Permit – Purpose.

The City Council recognizes the inherent danger of tobacco products and that the use of tobacco products has devastating health consequences. The City Council further recognizes that tobacco use is the leading cause of preventable illness and death in the United States, and that tobacco product use is started and established primarily during adolescence. Allowing tobacco products to be sold in the City increases access to these harmful and dangerous products. To that end, no tobacco products shall be sold in the City except as specifically enumerated in CMC 63150.5 et seq.

To the limited extent that CMC 63150.5 et seq. provides for tobacco and electronic cigarette retailers to be permitted or to continue to operate under an existing permit in the City, ~~the purpose of this Section~~ CMC 63150.5 et seq. is to encourage responsible tobacco and electronic cigarette retailing and to discourage violations of tobacco-related laws that (1) prohibit the sale or distribution of tobacco and electronic cigarette products to minors and (2) prohibit the display of tobacco and electronic cigarette products from being within reach of the public. This permit process is not intended to expand or reduce the degree to which tobacco-related activities are regulated by Federal or State law, including criminal prosecution for violations of such laws, or to alter the penalty provided therefor.

63150.5.1 Definitions.

“City” means the City of Carson, California.

“Code Enforcement Officer” means any employee or agent of the City who is designated to enforce any provision of this Code.

“Director” means the City’s Finance Officer or his or her designee.

“Drug paraphernalia” has the meaning set forth in Health and Safety Code Section 11014.5, as may be amended from time to time.

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“Electronic cigarette” means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. The term includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. The term does not include any inhaler prescribed by a licensed doctor.

~~“Newly established business” means a business which was not engaged in tobacco and electronic cigarette retailing within the City during the immediately preceding permit renewal period.~~

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

“Tobacco and electronic cigarette paraphernalia” means cigarette papers or wrappers, pipe holders, smoking materials of all types, cigarette rolling machines, and any other item designed to facilitate smoking or the ingestion of tobacco products.

“Tobacco and electronic cigarette retailer” means any person who sells, offers for sale, or offers to exchange, for any form of consideration, tobacco, tobacco products or tobacco paraphernalia; “tobacco and electronic cigarette retailing” shall mean engaging in any of these things.

“Tobacco product” means *any of the following*: ~~substance containing tobacco leaf, including but not limited to any tobacco cigarette, cigar, pipe tobacco, snuff, smokeless tobacco or any other form of tobacco which may be utilized for smoking, chewing, inhaling or other manner of ingestion.~~ (1) *A 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, or snuff;* (2) *An electronic cigarette;* (3) *Any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include a nicotine replacement product approved by the United States Food and Drug Administration.*

63150.5.2 Requirements for Tobacco and Electronic Cigarette Permit; Prohibition.

A. It shall be unlawful for any person to act as a tobacco and electronic cigarette retailer without first obtaining and maintaining a valid tobacco and electronic cigarette permit pursuant to CMC 63150.5 et seq., for each location at which such activity is to occur. No permit will be issued to authorize tobacco and electronic cigarette retailing at any place other than a fixed location; peripatetic tobacco and electronic cigarette retailing and tobacco and electronic cigarette retailing from vehicles are prohibited. Each day that a person offers tobacco, tobacco

products or tobacco paraphernalia for sale or exchange within the City without a valid permit shall constitute a separate violation of this Code.

B. Notwithstanding subsection (A) or any other provision of this Code:

1. Beginning on December 1, 2019, the City shall not accept any application for any new tobacco and electronic cigarette permit.

2. Beginning on January 1, 2020, the City shall not issue any new tobacco and electronic cigarette permit.

C. All tobacco and electronic cigarette retailers that hold a valid tobacco and electronic cigarette permit on January 1, 2020 shall be permitted to operate and/or apply for renewal of the permit as necessary to operate as a tobacco and electronic cigarette retailer until December 31, 2020, except as otherwise provided in Section 63150.5.12 (Hardship Exemption). Unless revoked on an earlier date, all such permits shall expire one year after the date of issuance, or December 31, 2020, whichever is earliest, and shall not be subject to renewal thereafter except as provided in Section 63150.5.12.

