



## **City of Hayward Tobacco Retail Sales Regulations – Frequently Asked Questions**

Effective January 2014, all Tobacco Retail Sales establishments operating in the City of Hayward will be required to obtain an annual Tobacco Retailers License (TRL), which includes annual inspections and compliance with specific Operational Standards and Requirements in accordance with Section 10-1.2780 of the Hayward Municipal Code. The TRL will need to be renewed annually in conjunction with the City business license.

### **What is the purpose of a TRL?**

The purpose of the TRL is to allow the City to regulate the establishments that sell tobacco products in order to protect public health and safety by ensuring that retailers comply with responsible retailing practices. The TRL would help the City limit youth access to tobacco by controlling the location and density of tobacco retailers. It would also allow the City to provide additional restrictions on the sale and promotion of tobacco products to be enforced at the local level. All establishments would be subject to compliance with operational standards, as well as annual inspections. The enforcement provisions would give the City the ability to issue administrative fines, fees, penalties and/or citations or abatement notices to violators of the provisions of the ordinance. The issuance of a TRL will be subject to an annual fee of \$400.

### **What is considered a Tobacco Retail Sales establishment?**

A “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.

### **What products are considered tobacco products?**

“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.

### **How do I know if the Tobacco Retail Sales Regulations apply to my business?**

The Tobacco Retail Sales Regulations apply to any business establishment that sells tobacco products, including, but not limited to, convenience stores, grocery stores, tobacco stores, cigar stores, electronic cigarette stores, gas stations, and drug stores (i.e. any establishment that is required to obtain a State of California Cigarette and tobacco products license).

### **How will the Regulations affect existing Tobacco Retailers?**

All tobacco retail sales establishments legally operating in the City prior to the adoption of the Regulations are legal non-conforming uses and may continue to operate in accordance with Section 10-1.2900 of the City’s Zoning Ordinance – Non-Conforming Uses. Per the Non-Conforming Use provision of the City’s Zoning Ordinance, these retailers are allowed to continue operation as a tobacco retail sales establishment, as long as the non-conforming use is not expanded or has not been discontinued for a period of six consecutive months or more. All legal non-conforming establishments are required to obtain an annual TRL and comply with all Requirements and Operational Standards for Tobacco Retail Sales Establishments.

**How will existing Tobacco Retailers know when the ordinance becomes effective?**

Prior to the effective date of the Tobacco Retailers License (TRL) requirement, the City of Hayward shall give notice by mail a minimum of one month in advance, to each tobacco related business with a valid City of Hayward business license and State of California “Cigarette and tobacco products license.” The program notice will provide businesses and property owners with a TRL application and all pertinent information related to the TRL requirements.

**What if I want to open a new Tobacco Retail Sales Establishment in Hayward?**

New Tobacco Retail Sales Establishments are a permitted use in the General Commercial Zone (CG) with the approval of a Conditional Use Permit, which includes separation requirements from sensitive receptors (i.e., schools, parks, daycare centers, etc.), residential zoning districts and existing Tobacco Sales Establishments, and compliance with set operational standards and annual Tobacco Retailers License (TRL), including restrictions on the sale of single cigars, imitation tobacco products and flavored tobacco products. Large format retailers are exempt from the Conditional Use Permit requirements; however, they must obtain an annual TRL and comply with all requirements and Operational Standards for Tobacco Retail Sales Establishments.

**What is the purpose of the minimum pack size for cigars that cost \$5 or less?**

The purpose of this restriction is to reduce youth access to these flavored and/or inexpensive tobacco products. Flavored cigars are commonly sold individually or in small packages. These products are often low-priced and flavored like candy, making them especially attractive to young people. Selling cigars individually, whether flavored or not, makes them cheaper and easier for youth to buy. Some little cigars and cigarillos are packaged for individual retail sale, and others are taken out of their original packaging and sold individually by the retailer. The purpose of the cost threshold is not to prevent the sale of single premium (more expensive) cigars to adults.

**What kind of documentation will be required to confirm flavored tobacco sales occurred prior to adoption of ordinance, so that such businesses can continue to sell such products?**

Existing business owners that were selling flavored tobacco products at the time of the adoption of the ordinance will need to provide documentation, such as a copy of an invoice. This will be noted on the initial TRL license and carried forward on annual renewals. This will allow the business to continue to sell any flavored tobacco products, as permitted by law.

**If I sell my business that the City has acknowledged can continue to sell flavored tobacco products (see response above), will the new owner also be able to continue selling flavored tobacco products?**

Yes; however, the new owner of a legal non-conforming tobacco retail sales establishment will have to apply for a change of ownership on the TRL. The new owner will not need to re-pay the TRL fee as the fee covers the business/location for the twelve month period. The new owner would be able to continue the sale of *all* tobacco products that the prior owner was legally permitted to sell, including flavored tobacco.

**Why are large format retailers exempt from the restrictions of this ordinance?**

Large format retailers (i.e. grocery stores, big box stores, etc.) have been exempted from some of the provisions of the Tobacco Retail Sales Regulations for a variety of reasons, most notably that studies have shown that sales of tobacco and tobacco products to youths are typically not occurring at the larger establishments<sup>1</sup>. Furthermore, since the Hayward Police Department began conducting the Youth Decoy Operations in 2010, of the 93 citations issued, only three occurrences (or 3% of violations) were at large format retailers. The remaining 90 citations (97%) were issued to gas stations, convenience stores, and tobacco stores.

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[http://www.cdph.ca.gov/programs/tobacco/Documents/CTCP\\_RetailerPresentation07.pdf](http://www.cdph.ca.gov/programs/tobacco/Documents/CTCP_RetailerPresentation07.pdf)