

**CITY OF SAN MATEO
ORDINANCE NO. 2015-16**

**AMENDING CHAPTER 7.41, "TOBACCO RETAILER PERMIT"
OF THE SAN MATEO MUNICIPAL CODE**

WHEREAS, the City Council introduced an ordinance on September 8, 2015, that is scheduled for adoption on October 5, 2015, altering the definition of "tobacco product" in San Mateo Municipal Code Chapter 7.40 and;

WHEREAS, the definition of "tobacco product" in Chapter 7.40 of SMMC will, upon adoption, now include both "tobacco and nicotine products", and;

WHEREAS, currently, SMMC Chapter 7.41 provides that sellers of any tobacco product must obtain, maintain, and annually renew a valid tobacco retailer permit issued by the Environmental Health Division of the San Mateo County Health Department and;

WHEREAS, the proposed amendment to Chapter 7.41.010 would refer to the definition of tobacco and nicotine in Chapter 7.40 thus requiring retailers to register for and obtain tobacco retailer permits for both tobacco and nicotine products including e-cigs and vapor products, and;

WHEREAS, this change in the definition of "tobacco product" will further the City Council's interest in providing more stringent regulation for the sale of e-cigarettes and vapor products by providing law enforcement and regulators additional regulatory tools,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN MATEO, CALIFORNIA, ORDAINS that:

Section 1. Chapter 7.41, "Tobacco Retailer Permit" of the San Mateo Municipal Code is amended to read as follows:

**Chapter 7.41
TOBACCO RETAILER PERMIT**

- 7.41.010 Requirement for a permit.**
- 7.41.020 Application, issuance and renewal procedure.**
- 7.41.030 Display of permit.**
- 7.41.040 Fees for permit.**
- 7.41.050 Permit is nontransferable.**
- 7.41.060 Enforcement of applicable law.**
- 7.41.070 Suspension of permit.**
- 7.41.080 Administrative fine.**
- 7.41.090 Authorization of enforcement by San Mateo County Personnel.**

7.41.010 REQUIREMENT FOR A PERMIT. It is unlawful for any retailer, individual, or entity to sell or offer for sale any tobacco products without first obtaining and maintaining a valid tobacco retailer's permit from the Environmental Health Division of the San Mateo County Health Department (the "Environmental Health Division") for each location where such sales are conducted. Permits are

valid for one year and shall be renewed annually. As used in Title 7 of this Code, the terms "tobacco" or "tobacco products" shall be defined as set forth in Section 7.40.020(l).

7.41.020 APPLICATION, ISSUANCE AND RENEWAL PROCEDURE.

(a) Application for a tobacco retailer's permit shall be submitted in the name of the entity or person proposing to conduct retail tobacco sales and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the Environmental Health Division and contain the following information:

- (1) The name, address and telephone number of the applicant;
- (2) The business name, address, and telephone number of each location where tobacco is retailed; and
- (3) Such other information as the Director of the Environmental Health Division or his or her designee (the "Director") determines is necessary for implementation of this ordinance codified in this chapter.

(b) Applicants for renewal must follow the application procedures set forth in subsection (a). A renewal for a tobacco retailer's permit will be denied if the application is for a person or location for which a suspension is in effect. (Ord. 2008-12 § 1, 2008; Ord. 1998-11 § 1, 1998).

7.41.030 DISPLAY OF PERMIT. Upon receipt of an application for a tobacco retailer's permit, the Director shall issue a permit which must be prominently displayed at each location where tobacco retail sales are conducted. (Ord. 2008-12 § 1, 2008; Ord. 1998-11 § 1, 1998).

7.41.040 FEES FOR PERMIT. The fee for tobacco retailer's permit shall reflect the County's costs of processing the permit and regulating compliance with this chapter and shall be contained in Section 5.64.070 of the San Mateo County Code. (Ord. 2008-12 § 1, 2008; Ord. 1998-11 § 1, 1998).

7.41.050 PERMIT IS NONTRANSFERABLE. Tobacco retailer's permits are nontransferable as between entities, retailers, individuals, locations or otherwise. (Ord. 2008-12 § 1, 2008; Ord. 1998-11 § 1, 1998).

7.41.060 ENFORCEMENT OF APPLICABLE LAW. If an agent or employee of the tobacco retailer violates any provisions of this chapter or any federal or state tobacco related law, the tobacco retailer shall immediately report the violation to the Police Department and the Environmental Health Division. (Ord. 2008-12 § 1, 2008).

7.41.070 SUSPENSION OF PERMIT.

(a) Grounds for Suspension. A tobacco retailer's permit may be suspended, as set forth below in subdivision (b), by the Director upon a finding, after notice and opportunity to be heard, that either of the following occurred:

- (1) After the permit was issued it was determined that the application for the permit is incomplete or inaccurate.
- (2) The permittee or his or her agent has violated any provision of this chapter or any federal or state tobacco-related law.

(b) Time Period of Suspension of Permit.

(1) Upon the first time that the Director makes the finding that either subsection (a)(1) or (a)(2) of this section has occurred, the permit to sell tobacco products shall be suspended for up to thirty (30) days.

(2) Upon the second time that the Director makes the finding set forth in subsection (a)(1) or (a)(2) of this section within twenty-four (24) months of the first determination, the permit to sell tobacco products shall be suspended for no less than thirty (30) days and up to 90 days.

