

SECTION 10-1.2780 TOBACCO RETAIL SALES ESTABLISHMENTS

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SECTION 10-1.2780 PURPOSE.

In addition to the general purposes listed in Section 10-1.110, General Provisions, the specific purpose of the Tobacco Retail Sales Establishments regulations is to provide for the orderly integration of tobacco-related uses in a manner that will prevent the sale of tobacco products and electronic smoking devices to youth by establishing reasonable and uniform regulations to prevent the close proximity of tobacco retail sales uses to youth and sensitive receptors, while permitting the location of tobacco retail sales in certain areas.

SECTION 10-1.2781 APPLICABILITY.

These regulations apply to all Tobacco Retail Sales Establishments, including the operation of existing businesses, new businesses, relocating businesses, and the conversion or expansion of an existing business to include the sale of tobacco, tobacco products, electronic smoking devices or tobacco paraphernalia, as defined herein. Tobacco Retailers legally existing prior to the adoption of these regulations may exist without the approval of a conditional use permit but must otherwise comply with all standards set forth in these regulations.

SECTION 10-1.2782 DEFINITIONS.

For purposes of these regulations, certain words and terms have the following meaning:

- a. “Cigar” means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, “Cigar” includes, but is not limited to, Tobacco Products known or labeled as “cigar,” “cigarillo,” “tiparillo,” “little cigar,” “blunt,” “blunt wrap,” or “cigar wrap.”
- b. “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; provided, however, that 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.
- c. “Distinguishable” means perceivable by an ordinary consumer by either the sense of smell or taste.
- d. “Drug Paraphernalia” is defined in California Health & Safety Code section 11014.5, as that section may be amended from time to time.
- e. “Electronic Smoking Device” 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. “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, vapor cigarette or any other product name or descriptor. “Electronic Smoking Device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.
- f. “Flavored Tobacco Product” means any tobacco product (other than cigarettes as defined by federal law) that contains a constituent that imparts a characterizing flavor. For purposes of this definition, “constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.
- g. “Hookah bar” or “hookah lounge” means any facility, building, structure or location, where customers share tobacco or a similar smoking product from a communal hookah placed throughout the establishment.

- h. “Imitation Tobacco Product” means any edible non-tobacco product designed to resemble a tobacco product or any non-edible non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic smoking device is not an imitation tobacco product.
- i. “Labeling” means written, printed, or graphic matter upon any tobacco product or any of its packaging, or accompanying such tobacco product.
- j. “Licensee” means the holder of a valid, City-issued Tobacco Retailer License.
- k. “Manufacturer” means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.
- l. “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.
- m. “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- n. “Proprietor” means a person with an ownership or managerial interest in a Tobacco Retail Sales Establishment. 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 Tobacco Retail Sales Establishment, 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 Tobacco Retail Sales Establishment.
- o. “Residential District” is any area within City limits that is designated in the City’s zoning ordinance as one of the following districts: RS; RNP; RM; RH; RO; MH; SMU; any residential Planned Development; T3, T4, T4-1, T4-2 or T-5 (in the City’s Form-Based Code zoning districts); or any subsequently created zoning district whose primary use is residential in character.
- p. “Self-Service Display” means the open display of tobacco products, electronic smoking devices or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.

- q. “Sensitive Receptors” are people that have an increased sensitivity to air pollution or environmental contaminants. For the purpose of this Ordinance, sensitive receptor locations include schools, parks and playgrounds, libraries, and day care centers.
- r. “Tobacco Retail Sales Establishment” or “Tobacco Retailer” means any establishment that sells tobacco, tobacco products, electronic smoking devices, tobacco paraphernalia, or any combination thereof, including retail or wholesale sales.
- s. “Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking or ingestion of tobacco products.
- t. “Tobacco Product” means any product containing, made or derived from tobacco or contains synthetically produced nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. “Tobacco product” includes, but is not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus, or electronic smoking devices (with or without nicotine). “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 and is being marketed and sold solely for that approved purpose.
- u. “Tobacco Retailer License” means the license issued pursuant to Section 10-1.2785 that authorizes electronic smoking device or tobacco retail sales at a certain, fixed location and by a certain Tobacco Retailer. Mobile vendors of tobacco products and electronic smoking devices are prohibited.
- v. “Vapor bar” or “vapor lounge” (also referred to as “smoking device bar” or “electronic smoking device lounge”) means any facility, building, structure or location where customers use an electronic smoking device or other apparatus to deliver an inhaled dose of nicotine or other substance within the establishment.

