



## SUBJECT

City Initiated Revocation Proceedings of Tobacco Retailer Licenses for Commercial Properties Within the City of Hayward Where License Holders Committed Three or More Violations Within a Five-Year Period, Pursuant to Hayward Municipal Code Section 10-1.2794.

## RECOMMENDATION

Staff recommends that the Planning Commission revoke the Tobacco Retailer Licenses for four commercial establishments that have committed violations of the Hayward Municipal Code as detailed in this staff report and related Attachments. As detailed in Attachments III-VI, each establishment has committed three (3) or more violations within a five (5) year period, satisfying the criteria requiring revocation under Hayward Municipal Code Section 10-1.2794.

## SUMMARY

On July 1, 2014, the City Council adopted Ordinance 14-16 establishing the Tobacco Retail Sales Establishment provisions of the Hayward Municipal Code (HMC). The Ordinance was adopted by the City of Hayward as part of the City's effort to regulate the sale of tobacco products, reduce youth access, and establish a comprehensive licensing and enforcement framework for tobacco retailers. The Ordinance requires all tobacco retail establishments obtain a valid Tobacco Retailer License and comply with applicable federal, state, and local laws governing the sale and distribution of tobacco products. Additionally, the Ordinance expanded prohibited product categories, including flavored tobacco products and vaping-related items, and reinforced enforcement tools, compliance timelines, and inspection authority.

The Ordinance was amended in 2020 to include a strengthened enforcement framework. Following those amendments, retailers have received numerous educational and compliance-focused inspections intended to support understanding of applicable requirements and promote voluntary compliance. Despite these ongoing outreach efforts, regular inspections, and provision of written notices of violations, multiple establishments have continued to demonstrate non-compliance with local and state tobacco regulations, as documented in Attachments III-VI.

Pursuant to HMC Section 10-1.2794, the Planning Commission is *required* to revoke Tobacco Retailer Licenses where, it is established by a *preponderance of the evidence*, that a retailer has committed three (3) or more violations of the Tobacco Retail Sales Ordinance (HMC Section 10-1.2780) within a five (5) year period, unless the retailer demonstrates by *clear and convincing evidence* that a lesser penalty is warranted.

The tobacco retail establishments listed in **Table 1** have committed three (3) or more violations in a five (5) year period. Attachment II to this report contains a summary table listing the

violations for each establishment. Attachments III-VI contain evidence for each violation for each business.

**Table 1. Business with 3 or more Violations (Failed Inspections)**

Business Name	Address	# of Violations	Appeals	Evidence Attachment
Hayward Food and Gas	391 W A St	6	None	Attachment III
Smokey's Smoke Shop & Gifts	25088 Hesperian Blvd	6	1 Denied	Attachment IV
Master Shell	22810 Foothill Blvd	5	None	Attachment V
The Gr8 Smoke Shop	1090 La Playa Rd	4	None	Attachment VI

## BACKGROUND

The Tobacco Retail Sales Establishment regulations were initially adopted by the City of Hayward through Ordinance No. 14-16 in 2014, codified under HMC Section 10-1.2780 et seq., as part of the City's effort to regulate the sale of tobacco products, reduce youth access, and establish a comprehensive licensing and enforcement framework for tobacco retailers<sup>1</sup>. The Ordinance requires all tobacco retail establishments obtain a valid Tobacco Retailer License and comply with applicable federal, state, and local laws governing the sale and distribution of tobacco products.

In 2020, the City Council adopted Ordinance No. 20-13, which amended and strengthened the original regulations in response to increasing public health concerns related to youth access to flavored tobacco products and electronic smoking devices. These amendments expanded prohibited product categories, including flavored tobacco products and vaping-related items, and reinforced enforcement tools, compliance timelines, and inspection authority. A six-month compliance period was provided for existing retailers to remove prohibited products from shelves and bring operations into compliance.

These local regulations operate in conjunction with broader state and federal tobacco control laws. At the state level, California enacted Senate Bill 793 (Proposition 31), which established a statewide prohibition on the retail sale of most flavored tobacco products, including menthol cigarettes, flavored vape products, and other characterizing flavored tobacco items, subject to limited exemptions. The law reflects California Health and Safety Code Section 104559.5 and is intended to reduce youth initiation and overall tobacco use. Federal requirements also apply to all retailers and operate in conjunction with state and local regulations.

