

ORDINANCE NO. 20-_____

ORDINANCE OF THE CITY OF HAYWARD, CALIFORNIA, AMENDING CHAPTER 10
(PLANNING, ZONING, AND SUBDIVISIONS), ARTICLE 1 (ZONING ORDINANCE),
SECTION 10-1.2780 THROUGH 10-1.2797, TOBACCO RETAIL SALES
ESTABLISHMENTS, OF THE HAYWARD MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Provisions. The City Council incorporates by reference the findings contained in Resolution No. 20-__ approving the text changes to the Hayward Municipal Code, Sections 10-1.2780 through 10-1.2797, Tobacco Retail Sales Establishments Ordinance.

Section 2. Chapter 10, Planning, Zoning, and Subdivisions of the Hayward Municipal Code, which establishes development standards and regulations for all zoning districts within City boundaries, is hereby amended to add certain text (as indicated by underline) and delete certain provisions (as indicated by strikethrough) in the attached Exhibit "A", related to tobacco retail sales establishments, introduced herewith and as specifically shown in this Ordinance.

Section 3. Severance. Should any part of this Ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this Ordinance, which shall continue in full force and effect, provided that the remainder of the Ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 4. Effective Date. In accordance with the provisions of Section 620 of the City Charter, the Ordinance shall become effective immediately upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 7th day of July 2020, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the ___th day of _____ 2020, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED:

Mayor of the City of Hayward

DATE: _____

ATTEST:

City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

EXHIBIT ACHAPTER 10, PLANNING, ZONING, AND SUBDIVISIONS
ARTICLE 1, ZONING ORDINANCE**SECTION 10-1.2780, TOBACCO RETAIL SALES ESTABLISHMENTS**

SEC. 10-1.2780-- FINDINGS AND 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.~~

The City finds and declares as follows:

- a. According to the Centers for Disease Control and Prevention, each day about 1,600 U.S. youth under the age of 18 smoke their first cigarette. Each year, nearly half a million Americans die prematurely of smoking or exposure to secondhand smoke. Another 16 million live with a serious illness caused by smoking.
- b. There is local and nation-wide evidence from the California Department of Public Health and the Centers for Disease Control and Prevention that youth consumption and use of flavored tobacco products and electronic smoking devices are on the rise. The use of these products has been identified by the United States Surgeon General to pose significant health and safety risks to community at-large and youth individuals under the age of 18.
- c. The City of Hayward recognizes that the use of tobacco products and electronic smoking devices have devastating and have long-lasting effects on personal and public health. The City further recognizes in accordance with the Centers for Disease Control and Prevention, that tobacco use is the leading cause of preventable disease, disability, and death in the United States.

d. The purpose of the Tobacco Retail Sales Establishments Ordinance is to promote public health and provide regulatory protection for the City's youth from harmful tobacco and nicotine products. The Ordinance establishes a monitoring program that encourages responsible tobacco retailing and holds businesses accountable for selling and distributing harmful and addictive tobacco and nicotine products to underage individuals. It is intended to supplement relevant provisions of Federal and State law and is not intended nor shall it be interpreted to conflict, expand or reduce the degree to which the acts regulated by Federal or State law are criminally proscribed or alter the penalties provided therein.

SEC. 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.

SEC. 10-1.2782 - DEFINITIONS.

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

- a. "Bidis" (also known as beedies) are defined as products containing tobacco wrapped in leaves of the temburni or tendu plants, or products marketed and sold as "bidis" or "beedies."
- b. "CBD" means cannabidiol, a cannabinoid or chemical compound found in cannabis plant and hemp.
- c. "Cannabis" shall mean as defined in Hayward Municipal Code Section 10-1.3500.
- ad. "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."