D. The operation of any tobacco and electronic cigarette retailer after permit expiration pursuant to Section 63150.5.2(C), inclusive of any hardship exemption period, shall constitute a public nuisance, and a separate violation of this Code for each day that such operation occurs. In addition to any and all other remedies available pursuant to this Code (including without limitation those set forth in Chapters 2 and 2.5 of Article I), the City may initiate a civil action to prohibit such operation, and the prevailing party in any such action shall be entitled to recovery of its reasonable attorneys' fees incurred in such action.

63150.5.3 Application Procedure.

A completed application for a tobacco and electronic cigarette permit (including the payment of all necessary fees) shall be submitted to the Director. The application shall be sought in the name of the person proposing to conduct retail tobacco sales and shall be signed by such person or, in the case of a business, by an authorized agent thereof. A valid City business license is also required before a tobacco and electronic cigarette permit may be issued. Each person applying for a tobacco and electronic cigarette permit shall be responsible for reviewing the conditions of conducting retail tobacco sales within the City and shall agree to abide by these conditions by signing the application under penalty of perjury. All applications shall be submitted on the form supplied by the Director and shall contain the following information:

1. The legal name, address, and telephone number of the applicant.
2. The business name, address and telephone number of the fixed location for which a tobacco and electronic cigarette permit is sought.

3. A statement whether or not the applicant has ever applied for and was denied or has been issued a tobacco and electronic cigarette permit from the City or any other jurisdiction which was revoked or suspended and the dates and circumstances surrounding the suspension and/or revocation.

4. A statement of whether the applicant, its agents or employees have been convicted of a felony involving or related to the sale of tobacco, tobacco paraphernalia or tobacco products within the past five (5) years.

5. Such additional information as the Director may reasonably require.

63150.5.4 Issuance and Renewal of Permit.

A. Upon the receipt of a complete application for a tobacco and electronic cigarette permit and the payment of the applicable permit fee, the City shall issue a permit, *to the extent allowed pursuant to Section 63150.5.2(B)-(D)*, unless any of the following occur:

1. The application is incomplete or inaccurate.

2. The application seeks authorization for tobacco and electronic cigarette retailing at an address that appears on a permit that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of CMC 63150.5 et seq.; provided, however, this subsection shall not constitute a basis for denial of a permit if either or both of the following apply:

(a) The applicant provides the City with documentation demonstrating, to the Director's satisfaction, that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For the purposes of this subsection, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two (2) informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this Section that have occurred at the location, will be presumed not to be an "arm's length transaction."

(b) It has been more than three (3) years since the most recent permit for that location was revoked.

3. The application seeks authorization for tobacco and electronic cigarette retailing by a person who has a currently suspended tobacco and electronic cigarette permit or who has had a permit revoked, pursuant to CMC 63150.5 et seq., within the last three (3) years.

4. The application seeks authorization for tobacco and electronic cigarette retailing in a manner which would violate this Code or any other local, State or Federal law.

5. The applicant, or its agents or employees, has been convicted of a felony involving or related to the sale of tobacco, tobacco paraphernalia or tobacco products within the past five (5) years.

6. The issuance of a tobacco and electronic cigarette permit would be in conflict with any other City ordinance.

B. A tobacco and electronic cigarette permit shall be valid for a term of one year and is subject to annual renewal in accordance with Section 6391, to the extent allowed by Section 63150.5.2(B)-(D).

63150.5.5 Permits Not Transferable.

A tobacco and electronic cigarette permit shall be nontransferable. Should a new person acquire a business that is engaged in tobacco and electronic cigarette retailing, that person must apply for a new permit prior to the commencement of any retail activity.

63150.5.6 Display of Permit.

Each tobacco and electronic cigarette permit shall be prominently displayed in a publicly visible location where tobacco and electronic cigarette retailing occurs.

63150.5.7 Permit Fee.

The fee for filing an application for a tobacco and electronic cigarette permit shall be established by resolution of the City Council and may be amended from time to time. The application fee is nonrefundable; however, if a permit is denied, the business license fee paid shall be refunded. This permit fee is calculated so as to recover the cost of both the administration and enforcement of the permit, including the cost of issuing the permit, renewing the permit, administering the tobacco and electronic cigarette permit program, retailer inspection and compliance checks, documentation of violations, adjudications and prosecutions of violators.