<sup>1</sup> Hayward Municipal Code Section 10-1.2780, Tobacco Retail Establishments.  
[https://library.municode.com/ca/hayward/codes/municipal\\_code?nodeId=HAYWARD\\_MUNICIPAL\\_CODE\\_CH10PL\\_ZOSU\\_ART1ZOOOR\\_S10-1.2780TORESAES](https://library.municode.com/ca/hayward/codes/municipal_code?nodeId=HAYWARD_MUNICIPAL_CODE_CH10PL_ZOSU_ART1ZOOOR_S10-1.2780TORESAES)

The City's Tobacco Retail License program is designed to ensure compliance with this layered regulatory framework by requiring adherence to all applicable federal, state, and local laws. As such, Hayward's Ordinance is structured to align with and reinforce state and federal tobacco control objectives, including the statewide flavored tobacco restrictions, while also allowing the City to impose additional local enforcement standards where authorized.

Since the implementation of the City's strengthened enforcement framework in 2020, retailers have received numerous educational and compliance-focused inspections intended to support understanding of applicable requirements and promote voluntary compliance. Each tobacco retail establishment is inspected to verify compliance with the Tobacco Retail Sales Establishment provisions. If the tobacco retail establishment is found in violation, the City sends the property owner a Notice of Violation and assesses penalties as established by the Master Fee Schedule. Each property owner has the right to appeal any Notice of Violation. Despite these ongoing outreach efforts, regular inspections, and provision of written Notices of Violation, multiple establishments have continued to demonstrate non-compliance with local and state tobacco regulations, as documented in the attached evidence.

In 2025, the City applied for and received a 2025 Department of Justice (DOJ) Tobacco Grant to strengthen enforcement efforts. As a result, the City enforcement efforts were centralized under one Code Enforcement Inspector which has resulted in better program oversight and coordination with state and federal tobacco enforcement agencies improving identification of hidden contraband and acquisition of evidence. These changes have improved Code Enforcement's ability to monitor, inspect and bring these businesses before the Planning Commission to consider revocation of the Tobacco Retail License (TRL).

## **HEARING PROCEDURES, BURDEN OF PROOF, APPEALS**

The following procedures govern the TRL revocation process. Such proceedings shall be conducted before the City of Hayward Planning Commission pursuant to HMC Section 10-1.2794 and related provisions. Details regarding the Order of Proceedings for revocation are included in Attachment VII.

### **1. Legal Basis for Revocation**

Under HMC Section 10-1.2794, a Tobacco Retail License is subject to mandatory revocation upon a finding that the Retailer has incurred three (3) or more violations of the City's Tobacco Retail Sales Requirements and Operational Standards set forth in HMC Section 10-1.2783 within any five (5) year period.

Qualifying violations include those listed in HMC Section 10-1.2783, which include, but are not limited to, the following:

- Sale of tobacco products to persons under the age of 21;
- Sale or offer for sale of flavored tobacco products;
- Sale of electronic smoking devices;

- Sale of electronic smoking and vaping products including e-liquids, concentrates, etc.;
- Sale of CBD, hemp products and any amount of Cannabis;
- Failure to maintain required signage, age-verification practices, or product placement standards;
- Sale of imitation tobacco;
- Violation of any local, State, or Federal law applicable to tobacco or electronic smoking products and paraphernalia;
- Violation of any local, State, or Federal law regulating controlled substances or drug paraphernalia, including California Health and Safety Code Section 11364.7 (Possession for Sale of Drug Paraphernalia);
- Failure to secure all tobacco products and/or paraphernalia so that only store employees have immediate access to those items;
- Maintaining self-service displays of tobacco products and electronic smoking devices;

## **2. Burden of Proof**

Pursuant to HMC Section 10-1.2794(a) the initial Burden of Proof rests with the City. The City must establish, by a preponderance of the evidence, that the licensee has committed three (3) or more violations within a five (5) year time period.

Under the “preponderance of evidence” standard, the evidence must show that it is more likely than not that each charged violation occurred. In other words, if the Planning Commission establishes that there is a 51% probability that the fact or claim occurred, then “preponderance of the evidence,” has been established.