SECTION – 10-1.2783 REQUIREMENTS AND OPERATIONAL STANDARDS FOR TOBACCO RETAIL SALES ESTABLISHMENTS.

- a. All new and existing Tobacco Retail Sales Establishments shall abide by all of the following requirements and operational standards:
 - 1. All Tobacco Retail Sales Establishments shall comply with local, state, and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia, including posting prominently near the cash register or other point of sale the legal age to purchase such items, and checking the identification of purchasers to ensure they are of legal age.
 - 2. All new Tobacco Retail Sales Establishments shall obtain a conditional use permit pursuant to Section 10-1.3200 prior to operation, unless exempt as provided hereinafter,

and a Tobacco Retailer License. It shall be unlawful for any person to operate as a Tobacco Retail Sales Establishment without first obtaining a conditional use permit if one is required and a Tobacco Retailer License.

3. All Tobacco Retail Sales Establishments shall display their Tobacco Retailer License to sell tobacco products and their annual inspection certificate in a visible, prominent location.
4. It shall be a violation of these regulations for any Tobacco Retail Sales Establishment to violate any local, state, or federal law applicable to tobacco products, electronic smoking devices or tobacco paraphernalia.
5. It shall be a violation of these regulations for any Tobacco Retail Sales Establishment or any of the Tobacco Retail Sales Establishment's agents or employees to violate any local, state, or federal law regulating controlled substances or drug paraphernalia, such as, for example, California Health and Safety Code section 11364.7, except that conduct authorized pursuant to the state Medical Marijuana Program (California Health and Safety Code sections 11362.7 *et seq.*) shall not be a violation of these regulations.
6. No Tobacco Retail Sales Establishment shall sell or transfer tobacco products or electronic smoking devices to any person who appears to be under twenty-seven (27) years of age without first examining the customer's identification to confirm that the customer is at least the minimum age under state and federal law to purchase and possess tobacco products or electronic smoking devices.
7. No person who is younger than the minimum age established by state or federal law for the purchase or possession of tobacco products or electronic smoking devices shall engage in the sale of such products.
8. Tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia shall be secured so that only store employees have immediate access to these items. Self-service displays of tobacco products, electronic smoking devices, and tobacco products are prohibited.
9. All Tobacco Retail Sales Establishments that do not sell imitation tobacco products or flavored tobacco products as of the effective date of these regulations are prohibited from selling any imitation tobacco product or flavored tobacco product. The burden of proof to establish that sales of imitation tobacco products and/or flavored tobacco products preceded the effective date of these regulations shall be on the Tobacco Retailer.
10. No Tobacco Retail Sales Establishment shall sell tobacco products, tobacco paraphernalia, or electronic smoking devices at a mobile location. For example, sales of tobacco products, tobacco paraphernalia, or electronic smoking devices on foot or from vehicles are prohibited.

11. Mobile vendors of tobacco products and electronic smoking devices are prohibited.
- b. Notwithstanding any other provision of law, it shall be a violation of these regulations for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:
 1. Any single cigar, whether or not packaged for individual sale;
 2. Any number of cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;
 3. Any package of cigars containing fewer than five (5) cigars. This subsection does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars.
- c. With the exception of Tobacco Retailers whose business included the sale of flavored tobacco products prior to the effective date of this Article, it shall be a violation of these regulations for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product within a 500 foot radius of any private or public kindergarten, elementary, middle, junior high, or high school. The burden of proof to establish that sales of flavored tobacco products preceded the effective date of these regulations shall be on the Tobacco Retailer.
- d. A tobacco product is presumed to be a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:
 1. Made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the product's labeling or packaging that are used explicitly or implicitly to communicate information about the flavor, taste, or aroma of a tobacco product; or
 2. Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.
- e. Every Tobacco Retail Sales Establishment shall maintain on the premises the original labeling and packaging provided by the manufacturer for all tobacco products that are sold or offered for sale by the establishment separately from the original packaging designed for retail sale to the consumer. The original labeling and packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale and may be disposed of upon the sale of the entire contents of such package.
- f. Each application for a conditional use permit to operate a Tobacco Retail Sales Establishment shall include a plan for demonstrating the means by which the applicant will comply with the operating standards outlined in this section.

- g. Compliance with these regulations shall be enforced by the City's Planning Director, in conjunction with the City's Code Enforcement Division and the Hayward Police Department. The Code Enforcement Supervisor or his/her designee shall use reasonable efforts to conduct a compliance check visit to each Tobacco Retail Sales Establishment at least once per twelve (12) month period to determine if the Tobacco Retail Sales Establishment is in compliance with these regulations. Nothing in this section shall create a right of action in any Tobacco Retail Sales Establishment or other person against the City or its agents in conducting these annual inspections.

