

ORDINANCE NO. 833

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GRASS VALLEY AMENDING CHAPTER 5.56 OF TITLE 5 OF THE GRASS VALLEY MUNICIPAL CODE REGULATING TOBACCO RETAILERS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GRASS VALLEY

SECTION 1. CODE ADOPTION. Chapter 5.56 (“Tobacco Retailer License”) of Title 5 (“Business Licenses and Regulations”) of the Grass Valley Municipal Code is hereby amended and restated as set forth in Exhibit “A” attached to this Ordinance and incorporated by reference.

SECTION 2: CEQA FINDINGS. This Ordinance sets out the rules and regulations pertaining to tobacco retailer licenses. As a purely administrative and regulatory action, it will not affect the physical environment. This Ordinance is not a project within the meaning of California Environmental Quality Act (CEQA) Guidelines, California Code of Regulations, title 14, section 15378 because it has no potential to result in physical change in the environment, directly or indirectly. It is also exempt from CEQA review under CEQA Guidelines, California Code of Regulations, title 14, section 15061(b)(3) because it can be seen with certainty that there is no possibility that the adoption of this Ordinance may have a significant effect on the environment.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons and circumstances. The City Council of the City of Grass Valley hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION 4. INCONSISTENT PROVISIONS. Any provision of the Grass Valley Municipal Code inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to give effect to this Ordinance.

SECTION 5. EFFECT OF ADOPTION. It is the intent of the City Council of the City of Grass Valley that the Grass Valley Municipal Code sections affected by this Ordinance shall not be considered repealed and reenacted in their amended form; that the portions which are not altered are to be considered as having been the law from the time when they were enacted; that the new provisions are to be considered as having been enacted at the time of the amendment; and that the omitted portions are to be considered as having been repealed at the time of the amendment.

SECTION 6. EFFECTIVE DATE. This Ordinance shall be in full force and effect 30 days after its adoption pursuant to Article VII, § 2 of the Grass Valley City Charter.

SECTION 7. PUBLICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published once in *The Union*, a newspaper of general circulation printed, published, and circulated within the City.

INTRODUCED and first read at a regular meeting of the City Council on the 11th day of February 2025.

FINAL PASSAGE AND ADOPTION by the City Council was at a meeting thereof held on the ____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Hilary Hodge, Mayor

APPROVED AS TO FORM:

ATTEST

Michael G. Colantuono, City Attorney

Taylor Whittingslow, City Clerk

EXHIBIT A

Chapter 5.56: TOBACCO RETAILER LICENSE

Section 5.56.010 – Definitions.

The following words and phrases, whenever used in this chapter shall have the meanings defined in this section unless the context clearly requires otherwise:

- A. “Arm’s length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value between two informed and willing parties, neither of which is under any compulsion to participate in the transaction.
- B. “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- C. “Cannabis product” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- D. “Cannabis retailer” means any retail establishment in which cannabis or cannabis products are sold or offered for sale to persons that do not hold a license to engage in commercial cannabis activity issued by the State of California in accordance with the Business and Professions Code Section 26000 et seq., as that section may be amended from time to time.
- E. “Child-resistant packaging” means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- F. “Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than 4.5 pounds per thousand.
- G. “Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.
- H. “Compliance checks” means systems the Department uses to investigate and ensure that tobacco retailers are following and complying with the

requirements of this chapter. Compliance checks may involve the use of persons between the ages of 16 and 20 who purchase or attempt to purchase tobacco products. Compliance checks may also be conducted by the Department or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to tobacco products.

I. “Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

J. “Delivery sale” means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a tobacco retail establishment. Delivery sale includes the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

K. “Department” means the Grass Valley Police Department and any agency or person designated by the Department to enforce or administer the provisions of this chapter.

L. “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

M. “Flavored tobacco product” means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.

N. "Full retail price" means the price listed for a tobacco product on its packaging or on any related shelving, advertising, or display where the tobacco product is sold or offered for sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

O. "Little cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than 4.5 pounds per thousand. "Little Cigar" includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.

P. "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.

Q. "Moveable place of business" means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

R. "Nitrous oxide" means a colorless, nonflammable gas (N₂O) sometimes used in aerosols and sometimes used as an anesthetic, which, when inhaled, produces loss of sensibility to pain, often preceded by exhilaration and laughter and used often as an anesthetic in dentistry. Nitrous oxide is oftentimes called "laughing gas."

S. "Nitrous oxide device" means any cartridge, compressed gas cylinder, apparatus, container, or other device intended or designed to be used to contain or dispense or administer nitrous oxide.

T. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

U. "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed 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 in addition to prescription pharmaceuticals.

V. "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole

interest of security for debt. A managerial interest shall be deemed to exist when a person has or shares ultimate control over the day-to-day operations of a business.

W. "Recreation facility" means an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes, and includes but is not limited to a gymnasium, playing court, playing field, and swimming pool.

X. "Sale" or "sell" means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.

Y. "Self-service display" means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

Z. "Significant tobacco retailer" means any tobacco retailer for which the principal or core business is selling tobacco products, tobacco paraphernalia, or both, as evidenced by any of the following: 1% or more of floor or display area is devoted to tobacco products, tobacco paraphernalia, or both; 20% or more of gross sales receipts are derived from tobacco products, tobacco paraphernalia, or both; or 20% or more of completed sales transactions include tobacco products or tobacco paraphernalia.

AA. "Smoking" means inhaling, exhaling, burning, possessing, or carrying any lighted or heated cigar, cigarette, tobacco product, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, synthetic nicotine, nicotine analog, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. "Smoking" includes using an electronic smoking device.

BB. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for and/or capable of being used for the smoking, preparation, storing, or consumption of tobacco products. It does not include lighters, matches or other ignition products.

CC. "Tobacco product" means:

1. any product containing, made of, or derived from tobacco, nicotine, synthetic nicotine, and/or nicotine analog that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
2. any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
3. any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

“Tobacco product” does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

DD. “Tobacco retailer” means any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.

EE. “Tobacco retailing” means engaging in the activities of a tobacco retailer.

FF. “Youth-oriented facility” means a parcel in the city that is occupied by:

1. a private or public kindergarten, elementary, middle, junior high, or high school;
2. a library open to the public;
3. a playground open to the public;
4. a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
5. a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes;
6. a park open to the public or to all the residents of a private community;

7. a licensed child-care facility or preschool other than a small-family day care home or a large-family day care home as defined in California Health & Safety Code § 1596.78;

Section 5.56.020 – General requirements and prohibitions.

A. TOBACCO RETAILER'S LICENSE REQUIRED. It shall be unlawful for any person to engage in tobacco retailing in the city without first obtaining and maintaining a valid tobacco retailer's license for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law.

B. LAWFUL BUSINESS OPERATION. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to the sale of tobacco products.

C. SMOKING PROHIBITED. Smoking, including smoking for the purpose of sampling any tobacco product, is prohibited within the indoor area of any retail establishment licensed under this chapter. Smoking is also prohibited outdoors within 25 feet of any retail establishment licensed under this chapter.

D. MINIMUM LEGAL SALES AGE. No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.

E. DISPLAY OF LICENSE. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

F. POSITIVE IDENTIFICATION REQUIRED. No person engaged in tobacco retailing shall sell a tobacco product to another person without first verifying by means of government issued photographic identification that the recipient is at least 21 years of age.

G. SELF-SERVICE DISPLAYS PROHIBITED. Tobacco retailing by means of a self-service display is prohibited.

H. ON-SITE SALES. All sales of tobacco products shall be conducted in-person in the licensed location. It shall be a violation of this chapter for any tobacco retailer or any of the tobacco retailer's agents or employees to engage in the delivery sale of tobacco products or to knowingly or recklessly sell or provide tobacco products

to any person that intends to engage in the delivery sale of the tobacco product in the city.

I. NITROUS OXIDE. It shall be unlawful for a tobacco retailer to sell, offer, distribute, or otherwise provide to any person nitrous oxide or a nitrous oxide device. This section shall not apply to:

1. The administration of nitrous oxide by a medical or dental practitioner licensed by the state or at the direction or under the supervision of a practitioner licensed by the state for the purpose of providing medical or dental care;
2. The sale or distribution of nitrous oxide as a propellant in food products such as whipped cream by Tier one commercial edible food generators, as defined in Section 8.24.010;
3. The sale or distribution of nitrous oxide by a wholesaler licensed by the Board of Pharmacy or manufacturer classified under Code Number 325120 or 424690 of the North American Industry Classification system (NAICS); or
4. Any other sale or distribution under an express exemption pursuant to Penal Code sections 381b through 381e.

Section 5.56.030 – Sale of flavored tobacco products prohibited.

A. FLAVORED TOBACCO PRODUCT SALES PROHIBITED. It shall be unlawful for any tobacco retailer to sell any flavored tobacco product.

B. PRESUMPTIVE FLAVORED TOBACCO PRODUCT. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has a taste or smell other than tobacco shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Section 5.56.040 – Tobacco product pricing and packaging.