- e. "Cigarette" means any roll of tobacco for smoking of any size or shape, made wholly or in part of tobacco and with a wrapper or cover made of paper or any other material. Tobacco wrapped in tobacco or with a cover made mostly of tobacco (for example, cigars) that weighs more than three pounds per thousand sticks are not cigarettes and are defined as Tobacco Products.
- bf. "Characterizing Flavor" means a ~~distinguishable~~ taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product, either prior to or during ~~or consumption, 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, sweetener, sugar, 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.g. "Drug Paraphernalia" is as defined in California Health &and Safety Code section 11014.5, as that section may be amended from time to time.
- eh. "Electronic Smoking Device" means:
1. any electronic ~~and/or battery-operated~~ device, ~~the use of which may resemble smoking, which can be used to that~~ delivers an inhaled a dose of nicotine or other substances to the person inhaling, including but not limited to, ~~"Electronic Smoking Device" includes any such device, whether manufactured, distributed, marketed, or sold as an~~ electronic nicotine delivery systems (ENDS) as defined under the United States Food and Drug Administration deeming rule, an electronic cigarette, ~~an~~ electronic cigar,

~~an~~ electronic cigarillo, ~~an~~ electronic pipe, ~~an~~ electronic hookah, vapor cigarette, vape pen, personal vaporizers, or any other product name or descriptor.

2. Any component, part, or accessory intended or reasonably expected to be used with an electronic smoking device, whether sold separately, including but not limited to coils, batteries, tanks, cartridges, pods, wicks, atomizers, nicotine concentrates, waxes, E-liquids, or other products and parts. "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.

i. "Flavored Tobacco Product" means any tobacco product (including but not limited to other than cigarettes as defined by federal law) that contains a constituent that imparts a characterizing flavor, including but not limited to mint or menthol cigarettes, flavored little cigars, smokeless tobacco, e-cigarettes and vaping devices. 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. Furthermore, there shall be a rebuttable presumption that a tobacco product is 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, imparts, or produces a characterizing flavor, including, but not limited to, the explicit or implicit use of text and/or images on the product's labeling or packaging or other advertisement to communicate information about the flavor, taste, or aroma of a tobacco product; and/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.

j. "Hemp Blunt Wraps" means a paper or cone-shape wrapper or cover made either in part or wholly from parts of a cannabis plant, also known as, but not limited, CBD blunt wraps.

- ~~g.k.~~ "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.l.~~ "Imitation Tobacco Product" means any edible or non-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 often -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.m.~~ "Labeling" means written, printed, or graphic matter upon any tobacco product or any of its packaging, or accompanying such tobacco product.
- ~~j.n.~~ "Licensee" means the holder of a valid, City-issued Tobacco Retailer License.
- ~~k.o.~~ "Manufacturer" means any person, including any re-packer or re-labeler, 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.p.~~ "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.q.~~ "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- ~~r.~~ "Pharmacy" and "Drugstore" mean a retail establishment in which the profession of pharmacy is practiced by a pharmacist license 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.

- s. “Property Owner” means any person, persons, organization, or legal entity owning real property and as it appears on the last equalized assessment roll for the City.
- nt. "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.
- ou. "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.
- v. “Retail Price” means the price listed for the tobacco product on its packaging or any related shelving, advertising, or display where sold or offered for sale, and includes all applicable taxes and fees.
- pw. "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.
- qx. "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, pre-schools, parks and playgrounds, libraries, and day care ~~centers~~ facilities.
- ry. "Tobacco Retail Sales Establishment" or "Tobacco Retailer" means any establishment that sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, ~~electronic smoking devices~~, tobacco paraphernalia, or any combination thereof, including retail or wholesale sales.

- ~~sz.~~ "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other items s or parts thereof designed or marketed for the smoking, ~~or~~ ingestion, preparation, storing, or consumption of tobacco products or other substances.
- ~~taa.~~ "Tobacco Product" means any product containing, made or derived from tobacco or ~~contains synthetically produced~~ nicotine that is intended for human consumption, whether smoked, heated, 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), or any component, part, accessory intended or reasonably expected to be used with 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 and is being marketed and sold solely for that approved purpose.
- ~~ubb.~~ "Tobacco Retailer License" means the license issued pursuant to Section 10-1.2785 that authorizes ~~electronic smoking device or~~ tobacco retail or wholesale sales at a certain, fixed approved location and by a certain Tobacco Retailer. Mobile vendors of tobacco products, ~~and~~ electronic smoking devices and tobacco paraphernalia are prohibited.
- ~~vcc.~~ "Vapor bar" or "vapor lounge" (also referred to as "smoking device bar" or "electronic smoking device lounge") means, but not limited to, any facility, building, structure or location where customers use tobacco products, an electronic smoking devices or other apparatuses to deliver an inhaled dose of nicotine or other substance within the establishment.
- ~~dd.~~ "Vaping device" means as defined in Subsection fh. of this section, an electronic smoking device and any device designed to vaporize nicotine or other substances to inhale or exhale vapor, including but not limited to bongs, water pipes, hookah devices, vaporizers, atomizers, bowls, chambers, including any components and substances, or parts thereof. For purposes of these regulations, a vaping device

does not include any medically prescribed vaporizer by a licensed physician or practitioner for medical purposes.