SECTION 10-1.2784 LARGE-FORMAT TOBACCO RETAILERS.

Retail establishments, such as grocery stores, big-box stores, pharmacies, etc., that have 10,000 square feet or more of floor area and that devote not more than five (5%) percent of such floor area to the sale, display, sale and storage of tobacco products, electronic smoking devices or tobacco paraphernalia ("Large-Format Tobacco Retailers") are permitted in any zoning district in which retail sales are allowed, without the need to obtain a conditional use permit for tobacco sales. Large-Format Tobacco Retailers are required to obtain a Tobacco Retailer License as set forth in Section 10-1.2785 and are subject to compliance with all requirements and operational standards as set forth in these regulations.

SECTION 10-1.2785 TOBACCO RETAILER LICENSE (TRL).

All new and existing Tobacco Retail Sales Establishments must obtain an annual Tobacco Retailer License (TRL) and comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments set forth in Section 10-1.2783 above.

a. Tobacco Retailer License Application Procedure:

1. Application for a Tobacco Retailer License shall be submitted in the name of each proprietor proposing to conduct tobacco retail sales and shall be signed by each proprietor or an authorized agent thereof. It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retail sales, including those laws affecting the issuance of a Tobacco Retailer License. No proprietor may rely on the issuance of a TRL as a determination by the City that the proprietor has complied with all laws applicable to tobacco retail sales. A TRL issued contrary to these regulations, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 10-1.2796 herein. Nothing in these regulations shall be construed to vest in any person obtaining and maintaining a TRL any status or right to act as a Tobacco Retailer in contravention of any provision of law.
2. All applications for a TRL shall be submitted on a form supplied by the City and shall contain the following information:
 - i. The name, address, and telephone number of each proprietor of the business seeking a TRL;

- ii. The business name, address, e-mail, and telephone number of the single fixed location for which a TRL is sought;
 - iii. A single name and mailing address authorized by each proprietor to receive all communications and notices (the “authorized address”). If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (b)(2);
 - iv. Proof that the location for which a TRL is sought has been issued a valid state tobacco retailer’s license by the California Board of Equalization;
 - v. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, these regulations and, if so, the dates and locations of all such violations within the previous five years;
 - vi. A statement signed by each proprietor that no drug paraphernalia is or will be sold at the location for which the TRL is sought; and
 - vii. Such other information as the Planning Director deems necessary for the administration or enforcement of these regulations as specified on the application form required by this section, including any proposed signage or artwork for the business premises to ensure that the signage/artwork does not encourage youth smoking.
3. All Tobacco Retail Sales Establishments shall inform the Planning Director or his/her designee in writing of any change in the information submitted on an application for a TRL within ten business days of a change.
 4. 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 any applicable exemptions.

b. Issuance of TRL:

Upon the receipt of a complete application for a TRL and the license fee required hereunder, the Planning Director or his/her designee 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 incomplete, inaccurate, false or otherwise fails to comply with Section 10-1.2785(a)(2) above. Intentionally supplying inaccurate or false information shall be a violation of these regulations;
2. The application seeks authorization for tobacco retail sales at a location for which the issuance of a TRL is prohibited under these regulations, unless tobacco retail sales were being conducted at the proposed location prior to the effective date of these regulations

and provided that such sales constitute a legal, nonconforming use;

3. The application seeks authorization for tobacco retail sales that is prohibited under these regulations (e.g., mobile vending) or that is unlawful pursuant to this Article, including without limitation, the zoning ordinance, building code, and business license tax ordinance, or that is unlawful pursuant to any other law;
4. The location for which a TRL is sought lacks a valid state tobacco retailer's license by the California Board of Equalization; or
5. The applicant has been found in violation of three (3) or more of the Operational Standards listed in Section 10-1.2783 of these regulations within the last three years.

c. TRL Renewal and Expiration:

1. Term and Renewal of TRL. A TRL is invalid if the appropriate fee has not been timely paid in full or if the term of the TRL has expired. The term of a TRL is one year, commencing the first day of each calendar year.
2. Expiration of TRL. A TRL that is not timely renewed shall expire at the end of its term. To apply for reinstatement of a license that was not timely renewed, the proprietor must:
 - i. Submit the TRL fee, including any fees for late renewal, and application renewal form; and
 - ii. Submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product, electronic smoking device or tobacco paraphernalia after the TRL expiration date and before the TRL is renewed; and
 - iii. Has paid all outstanding fines and resolved any outstanding violations of these regulations, before seeking renewal of the license.