A. PACKAGING AND LABELING. No tobacco retailer shall sell any tobacco product to any consumer unless the tobacco product: (1) is sold in the manufacturer's packaging intended for sale to consumers; (2) conforms to all applicable federal labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.

B. DISPLAY OF PRICE. The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.

C. DISTRIBUTION OF TOBACCO SAMPLES OR PROMOTIONAL ITEMS. It is unlawful for any person to distribute free or nominally priced tobacco products.

D. PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS. No tobacco retailer shall:

1. honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;
2. sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item; or
3. provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.

Section 5.56.050 – Limits on eligibility for a tobacco retailer license.

A. MOBILE VENDING. No license may issue to authorize tobacco retailing at other than a fixed location. No tobacco retail license will be issued to a moveable place of business.

B. LICENSED CANNABIS BUSINESSES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing at a location licensed for commercial cannabis activity by the State of California under Business and Professions Code Division 10.

C. PHARMACIES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.

D. PROXIMITY TO YOUTH-ORIENTED FACILITIES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing by a significant tobacco retailer within 1,000 feet of a youth oriented facility as measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.

1. Notwithstanding the forgoing, a tobacco retailer operating lawfully on the effective date of this ordinance that otherwise would be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as:

- i. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
- ii. the significant tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than 60 consecutive days;
- iii. the significant tobacco retailer does not substantially change the business premises or business operation; and
- iv. the significant tobacco retailer retains the right to operate under other applicable laws, including without limitation the city's development code, building codes, and business license ordinance.

E. PROXIMITY TO OTHER SIGNIFICANT TOBACCO RETAILERS. No license may issue, and no existing license may be renewed, to authorize tobacco retailing by a significant tobacco retailer within 500 feet of a significant tobacco retailer location already licensed pursuant to this chapter as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing significant tobacco retailer's business is located.

1. Notwithstanding the forgoing, a significant tobacco retailer operating lawfully on the effective date of this ordinance that otherwise would be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as:

- i. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
- ii. the significant tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than 60 consecutive days;
- iii. the significant tobacco retailer does not substantially change the business premises or business operation; and

iv. the significant tobacco retailer retains the right to operate under other applicable laws, including without limitation the city's development code, building codes, and business license ordinance.

F. PROXIMITY TO CANNABIS RETAILERS. No license may issue, and no existing license may be renewed, to authorize tobacco retailing by a significant tobacco retailer within 2,000 feet of an existing cannabis retailer as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing cannabis retailer's business is located.

1. Notwithstanding the forgoing, a tobacco retailer operating lawfully on the effective date of this ordinance that otherwise would be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as:

i. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);

ii. the significant tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than 60 consecutive days;

iii. the significant tobacco retailer does not substantially change the business premises or business operation; and

iv. the significant tobacco retailer retains the right to operate under other applicable laws, including without limitation the city's development code, building codes, and business license ordinance.

G. POPULATION AND DENSITY. The issuing of tobacco retailer licenses is limited as follows:

1. The total number of tobacco retailer licenses issued to significant tobacco retailers within the city shall be limited to one for each 3,000 inhabitants of the city.

2. For the purposes of this subsection, the total population of the city shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed. For purposes of calculating the limit established by this

subsection, a fraction of .5 or more shall be rounded up to the next whole number. A fractional amount of less than .5 shall be rounded down to the next whole number.

3. No new license may issue to authorize tobacco retailing by a significant tobacco retailer if the number of significant tobacco retailers already issued equals or exceeds the total number authorized pursuant to subsection (1).

4. Notwithstanding the forgoing, a significant tobacco retailer operating lawfully on the effective date of this ordinance that otherwise would be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as:

- i. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
- ii. the significant tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than 60 consecutive days;
- iii. the significant tobacco retailer does not substantially change the business premises or business operation; and
- iv. the significant tobacco retailer retains the right to operate under other applicable laws, including without limitation the city's development code, building codes, and business license ordinance.

Section 5.56.060 – Application Procedure.

A. An application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. All applications shall be submitted on a form supplied by the Department.

B. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to Section 5.56.130(C) of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.

C. Applicant submissions shall contain the following information:

1. The name, address, and telephone number of each proprietor of the business seeking a license.
 2. The business name, address, and telephone number of the location for which a license is sought.
 3. The name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this chapter.
 4. Proof that the location for which a tobacco retailer's license is sought has been issued all necessary state licenses for the sale of tobacco products.
 5. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this chapter or any other local, state, or federal law governing the sale of tobacco products, and if so, the dates and locations of all such violations within the previous five years.
 6. A signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product without a license required by this chapter.
 7. Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.
- D. A licensed tobacco retailer shall inform the Department in writing of any change in the information submitted on an application for a tobacco retailer's license within 10 business days of a change.