If the Planning Commission finds that it is more likely than not that the Retailer has committed three (3) or more violations within a five (5) year period, the Tobacco Retail License or Conditional Use Permit “shall” be revoked, unless the Retailer can demonstrate by clear and convincing evidence that a lesser penalty is warranted. Lesser penalties can include, but are not limited to suspension, abatement and/or additional administrative citations/penalty fees.

The “clear and convincing” burden of proof is higher than the “preponderance of evidence,” standard, and requires that the party present evidence that leaves the Planning Commission with the firm belief or conviction that the fact or claim is highly probable (that a lesser penalty is warranted).

## STAFF ANALYSIS

Staff recommends that the Planning Commission revoke the Tobacco Retailer Licenses for each of the commercial establishments based on the information provided in this staff report and the evidence provided in the related Attachments III through VI. Each establishment was given multiple opportunities to remedy its violations and achieve compliance with the City's Tobacco Retailer License requirements, yet each persistently failed to do so. The violations extend beyond the unlawful sale of tobacco products and include serious criminal activity such as the sale of illegal drugs. This pattern of conduct has created significant public nuisances, posed grave risks to community health and safety, and undermined the integrity of the City's regulatory framework — particularly given that many of the implicated regulations are designed to protect minors from harmful products and associated criminal activity, as will be further discussed in this report and detailed in the related Attachments.

The most frequently observed violations include continued sales and/or possession for sale of flavored tobacco products, electronic smoking devices and vape products in violation of applicable regulations, and deficiencies related to expired, missing, or improperly posted tobacco retail licensing documentation. In several cases, these violations have persisted despite prior warnings, notices and follow-up inspections intended to achieve compliance.

Since implementation of the City's strengthened tobacco retail enforcement framework, businesses have received repeated educational inspections and compliance outreach intended to ensure understanding of both City requirements and applicable state and federal tobacco laws. It is the responsibility of each business owner and operator to actively research, monitor, and remain up to date on all applicable federal, state, and local laws that govern their operations, including but not limited to the City's Tobacco Retailer License Ordinance, California tobacco control laws, and federal minimum age restrictions. Ongoing compliance is not passive and requires continued attention to changes in law and regulatory requirements. Retailers are provided with access to the City's Ordinance and related guidance materials and are expected to maintain awareness of updates that may impact their business operations. Operators are also encouraged to contact Code Enforcement staff directly with any compliance questions or requests for clarification to ensure continued adherence to all applicable regulations.

Attachment II contains a table detailing the time and nature of the continued violations. Attachments III through VI contain detailed evidence of violations for each of the businesses. Each Attachment is organized to provide the following:

1. Summary of Evidence describes each violation, evidence provided, penalties assessed and due, and staff recommendation
2. Photographic evidence with description
3. Case and Inspection Detail Reports by case number which describes the case activity, detailed descriptions of the violations, photographic evidence associated with the case, and inspection activity and status
4. Violation Notices and Administrative Penalty and Fee Notices that were served on the property owner

5. Hayward Police Department Inventory of Unpermitted or Illegal Items which documents quantities of items found by the Hayward Police Department during recent inspections. If applicable

Collectively, these records demonstrate by preponderance of the evidence a pattern of repeated non-compliance across each establishment subject to the City's Tobacco Retailer License program.

Given the documented history of non-compliance, staff are providing this analysis to assist the Planning Commission in determining whether the circumstances presented warrant revocation of the Tobacco Retail License in accordance with HMC Section 10-1.2793. Staff does not recommend issuing a lesser penalty, given the severity of the violations, the number of opportunities these establishments have had to comply, and the danger to the public these establishments pose.

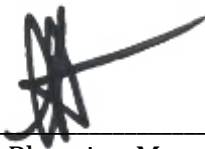
**NEXT STEPS**

The Planning Commission decision starts a 10-day appeal period pursuant to HMC Sections 10-1.2825 and 10-1.2845. If no appeal is received, the Commission's decision will become final. If an appeal is filed, then the City Council will schedule a hearing for a date to be determined.

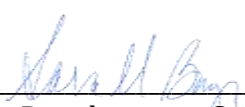
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