SEC. 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, ~~S~~state, and/or ~~F~~federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or tobacco paraphernalia, including, but not limited to, posting prominently near the cash register or other point of sale and at the entrances to the establishment, the legal age to purchase tobacco products 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 ~~P~~erson 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 City of Hayward Tobacco Retail License and California Cigarette and Tobacco and Product Retailer License to sell tobacco products, ~~and their annual inspection certificate in a visible, in a~~ prominent location visible to the public at all times.
 4. It shall be a violation of these regulations for any Tobacco Retailer ~~Sales Establishment~~ to violate any local, ~~s~~State, or ~~F~~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, ~~s~~State, or ~~F~~federal law regulating controlled substances or drug paraphernalia, ~~such as,~~ for example, California Health and Safety Code ~~s~~Section 11364.7, except that conduct authorized pursuant to the ~~s~~State ~~Medical Marijuana Program (California Health and Safety Code sections 11362.7 et seq.)~~ law shall not be a violation of these regulations.
6. No Tobacco Retail Sales Establishment shall sell, ~~or transfer,~~ or in any form furnish tobacco products or tobacco paraphernalia ~~or electronic smoking devices~~ to an individual under the age of 21 in accordance with the California Penal Code 308, California STAKE Act, or any other applicable local, State or Federal law, or to ~~any individual 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 ~~s~~State and ~~F~~federal law to purchase and possess tobacco products ~~or electronic smoking devices~~.
7. No person who is younger than the minimum age established by ~~S~~state or ~~F~~federal law for the purchase or possession of tobacco products or electronic smoking devices shall engage in the sale of such products.
8. ~~All~~ 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. No Tobacco Retail Establishment shall sell imitation tobacco products or any imitation products that resemble cannabis or any drug or illegal substances.~~

10. No Tobacco Retail Sales Establishment shall sell tobacco products, or tobacco paraphernalia, ~~or electronic smoking devices~~ at a mobile location, ~~For example, sales of tobacco products, or tobacco paraphernalia, or electronic smoking devices~~ on foot or from vehicles, ~~are prohibited.~~

11. All sales of tobacco products and tobacco paraphernalia shall be conducted in person at the licensed Tobacco Retail Sales Establishment. No Tobacco Retail Sales Establishment shall offer or provide any delivery of tobacco products or tobacco paraphernalia to a consumer.

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, ~~with a retail price of less than eight (\$8) dollars, including all applicable taxes and fees.~~
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 unless it contains at least five cigars or units in the manufacturer's original consumer package with a retail price of eight (\$8) dollars or more, including all applicable taxes and fees. ~~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.~~
4. Single cigarettes or cigarettes packages of less than 20 cigarettes.
5. Cigarette packages of 20 cigarettes with a retail price of less than eight (\$8) dollars per package, including all applicable taxes and fees.

6. Any tobacco product for less than the retail price by honoring or redeeming discounts, multi-package discounts, free products, or any other form of discount.

7. Cigarette packages or tobacco products not in compliance with the Revenue and Taxation Code, Section 30165.1, Subdivisions (e)(1), (e)(2) and (e)(3); not listed as approved in the California Tobacco Directory.

The minimum prices established in this section shall be adjusted from time to time in proportion with the Consumer Price Index for the San Francisco/Oakland/Hayward area as reported by the U.S Labor of Statistics and after publicly being posted in the City's website for at least 60 calendar days.

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, or exchange for any form of consideration any:~~

1. Flavored tobacco products, parts, components, or flavored tobacco paraphernalia.

2. Bidis or Beedies products.

3. Electronic smoking devices, electronic nicotine delivery systems (E-cigarettes), vaping devices, including all parts and components.

4. Electronic smoking and vaping products, and vaping paraphernalia, including but not limited to, devices, parts and components, e-liquids, concentrates, waxes, etc.

5. CBD or hemp products, or any products made from, derivative of, or containing any amount of a Cannabis plant intended for human consumption.