Section 5.56.070 – License issuance or denial.

- A. **ISSUANCE OF LICENSE.** Upon the receipt of a complete and adequate application for a tobacco retailer's license and the license fee required by this chapter, the Department may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.
- B. **DENIAL OF APPLICATION.** The Department may deny an application for a tobacco retailer's license based on any of the following:

1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter;
2. The application seeks authorization for tobacco retailing at a location for which this chapter prohibits a license to be issued;
3. The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued; or
4. The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this chapter, that is unlawful pursuant to any other chapter of this Code, or that is unlawful pursuant to any other law.
5. Any other suitable reason the granting of a license to the applicant is not consistent with the public health and welfare, including the applicant's history of noncompliance with this chapter and other laws relating to the sale of tobacco products.

5.56.080 – License renewal and expiration.

A. RENEWAL OF LICENSE. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is 1 calendar year. Each tobacco retailer shall apply for the renewal of their tobacco retailer's license and submit the license fee no later than 30 days prior to expiration of the current license. A retailer that fails to timely submit a renewal application and fee is ineligible for license renewal and must submit a new application pursuant to Section 5.56.060.

5.56.090 – Licenses not transferable, past violations at retail location.

A. LICENSES NOT TRANSFERRABLE. A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietors.

B. PAST VIOLATIONS. Notwithstanding any other provisions of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

1. the location has been transferred to new proprietor(s) in an arm's length transaction;

2. the new proprietor(s) provide the city with clear and convincing evidence that the new proprietor(s) have acquired the location in an arm's length transaction; and
3. no former proprietor retains any ownership or managerial interest in the location.

5.56.100 – License conveys a limited, conditional privilege.

Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the city identified on the face of the permit. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

5.56.110 – Fee for license.

The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the city council. The fee shall be calculated so as to recover the total cost of administration and enforcement of this chapter, including, but not limited to, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

5.56.120 – Compliance Monitoring.

- A. Compliance with this chapter shall be monitored by the Department. In addition, the city may designate additional persons to monitor compliance with this chapter. All licensed premises must be open to inspection by city staff or designated persons during regular business hours.
- B. The Department may inspect each tobacco retailer 1 or more times in a 12 month period to ensure compliance with this chapter.
- C. The Department may conduct 1 or more compliance checks per 12-month period that involves the participation of persons between the ages of 16 and 20 to enter licensed premises to attempt to purchase tobacco products.

D. The Department may examine and audit the books, business records, and inventory of a tobacco retailer to ensure compliance with this chapter upon request during regular business hours.

E. Nothing in this section shall create a right of action in any licensee or other person against the city or its agents.

5.56.130 – Suspension or revocation of license.

A. **SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION.** In addition to any other penalty authorized by law, a tobacco retailer's license may be suspended or revoked if the Department finds, based on a preponderance of the evidence, that the licensee, or any of the licensee's agents or employees, have violated any of the requirements, conditions, or prohibitions of this chapter; such violation is determined by any court of competent jurisdiction; or the licensee has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 5.56.020 above. Enforcement shall be stayed during the pendency of an appeal which is properly and timely filed, unless a stay would jeopardize public health, safety, or welfare. During any period of license suspension, all tobacco products must be removed from public view.

1. Upon a finding by the Department of a first violation of this chapter at a location, the license may be suspended for up to 30 days.

2. Upon a finding by the Department of a second violation of this chapter at a location within any 5-year period, the license may be suspended for up to 90 days.

3. Upon a finding by the Department of a third violation of this chapter at a location within any 5 year period, the license may be suspended for up to 1 year.

4. Upon a finding by the Department of four or more violations of this chapter at a location within any 5 year period, the license may be revoked.

B. **APPEAL OF SUSPENSION OR REVOCATION.** A decision of the Department to suspend or revoke a license is appealable. Any appeal must be filed in writing with the City Clerk within 10 days of receipt of the Department's decision.

1. The appeal must be in writing on a form provided by the City, state the specific reasons for the appeal and the grounds asserted for relief, and be accompanied by a nonrefundable appeals processing fee set by City Council resolution. The failure to file an appeal within the time or in the manner prescribed in this section, or to include the appeals processing fee, waives the right to appeal. If such an appeal is timely made, it shall stay enforcement of the appealed action.