63150.5.8 Permit Violation – Compliance Monitoring.

It shall be a violation of a tobacco and electronic cigarette permit for any tobacco and electronic cigarette permittee, or his or her agents or employees, to violate any local, State or Federal tobacco-related law.

Compliance with this Section shall be monitored by the Los Angeles County Sheriff's Department – Carson Station. Notwithstanding the foregoing, any City peace officer or code

enforcement officer is authorized to enforce CMC 63150.5 et seq. The City shall request that the Los Angeles County Sheriff's Department verify compliance of each tobacco and electronic cigarette permittee with CMC 63150.5 et seq., a minimum of one (1) time per twelve (12) month period. Compliance checks shall include an investigation into whether a tobacco and electronic cigarette permittee is complying with tobacco laws prohibiting the sale of tobacco products to minors. The Los Angeles County Sheriff's Department may use youth decoys and shall comply with protocols for the compliance checks developed in consultation with the Los Angeles County Department of Health Services.

The City shall not enforce any tobacco-related minimum age law against a person who otherwise might be in violation of such law because of such person's age (herein "youth decoy") if the potential violation occurs when the youth decoy is participating in a compliance check supervised by a peace officer, a code enforcement official or an agent of another governmental agency.

~~63150.5.9 Permit Compliance Incentives.~~

~~Upon a finding by the City that a tobacco and electronic cigarette permittee has not violated CMC 63150.5 et seq., within the preceding three (3) year period, the Director shall grant a ten (10) percent discount from the permit fee set forth in CMC 63150.5.7.~~

~~Upon a finding by the City that a tobacco and electronic cigarette permittee has not violated CMC 63150.5 et seq., within the preceding six (6) year period, the Director shall grant an additional ten (10) percent discount, for a total of a twenty (20) percent discount, from the permit fee set forth in CMC 63150.5.7.~~

63150.5.10 Suspension or Revocation of Permit.

A. In addition to any other penalty authorized by law, a tobacco and electronic cigarette permit may be suspended or revoked if the City finds, after notice to the tobacco and electronic cigarette permittee and an opportunity for the permittee to be heard, that the permittee, or his or her agents or employees, has violated any of the provisions of CMC 63150.5 et seq., or any other local, State or Federal law relating to tobacco; provided, however, that a violation by a permittee at one (1) location may not be cause for such permittee to lose its permit at any other location within the City where such permittee is engaged in the retail sale of tobacco. Similarly, the violation of a tobacco and electronic cigarette permit at a particular location will not bar the City from granting a new tobacco and electronic cigarette permit, *to the extent allowed pursuant to Section 63150.5.2(B)-(D)*, to another applicant who is unrelated to the prior permittee for the same location.

1. Upon a finding by the City of a first violation of any provision of CMC 63150.5 et seq., within any three (3) year period, the Director may:

- (a) Issue a written warning to the permittee.

(b) Advise the permittee of the penalties for further violations of CMC 63150.5 et seq.

(c) Require the permittee to provide documentation to the City that all employees engaged in the retail sales of tobacco have received training in a City-approved program within sixty (60) days after the warning, or such other time as shall be set by the Director.

2. Upon a finding by the City of a second permit violation of any provision of CMC 63150.5 et seq., within any three (3) year period, the tobacco and electronic cigarette permit may be suspended up to thirty (30) days.

3. Upon a finding by the City of a third permit violation of any provision of CMC 63150.5 et seq., within any three (3) year period, the tobacco and electronic cigarette permit may be suspended up to ninety (90) days.

4. Upon a finding by the City of a fourth permit violation of any provision of CMC 63150.5 et seq., within any three (3) year period, the tobacco and electronic cigarette permit may be suspended for up to one (1) year.

5. Upon a finding by the City of a fifth permit violation of any provision of CMC 63150.5 et seq., within any three (3) year period, the tobacco and electronic cigarette permit may be revoked.