~~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. Implementation: All existing legal Tobacco Retail Establishment owners shall have six (6) months from the effective date of these regulations to cease the sales of and remove all: (i) flavored tobacco products, including but not limited to any related flavored tobacco paraphernalia; (ii) electronic smoking devices, electronic nicotine delivery systems; and (iii) vaping devices, products and vaping paraphernalia; including but not limited to, devices, substances, parts and components. However, no grace period will be provided when a legal Tobacco Retail Establishment is sold or transferred. All Tobacco Retail Establishments shall abide by all Tobacco Retail Sales requirements and operational standards set forth herein.

~~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 Development Services Planning Director or his/her designee, in conjunction with the City's Code Enforcement Division and the Hayward Police Department. The Code Enforcement ~~Supervisor~~ Manager 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; and any necessary follow-up inspections of non-compliant Tobacco Retailers. The Hayward Police Department shall use reasonable efforts to conduct decoy inspection operations throughout the year to verify the Tobacco Retailers are compliant and are not selling to minors at any time. Nothing in this section shall create a right of action in any Tobacco Retail Sales Establishment or other ~~P~~person against the City or its agents ~~in conducting these annual inspections.~~

SEC. 10-1.2784 - LARGE-FORMAT TOBACCO RETAILERS.

- a. 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, with the exception of subsection "c." of this section.
- b. 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.
- c. The sale of tobacco products and tobacco paraphernalia in drugstores and pharmacies is hereby prohibited. Any existing drugstore or pharmacy with a valid City-issued Tobacco Retail License shall have six (6) months from the effective date of these regulations to cease the sales of all tobacco products and tobacco paraphernalia and remove all related products.

SEC. 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 and as follows:-

- a. Tobacco Retailer License Application Procedure:
 1. Application for a Tobacco Retailer License shall be submitted in the name of each ~~p~~Proprietor proposing to conduct tobacco retail sales and shall be signed by each ~~p~~Proprietor or an authorized agent thereof. It is the responsibility of each ~~p~~Proprietor to be informed regarding all laws applicable to tobacco retail sales, including those laws affecting the issuance of a Tobacco Retailer License. No ~~p~~Proprietor may rely on the issuance of a TRL as a determination by the City that the ~~p~~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 ~~p~~Proprietor shall be revoked pursuant to Section 10-1.279~~64~~ herein. Nothing in these regulations shall be construed to vest in any ~~P~~erson obtaining and maintaining a TRL any status or right to act as a Tobacco Retailer in contravention of any provision of law.
 2. After approval of a conditional use permit, a completed and executed All applications for a TRL shall be submitted on a form supplied by the City and shall contain the following information, but not limited to:
 - i. The name, address, and telephone number, and driver's license or state issued I.D. number of each ~~p~~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 ~~p~~Proprietor to receive all communications and notices (the "authorized address"). If an authorized address is not supplied,

each ~~p~~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~~
The valid state tobacco retailer's license number issued by the California Board of Equalization Department of Tax and Fee Administration. A copy of the California Cigarette and Tobacco Products Retailer's License and California Seller's Permit must be provided with the TRL application.[;]
 - v. Whether or not any ~~p~~Proprietor or any agent of the ~~p~~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 ~~p~~Proprietor that no drugs or 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 or designee deems necessary for the administration or enforcement of these regulations as specified on the application form required by this section, including however not limited to 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 or does not qualify under any exemptions 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~~ Department of Tax and Fee Administration.;
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~~ five 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 ~~P~~proprietor must complete all of the following:

- i. Submit the TRL fee, including any fees for late renewal, and application renewal form;~~and.~~
 - ii. Submit a signed affidavit affirming that the ~~p~~P~~roprietor~~ 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. ~~Pay 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 ~~p~~P~~erson~~ to another or from one location to another. A new TRL is required whenever a Tobacco Retail Sales Establishment has a change in ~~p~~P~~roprietor~~(s).
- e. TRL Conveys a Limited, Conditional Privilege: Nothing in these regulations shall be construed to grant any ~~p~~P~~erson~~ 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. A TRL 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~~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 the TRLa 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 calendar 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 check inspections at least annually in addition to follow-up inspections for non-compliance 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.