d. TRL Nontransferable:

A TRL may not be transferred from one person to another or from one location to another. A new TRL is required whenever a Tobacco Retail Sales Establishment has a change in proprietor(s).

e. TRL Conveys a Limited, Conditional Privilege:

Nothing in these regulations shall be construed to grant any person obtaining and maintaining a TRL any status or right other than the limited conditional privilege to act as a Tobacco Retail Sales Establishment at the location in the City identified on the face of the license. Nothing in these regulations 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 the Hayward

Municipal Code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. ATRL does not make the Tobacco Retailer a “retail or wholesale tobacco shop” for the purposes of California Labor Code Section 6404.5.

f. Fee For TRL:

The fees for the annual TRL shall be established by the City Council from time to time in the City’s Master Fee Schedule, and are payable at the time the establishment obtains or renews its business license. The fee shall be calculated so as to recover the cost of administration and enforcement of these regulations, including but not limited to, issuing a license, Tobacco Retailer inspections and compliance checks, documentation of violations and prosecution of violators. Annual fees shall not be pro-rated or refunded during the course of the year.

g. Compliance and Monitoring:

1. Compliance with these regulations shall be enforced by the Planning Director, in conjunction with the Code Enforcement Division and Hayward Police Department. The City Manager may designate any number of additional persons to monitor compliance with these regulations.
2. Compliance checks shall be conducted so as to allow the City to determine, at a minimum, if the Tobacco Retailer is in compliance with all laws regulating sales of tobacco products, electronic smoking devices, tobacco paraphernalia, and imitation tobacco products. City staff shall endeavor to perform compliance inspections at least annually on all Tobacco Retail Sales Establishments.
3. The City shall not enforce any law establishing a minimum age for tobacco product or electronic smoking device 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:
 - i. The youth decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the City;
 - ii. The youth decoy is acting as an agent of a person designated by the City to monitor compliance with these regulations; or
 - iii. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Alameda County Public Health Department or the California Department of Health Services or other governmental agency.

SECTION 10-1.2786 CONDITIONAL USE PERMIT FOR NEW TOBACCO RETAIL SALES ESTABLISHMENTS.

- a. All new Tobacco Retail Sales Establishments that have less than 10,000 square feet of floor area or devote more than five (5%) percent of their floor area to the sale, display, and storage of tobacco products, electronic smoking devices or tobacco paraphernalia shall apply for and obtain a conditional use permit, in addition to a Tobacco Retailer License.
- b. New Tobacco Retail Sales Establishments that have less than 10,000 square feet of floor area or devote more than five (5%) percent of their floor area to the sale, display, and storage of tobacco products, electronic smoking devices or tobacco paraphernalia are only allowed in the General Commercial (CG) Zoning District. In addition to obtaining a conditional use permit, new Tobacco Retail Sales Establishments shall be subject to the following separation requirements:
 1. No new Tobacco Retail Sales Establishments shall be established or located within 500 feet from any existing residential district or use, any sensitive receptors, or similar use as determined by the Planning Director, or within 500 feet of any other Tobacco Retail Sales Establishment.
 2. The distances set forth above shall be measured as a radius from property line to property line without regard to intervening structures.
 3. The applicant shall be required to submit a map, drawn to scale, showing how their proposed business location meets the aforementioned location requirements as part of the conditional use permit application.

SECTION 10-1.2787 POSTING OF CONDITIONS OF APPROVAL.

A copy of the conditions of approval for the conditional use permit must be kept on the premises of the Tobacco Retail Sales Establishment and posted in a place where it may readily be viewed by the general public.

SECTION 10-1.2788 FINDINGS.

In making the findings required by Section 10-1.3225 governing conditional use permits, the Planning Director, or the Planning Commission on referral or appeal, shall consider whether the proposed use will result in an undue concentration of Tobacco Retail Sales Establishments in the area. The Planning Commission, or City Council on referral or appeal, shall also consider whether the proposed use will detrimentally affect the surrounding neighborhood after giving consideration to the distance of the proposed use from the following uses: Residential structures, churches, schools, public playgrounds and parks, recreation centers, and other similar uses.

SEC. 10-1.2789 APPLICATION FOR CONDITIONAL USE PERMIT.