B. A tobacco and electronic cigarette permit shall be revoked if the City finds, after notice to the permittee and an opportunity for the permittee to be heard, that any one (1) of the conditions listed below existed at the time of the violation. The revocation of a tobacco and electronic cigarette permit shall prohibit the permittee from tobacco and electronic cigarette retailing within the City ~~for a period of three (3) years~~. The revocation shall be without prejudice to the filing of a new application for a tobacco and electronic cigarette permit by a new applicant at an address where a permit has been revoked, *to the extent allowed pursuant to Section 63150.5.2(B)-(D)*.

1. One (1) or more of the bases for denial of the tobacco and electronic cigarette permit listed in CMC 63150.5.4 existed at the time the tobacco and electronic cigarette permit application was made or at any time before the permit was issued.

2. The application is incomplete for failure to provide the information required by CMC 63150.5.3.

3. The information contained in the application, including any supplemental information, is found to be false in any material respect.

4. The application seeks authorization for a type of tobacco and electronic cigarette retailing that is unlawful pursuant to this Code or any other local, State or Federal law.

C. In the event the City denies, suspends or revokes a tobacco and electronic cigarette permit, written notice of the denial, suspension or revocation shall be served upon the applicant or permittee, as the case may be, within five (5) days of the decision to deny, suspend or revoke the permit to the mailing address specified in the application.

D. During a period of suspension of a tobacco and electronic cigarette permit, the permittee must remove from public view all tobacco products and tobacco paraphernalia at the address that appears on the suspended or revoked tobacco and electronic cigarette permit.

63150.5.11 Notification and Appeals.

1. Any notice of denial, suspension or revocation of a tobacco and electronic cigarette permit shall state the reasons for such action and the appropriate remedy or cure, if applicable.

2. Any notification to be given pursuant to CMC 63150.5 et seq., shall be deemed given once the notice is sent by facsimile to the facsimile number listed on the application, or if no number is listed, when notice is placed, postage prepaid, in the United States mail, addressed to the applicant at the address shown on the permit application.

3. Any applicant or permittee aggrieved by a decision or action of the Director under CMC 63150.5 et seq., shall have the right to appeal such decision to ~~the City Council~~ **an Administrative Hearing Officer appointed in accordance with Section 1203.8 of this Code.**

(a) Any appeal that is filed pursuant to this Section shall be filed, and all appropriate fees shall be paid, with the City Clerk **or his or her designee** within fourteen (14) calendar days after notice of denial, approval or revocation is given by the City. The ~~hearing City Council~~ shall act upon any such appeal **shall be conducted** within **sixty (60)** ~~twenty eight (28)~~ calendar days of the filing of the appeal.

(b) Upon receipt of an appeal that is filed pursuant to this Section, the City Clerk **or his or her designee** shall set a date for a hearing of the matter and give notice of the date, time and place of the hearing to the applicant/appellant. Prior to such hearing, the Director shall transmit to the **hearing officer** ~~City Clerk~~ a report of his/her findings. At the hearing ~~by the City Council~~, the Director shall present all documents on file with respect to the matter being appealed.

(c) The **hearing officer** ~~City Council~~ shall consider the record and such additional evidence as may be offered and may affirm, reverse or modify, in whole or in part, the action that was appealed. The **hearing officer** ~~City Council~~ may also make or substitute additional decisions or determinations as it finds warranted under the

provisions of CMC 63150.5 et seq., and may waive any requirement of CMC 63150.5 et seq., where it is found to be in the public interest. ***The decision of the hearing officer shall be final.*** The ***hearing officer*** ~~City Clerk~~ shall transmit a written copy of the ~~City Council's~~ decision to the applicant/appellant within five (5) days of the hearing.

(d) Any appeal of a tobacco and electronic cigarette permit that remains pending upon the final permit expiration date pursuant to Section 63150.5.2(C), inclusive of any hardship exemption period, shall be deemed mooted and shall be dismissed, and the action shall be deemed final, provided that such dismissal shall not preclude any application for or granting of any hardship exemption to the extent such process is available in compliance with Section 63150.5.12.

63150.5.12 Hardship Exemption.

A. Any permittee that wishes to operate a tobacco and electronic cigarette retailer on or after January 1, 2021, may apply for no more than two hardship exemptions as provided for in this Section 63150.5.12. Each hardship exemption granted shall authorize the permittee to operate for one year commencing from the date the permittee's permit would otherwise expire.