(3) Upon the third and each subsequent time that the Director makes the finding set forth in subsections (1)(1) and (a)(2) within twenty-four months of a prior determination, the permit to sell tobacco products shall be suspended for no less than ninety (90) days and up to one year.

(c) Effective Date of Suspension.

(1) If the Director makes oral findings and issues an order of suspension at the hearing, the suspension will be effective ten (10) days from the date of the hearing, unless a timely appeal is filed in accordance with subsection (d).

(2) If the Director makes written findings and issues an order of suspension by certified mail after the hearing, the suspension will be effective fifteen (15) days from the date appearing on the notice of that finding and order of suspension, unless a timely appeal is filed in accordance with subsection (d).

(d) Appeal of Suspension.

(1) The decision of the Director may be appealed to the San Mateo County Licensing Board.

(2) An appeal must be in writing, be addressed to the Director and be hand-delivered to the offices of the Division of Environmental Health.

(3) An appeal must be received by the Division of Environmental Health before the effective date of suspension provided by subsections (c)(1) or (c)(2) in order to be considered.

(4) The filing of a timely appeal will stay a suspension pending a decision on the appeal by the San Mateo County Licensing Board.

(5) The decision of the San Mateo County Licensing Board shall be a final administrative order, with no further administrative right of appeal. (Ord. 2010-3 § 1, 2010; Ord. 2008-12 § 1, 2008; Ord. 1998-11 § 1, 1998).

7.41.080 ADMINISTRATIVE FINE.

(a) Ground for Fine. A fine may be imposed upon finding made by the Director, that any retailer, individual, or entity who is an owner of a retail establishment:

(1) does not have a valid tobacco retailer's permit; and

(2) offers for sale any tobacco, cigarette, or cigarette papers, or any other preparation of tobacco, or any other instrument or paraphernalia that is designed for the smoking or ingestion of tobacco or products prepared from tobacco.

(b) Amount of fine. Upon findings made under subsection (a), the retailer, individual, or entity who is an owner of a retail establishment shall be subject to an administrative fine as follows:

(1) A fine not exceeding one hundred dollars (\$100) for a first violation.

(2) A fine not exceeding two hundred dollars (\$200) for a second violation.

(3) A fine not exceeding five hundred dollars (\$500) for the third and subsequent violations.

(4) Each day that tobacco products are offered for sale without a permit shall constitute a separate violation. A finding of "offering for sale" will be made if these tobacco products are actually sold and or displayed in the retail establishment.

(c) Fine Procedures. Notice of the fine shall be served on the retailer, individual, or entity who is owner of the establishment by certified mail. The notice shall contain an advisement of the right to request a hearing before the Director or designee contesting the imposition of the fine. Said hearing must

be requested within ten days of the date appearing on the notice of the fine. The decision of the Director shall be a final administrative order, with no administrative right of appeal.

(d) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director or designee after the hearing, the fine shall be referred to an a collection agency within or external to the County. In addition, any outstanding fines must be paid prior to the issuance of any permit by the San Mateo County Environmental Health Division of the Department of Health and Department of Planning and Building. (Ord. 2008-12 § 1, 2008; Ord. 1998-11 § 1, 1998).

7.41.090 AUTHORIZATION OF ENFORCEMENT BY SAN MATEO COUNTY PERSONNEL.

The County of San Mateo, its officers, employees and agents are hereby authorized to enforce this ordinance on behalf of the City, within the jurisdiction areas of this city. Such enforcement authority includes, but is not limited to, the collection of fees and fines expending such revenue in the enforcement of the tobacco retailer requirements, holding hearings, suspending permits and issuing administrative fines. (Ord. 2008-12 § 1, 2008).

Section 2. SEVERABILITY. In the event any section, clause or provision of this Ordinance shall be determined invalid or unconstitutional, such section, clause or provision shall be deemed severable and all other sections or portions hereof shall remain in full force and effect. It is the intent of the City Council that it would have adopted all other portions of this Ordinance irrespective of any such portion declared to be invalid or unconstitutional.

Section 3. ENVIRONMENTAL DETERMINATION. In accordance with California Environmental Quality Act (CEQA) Guidelines section 15378(b)(5), this action is categorically exempt from (CEQA) as an administrative activity that will not result in a potentially significant physical impact on the environment.

Section 4. PUBLICATION. This Ordinance shall be published in summary in a newspaper of general circulation, posted in the City Clerk's Office, and posted on the City's website, all in accord with Section 2.15 of the City Charter.

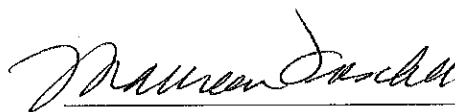
Section 5. LEGISLATIVE HISTORY AND EFFECTIVE DATE. This Ordinance was introduced on October 5, 2015 and adopted on November 2, 2015, and shall be effective thirty days after its date of adoption.

The foregoing ordinance was adopted by the City Council of the City of San Mateo, State of California by the following vote:

AYES: Council Members Freschet, Matthews, Bonilla, Goethals and Lim
NOES: None
ABSENT: None

ATTEST:


Patrice M. Olds, City Clerk


Maureen Freschet, Mayor