In addition to the requirements set forth in Section 10-1.2815 and any other applicable City regulation, an application for a conditional use permit for a new Tobacco Retail Sales Establishment shall set forth and include the following:

- a. A map showing that the proposed establishment meets all location and separation requirements as set forth in Section 10-1.2786; and
- b. The true and complete name and address of each lender or shareholder with a five (5) percent or more financial interest in the proposed business or any other person to whom a share or percentage of the income of the establishment is to be paid; and
- c. A statement by the applicant indicating whether or not such applicant has at any time been convicted of any crime other than minor traffic offenses and, if so, the nature of the crime for which the applicant was convicted and the date and jurisdiction of the conviction.

SECTION 10-1.2790 PROHIBITED USES.

The following uses are prohibited in all zoning districts: Vapor bars or vapor lounges; smoking device bars or electronic smoking device lounges; and hookah bars or hookah lounges.

SECTION 10-1.2791 EXISTING TOBACCO RETAIL SALES ESTABLISHMENTS.

Any Tobacco Retail Sales Establishment legally in existence as of the effective date of these regulations shall be considered a legal non-conforming use and will be permitted to continue in operation as a Tobacco Retail Sales Establishment. In order to maintain its legal non-conforming status, each such Tobacco Retail Sales Establishment shall be required comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments set forth in Section 10-1.2783 and the Non-Conforming Use regulations set forth in Section 10-1.2900 et seq., and shall obtain an annual Tobacco Retailer License as set forth in Section 10-1.2785.

SEC. 10-1.2792 LIABILITY FOR EXPENSES.

Any person who is found to have violated the Tobacco Retail Sales Establishments regulations shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Reinspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the establishment, as may be set by the City Council in the Master Fee Schedule.

SEC. 10-1.2793 INSPECTION AND RIGHT OF ENTRY.

To the extent permissible by law, the Planning Director or his designees shall have the right to enter and inspect any Tobacco Retail Sales Establishment for the purpose of ensuring compliance with these regulations, provided that any such entry and inspection shall be conducted in a reasonable manner

whenever there is reason to suspect a violation of any of the provisions of the Tobacco Retail Sales Establishments regulations. If the licensee or his or her agents refuse permission to enter, inspect or investigate the establishment, the City may seek an inspection warrant pursuant to the provisions of California Code of Civil Procedure Sections 1822.50 *et seq.*, or any successor legislation thereto.

SEC. 10-1.2794 PUBLIC NUISANCE.

It shall constitute a public nuisance for any person to operate a Tobacco Retail Sales Establishment in violation of these regulations.

SEC. 10-1.2795 CUMULATIVE REMEDIES.

Any person who violates any provision of the Tobacco Retail Sales Establishment regulations is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted. The remedies provided in these regulations shall be cumulative and may include administrative citation pursuant to Chapter 1, Article 7 of this Code and/or abatement pursuant to Chapter 5, Article 7 of this Code, in addition to any other procedures provided in the Hayward Municipal Code or by state law. Administrative action hereunder shall not prejudice or affect any other action, civil or criminal, for the maintenance of any such violation. The fines and penalties for violations of the Tobacco Retail Sales Establishments regulations shall be established by the City Council in the Master Fee Schedule.

**SEC 10-1.2796 REVOCATION OF TOBACCO RETAILER LICENSES AND
CONDITIONAL USE PERMITS; APPEALS.**

- a. Any Tobacco Retail Sales Establishment that violates these regulations three (3) times within a three-year period shall be subject to revocation of its Tobacco Retail License and/or its conditional use permit.
- b. For Large-Format Tobacco Retail Sales Establishments, written notice containing the effective date of the TRL revocation shall be sent to the address on record for the Tobacco Retail Sales Establishment, along with a description of the process for appealing the TRL revocation. Appeals of the TRL revocation shall observe the process set forth in Chapter 1, Article 7 of this Code.
- c. For Tobacco Retail Sales Establishments that have a conditional use permit or that are legal nonconforming uses, a revocation hearing will be scheduled before the Planning Commission in accordance with the procedures set forth in Section 10-1.3260 of this Code. Appeals shall be governed by Section 10-1.2845 of this Code.
- d. The hearing officer, in the case of administrative action under 10-1.2796 subsection (a), or the Planning Commission, in the case of administrative action under 10-1.2796 subsection (b), has the authority to order a suspension of the Tobacco Retail Sales Establishment's TRL and/or conditional use permit in lieu of revocation.

SECTION 10-1.2797 ANNUAL REPORT.

An annual report shall be provided to the City Council regarding the implementation of these provisions unless Council no longer requests such report.

Ord. 14-16, adding Sections 10-1.2780 through 10-1.2797, Chapter 10, Article 1 of the Hayward Municipal Code relating to Tobacco Retail Sales Establishments, adopted July 1, 2014.