B. A permittee must submit a complete application for a hardship exemption at least ninety (90) days before the permit is set to expire, but no sooner than six months before the permit is set to expire. Such application shall be made in writing on a form prescribed by the Director and shall be accompanied by a hardship exemption application fee established by resolution of the City Council. The permittee shall bear the burden of proof in establishing by a preponderance of the evidence that the application of CMC 63150.5 et seq. to the permittee's business is unreasonable, and will cause undue hardship to the permittee by not allowing the permittee to recover his or her reasonable investment-backed expectations. The permittee applying for the exemption shall furthermore be required, in order to meet its burden of proof, to submit the documents set forth in this Section 63150.5.12.

C. A complete application for a hardship exemption shall include the following:

- 1. The permittee's name and street address of business;***
- 2. The address to which notice is to be mailed, including, at the permittee's option, a telephone number or email address;***
- 3. The permittee's signature;***
- 4. The term of the requested extension;***
- 5. Documentation relevant to the criteria and factors identified in subsection (D) of this Section; and***

6. *A declaration, under penalty of perjury, that all the information in the application is true and correct;*

7. *The required hardship exemption application fee.*

D. In determining whether to grant a hardship exemption to the permittee, the hearing officer, or City Council on appeal by the applicant, may consider the following, among other factors:

1. *The percentage of the retail sales over the last three years that have been derived from tobacco products and tobacco paraphernalia;*

2. *The amount of investment in the business;*

3. *The present actual and depreciated value of any business improvements dedicated to the retail sale of tobacco products and tobacco paraphernalia;*

4. *The applicable Internal Revenue Service depreciation schedule or functional non-confidential equivalent;*

5. *The remaining useful life of the business improvements that are dedicated to the sale of tobacco products and tobacco paraphernalia;*

6. *The remaining lease term of the business, if any;*

7. *The ability of the tobacco and electronic cigarette retailer to sell other products;*

8. *The opportunity for relocation of the business and the cost of relocation;*
and

9. *A business plan demonstrating how long the business will need to sell tobacco products and tobacco paraphernalia to recoup any reasonable investment-backed expectations, and a plan for phasing out the sale of those products, subject to the time limits set forth in this Section.*

E. The hardship exemption hearing shall be conducted by an Administrative Hearing Officer appointed in accordance with Section 1203.8 of this Code. Written notice of the time and place of the hearing shall be given at least ten (10) calendar days prior to the date of the hearing to the permittee by the City either by causing a copy of such notice to be delivered to the permittee personally or by mailing a copy thereof, postage prepaid, addressed to the permittee at the address shown on the hardship exemption application.

F. Within forty-five (45) days after a completed application is filed, the hearing officer shall open the hearing on the hardship exemption. The hearing officer shall receive and consider evidence presented by the permittee, and shall determine whether to grant or deny the hardship exemption. The hearing officer shall make written findings in support of the decision. The decision of the hearing officer shall be final and conclusive, unless a timely and complete appeal is filed by the applicant with the City Clerk pursuant to subsection (G) of this Section.

G. Any decision of the hearing officer may be appealed by the applicant in accordance with Section 6347. To be deemed complete, the notice of appeal shall be signed by the applicant, shall state the grounds for disagreement with the decision of the hearing officer, and shall be accompanied by the applicable filing fee established by resolution of the City Council.

H. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the hardship exemption.

I. A retailer may continue to sell tobacco products or tobacco paraphernalia while a hardship exemption application is pending before a hearing officer or on appeal to the City Council.

J. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

63150.5.13 Interpretation.

Nothing in Section 63150.5 shall be interpreted or applied to prohibit any person from selling drug paraphernalia.”

SECTION 5. SEVERABILITY. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 6. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 7. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

[signatures on the following page]

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this ____ day of _____, 2019.

ALBERT ROBLES, Mayor

ATTEST:

DONESIA GAUSE-ALDANA, City Clerk

APPROVED AS TO FORM:

SUNNY K. SOLTANI, City Attorney