2. Upon timely receipt of a written request for a hearing, the City Clerk shall schedule a hearing which shall be held no later than 30 calendar days after receipt of the request for hearing. The City Clerk shall serve a notice of hearing on the licensee at least 10 calendar days prior to the scheduled date of the hearing.

3. The Department shall have the burden of proof during the hearing, and shall prove by a preponderance of the evidence that the violations leading to suspension or revocation, or denial of the application, exist.

4. At the conclusion of the hearing, the hearing officer shall prepare a written decision which either grants or denies the appeal and contains findings of fact and conclusions of law. The written decision shall be filed with the City Clerk not later than 7 calendar days following the date on which the hearing is closed. The City Clerk shall, within 3 days of the filing of such decision, serve the applicant or licensee with notice and copy of the written decision.

5. The provisions of the California Administrative Procedure Act (Government Code § 11500 et seq.), and the formal rules of evidence do not apply at the hearing. Any and all evidence which the hearing officer deems reliable, relevant and not unduly repetitious may be considered.

6. The hearing officer's decision is final upon service of the hearing officer's decision on the appellant.

7. An appeal is not available for a revocation made pursuant to subsection (C) below.

C. REVOCATION OF LICENSE WRONGLY ISSUED. A tobacco retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 5.56.070 existed at the time application was made or at any

time before the license issued. The decision by the Department shall be the final decision of the city.

5.56.140 – Tobacco retailing without a license.

A. INELIGIBLE FOR LICENSE. In addition to any other penalty authorized by law, if the Department finds, or if a court of competent jurisdiction determines, based on a preponderance of evidence after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows:

1. After a first violation of this section at a location, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction and no former proprietor retains any ownership or managerial interest in the business), until 30 days have passed from the date of the violation.
2. After a second violation of this section at a location within any 5 year period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction and no former proprietor retains any ownership or managerial interest in the business), until 90 days have passed from the date of the violation.
3. After of a third or subsequent violation of this section at a location within any 5 year period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction and no former proprietor retains any ownership or managerial interest in the business), until 5 years have passed from the date of the violation.

5.56.150 – Additional remedies.

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of 18 years, such a person shall not be required to appear or give testimony in any civil or administrative process

brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

C. Violations of this chapter, including violations for tobacco retailing without a license, shall be subject to all available enforcement actions, including administrative, criminal or civil citations as authorized pursuant to this code.

D. Violations of this chapter are hereby declared to be public nuisances.

E. Tobacco products offered for sale in violation of this chapter are subject to seizure by the Department or its designee and shall be forfeited after the licensee or any other owner of the tobacco products seized is given reasonable notice and an opportunity to demonstrate that the tobacco products were not offered for sale in violation of this chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Section 5.56.130. Forfeited tobacco products shall be destroyed and properly disposed of at the cost of the seller after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

F. For the purposes of the remedies provided in this chapter:

1. Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this chapter shall constitute a separate violation of this chapter; and

2. Each individual tobacco product that is distributed, sold, or offered for sale in violation of this chapter shall constitute a separate violation of this chapter.

G. All tobacco retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer.

5.56.160 – Exceptions.

A. Nothing in this chapter prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious or spiritual ceremony or practice.

- B. Nothing in this chapter shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

5.56.170 – Captions.

The captions to sections throughout this chapter are for convenience of reference but shall not affect construction of this article.

5.56.180 – Calculation of time.

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this article or any franchise, and a period of time or duration for the fulfillment of doing thereof is prescribed in this section, the time shall be computed so as to exclude the first and include the last day of the prescribed time.

5.56.190 – Construction and severability.

It is the intent of the City Council of Grass Valley to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this chapter, or its application to any other person or circumstance. The City Council of Grass Valley hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

5.56.200 – Rights reserved.

- A. The rights reserved to the City under this chapter are in addition to all other rights of the City, whether reserved by this section or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.
- B. Except as otherwise provided by state law, a State franchise shall not include, or be a substitute for:
 - 1. Compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not

limited to, compliance with the conditions that the City may establish before constructing facilities for, or providing, nonvideo services;

2. Any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits, and street cut permits; and
 3. Any permit, agreement, or authorization for occupying any other property of the City or any private person to which access is not specifically granted by the State franchise.
- C. Except as otherwise provided in state or federal law, a State franchise shall not relieve a franchisee of its duty to comply with all laws, including the ordinances, resolutions, rules, regulations, and other laws of the City, and every franchisee shall comply with the same.
- D. Nothing contained in this section shall ever be construed exempt a franchisee from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are consistent with this section or California Public Utilities Code section 5800, *et seq.*