SEC. 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 are only allowed in the General Commercial (CG) Zoning District and shall apply for and obtain approval of a conditional use permit, as set forth in HMC Section 10-1.2815 and any other applicable City regulation, 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, but not limited to:

1. No new Tobacco Retail Sales Establishments shall be established or located within ~~500~~1,000 feet from any existing residential district or use, any sensitive receptors, or similar use as determined by the Planning Development Services Director, or within 500 feet of any other approved 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:
 - i. ~~a~~a map, drawn to scale, showing how their proposed business location meets the ~~mentioned~~ location and separation requirements as part of the conditional use permit application.
 - ii. 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.
 - iii. 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.

iv. A plan for demonstrating the means by which the applicant will comply with Section 10-1.2783, Requirements and Operational Standards for Tobacco Retail Sales.

c. Any Tobacco Retail Sales Establishment legally in existence as of the effective date of these regulations will not be required to obtain a conditional use permit and will be deemed a legal non-conforming use for Zoning purposes as it pertains to the provisions this Section, 10-1.2786. Such legal non-conforming status will not apply to any other provisions of the Tobacco Retail Sales Establishment Ordinance requirements adopted herein. In order to maintain its legal zoning non-conforming status, each such Tobacco Retail Sales Establishment must comply with all Requirements and Operational Standards Section 2783 and the Non-Conforming Use regulations set forth in Section 10.1.2900 et seq.

SEC. 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.

SEC. 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: ~~R~~ 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.~~

~~SEC. 10-1.2790-2789~~ - PROHIBITED LAND USES.

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

~~SEC. 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~~2790 - LIABILITY FOR EXPENSES.

Any ~~p~~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 and penalty fees, and all costs and expenses to ascertain compliance with previously noticed violations shall be charged to the Proprietor(s) owner of the Tobacco Retail Sales Establishment, as ~~may be~~ set by the City Council in the Master Fee Schedule. However, the City reserves the right to recover any and all outstanding enforcement costs and charges incurred by the Tobacco Retail Sales Establishment from the Property Owner for non-compliance or non-payment pursuant to Chapter 5, Article 7 of the Hayward Municipal Code and Section 10-1.2793, or any other available legal remedy.

SEC. 10-1.~~2793~~2791 - INSPECTION AND RIGHT OF ENTRY.

To the extent permissible by law, the Planning Director or his/her 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, or 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~~2792 - PUBLIC NUISANCE.

It shall constitute a public nuisance for any ~~p~~Person to operate or allow to operate a Tobacco Retail Sales Establishment in violation of these regulations.

SEC. 10-1.~~2795~~2793 - CUMULATIVE REMEDIES.

Any ~~p~~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. 10-1.27962794 - REVOCATION OF TOBACCO RETAILER LICENSES AND
CONDITIONAL USE PERMITS; APPEALS.

- a. ~~In addition to the remedies set forth in Section 10-1.2793, A~~ny Tobacco Retail Sales Establishment ~~that violates in violation of~~ these regulations three (3) times within a ~~three~~five-year period shall be ~~subject to~~ ~~referred to the Planning Commission~~ ~~subject to~~for review. ~~A third violation within such five-year period shall result in~~ revocation of ~~its~~ ~~the~~ Tobacco Retail License ~~and/or~~ ~~its~~ ~~e~~Conditional Use Permit, ~~unless the business can demonstrate by clear and convincing evidence that a lesser penalty is warranted.~~
- b. For Large-Format Tobacco Retail Sales Establishments, ~~as defined in Section 10-1.2784.a, a~~ 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 and/or Chapter 5, Article 7 of the Hayward Municipal Code.~~
- c. For ~~any~~ Tobacco Retail Sales Establishments ~~found to be in violation of Section 10-1.2794.a that have operating with~~ a Conditional Use Permit or ~~that are deemed~~ a 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 the Hayward Municipal~~ Code. Appeals shall be governed by Section 10-1.2845 of ~~this the Hayward Municipal~~ Code.
- d. ~~The hearing officer in the case of administrative action under 10-1.27964 subsection (a), or the Planning Commission, in the case of administrative action under 10-1.27964 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~~

SEC. 10-1.~~2797-2795~~ - ANNUAL REPORT.

An annual report shall be provided to the City Council regarding the ~~implementation~~ enforcement of these provisions, ~~unless Council no longer requests such repo~~ including but not limited to, administrative and enforcement compliance data.