Subchapter 10: Tobacco Retailer's Permit

4.10.010 Requirement for a Permit.

(a) After November 1, 1998,It shall be 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 Director of the San Mateo County health Services Agency Environmental Health Division of the San Mateo County Department of Health (the "Environmental Health Division") for each location where such sales are conducted. Permits are valid for five (5) years one year and shall be renewed annually.

(b) The City Council hereby appoints the Director of the San Mateo County Environmental Health Division ("Director"), or his or her designee, to administer this ordinance.

[*History*: ORD. 538, 8/26/98; ORD. 670, 7/9/08]

4.10.020 Application, Issuance and Renewal Procedure.

(a) Application for a tobacco retailers permit shall be submitted in the name of the entity or person proposing to conduct retail tobacco sales on the business premises and shall be signed by such person or an authorized agent thereof. All applications shall be submitted on a form supplied by the Director 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 or his or her designee determines.

(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.

[*History*: ORD. 538, 8/26/98; ORD. 670, 7/9/08]

4.10.030 Display of Permit.

Upon receipt of an application for a tobacco retailer's permit, the Director or his or her designee shall issue a permit which must be prominently displayed at each location where tobacco retail sales are conducted.

[*History*: ORD. 538, 8/26/98; ORD. 670, 7/9/08]

4.10.040 Fees for Permit.

The fee for a tobacco retailer's permit shall reflect the County's costs of processing the permit and regulating compliance with this subchapter, as contained in section 5.64.070 of the San Mateo County Ordinance Code, and established by the City Council of the Town of Colma by resolution.

[*History*: ORD. 538, 8/26/98; ORD. 670, 7/9/08]

4.10.050 Permit is Nontransferable.

Tobacco retailers permit are nontransferable, as between entities, retailers, individuals, locations or otherwise.

[*History*: ORD. 538, 8/26/98; ORD. 670, 7/9/08]

4.10.060 Enforcement of Applicable Law.

If an agent or employee of the tobacco retailer violates any provisions of this subchapter or any federal or state tobacco related law, the tobacco retailer shall immediately report the violation to the Environmental Health Division.

4.10.070 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 of the Environmental Health Division or his or her designee 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 of the Environmental Health Division or his or her designee 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 30 days

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

(3) Upon the third and each subsequent time that the Director of the Environmental Health Division or his or her designee makes the finding set forth in subsections (a)(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 90 days and up to one year.

[*History*: ORD. 538, 8/26/98; ORD. 670, 7/9/08]

(c) *Effective Date of Suspension.*

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

(2) If the Director of the Environmental Health Division or his or her designee makes written findings and issues an order of suspension by certified mail after the hearing, the suspension will be effective 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 of the Environmental Health Division or his or her designee is appealable to the San Mateo County Licensing Board.

(2) An appeal must be in writing, be addressed to the Director of the Environmental Health Division 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.

[*History*: ORD. 538, 8/26/98; ORD. 670, 7/9/08]

4.10.080 Administrative Fine.

(a) *Grounds for Fine.* A fine may be imposed Upon findings made by the Director of the Environmental Health Division or his or her designee, that any retailer, individual, or entity who is an owner of a retail establishment:

(1) *Grounds for Fine.* A fine may be imposed Upon findings made by the Director of the Environmental Health Division or his or her designee, that any retailer, individual, or entity who is an owner of a retail establishment:

(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 of the Environmental Health Division or his or her 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 of the Environmental Health Division 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 of the Environmental Health Division or her or his designee after the hearing, the fine shall be referred to 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.

[*History*: ORD. 538, 8/26/98; ORD. 670, 7/9/08]

4.10.090 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 Town, within the jurisdiction areas of this Town. 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.

[*History*: ORD. 538, 8/26/98; ORD. 670, 7/9/08]