



City of Jurupa Valley

Staff Report

DATE: FEBRUARY 19, 2026
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROD BUTLER, CITY MANAGER
BY: PETER M. THORSON, CITY ATTORNEY
SUBJECT: AGENDA ITEM NO. B

**REPORT ON LIMITING SMOKE SHOPS IN CITY AND DIRECTION TO
STAFF REGARDING POTENTIAL MUNICIPAL CODE AMENDMENTS
REGULATING SMOKE SHOPS**

RECOMMENDATION

That the City Council receive a report on the authority of the City to limit smoke shops/tobacco retailers within the City or in certain commercial areas of the City and provide direction to Staff regarding potential amendments to the Jurupa Valley Municipal Code further regulating smoke shops and tobacco retailers.

BACKGROUND

On October 2, 2025, Council directed Staff, at the request of Council Member Sanchez, to prepare a report to the Council on the authority of the City to limit the number of smoke shops within the City or to require that smoke shops be separated from other smoke shops or sensitive uses.

SUMMARY

The City Council has the authority under California law to limit the number of smoke shops in the City or require smoke shops be separated from other smoke shops or sensitive uses if the proposed ordinance: 1) makes findings that the limitations protect the health, safety and general welfare of the community; 2) smoke shop locations are specifically defined; and 3) existing smoke shops that are not in compliance with the new regulations are deemed non-conforming uses with an appropriate period for compliance with the new regulations.

Currently, Chapter 5.68 of the Jurupa Valley Municipal Code regulates “tobacco retailers” through permits but does not limit the number of tobacco retailers within the City nor provide separation from other tobacco retailers or sensitive uses.

ANALYSIS

California court cases have upheld the authority of cities to limit the number of certain businesses within a city, separate businesses from other similar businesses or sensitive uses or exclude them from certain zones or areas of the city so long as the regulations are rationally related to legitimate governmental interests protecting the health, safety and general welfare of the community including:

- protecting the health of people in the community;
- encouraging economic development through a diverse and stabile business community;
- avoiding adverse secondary impact of the business;
- providing and maintaining important services for the community; or
- protecting against urban and suburban blight and economic decline;

These purposes could support limiting the number of tobacco retailers within the City, requiring that tobacco retailers be separated from other tobacco retailers and sensitive uses, or excluding tobacco retailers from certain zones or areas of the City.

Any proposed ordinance would need to carefully define the tobacco retailers that would be subject to the limitations. The percentage of sales from tobacco products varies greatly among the stores selling tobacco products.

Tobacco retailers legally operating as of the date of a proposed ordinance would be deemed legally non-conforming uses and would be provided adequate time to comply with the new regulations.

Currently, Chapter 5.68 of the Jurupa Valley Municipal Code requires tobacco retailers to obtain annual tobacco retailer licenses. The tobacco retailer permitting process of Chapter 5.68 is designed to: 1) promote compliance with federal, state and local laws intended to regulate tobacco sales and use; 2) discourage the illegal purchase of tobacco products by minors; 3) promote compliance with laws prohibiting the sales of cigarettes and tobacco products to minors; 4) protect children from being lured into illegal activity through the misconduct of adults; and 5) reduce the incidence of tobacco related diseases.

Tobacco retailer permits are issued by the Riverside County Environmental Health Department for tobacco retailers in the City.

According to Staff review of the City's business registration certificates, there are 67 businesses in the City that sell or possibly sell tobacco products consisting of: 1) 11 liquor stores with possible



tobacco sales; 2) 14 smoke or vape shops; 3) 15 fuel stations with possible tobacco sales; 4) 15 gas stations with possible tobacco sales; 5) 7 Circle K stores with tobacco sales; and 6) 5 ARCO stores with tobacco sales.

City Staff monitors compliance with the tobacco retailer permit requirements through the business registration certificates and storm water compliance inspections.

FINANCIAL IMPACT

If the Council directs staff to prepare an ordinance limiting the number or location of tobacco retailers within the City, the financial impact would be limited to Staff and attorney time to prepare the ordinance.

ALTERNATIVES

The City Council may decline to direct Staff to prepare an ordinance limiting the number or location of tobacco retailers within the City or may request further information from the Staff.

*****SIGNATURES ON FOLLOWING PAGE*****



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Submitted by:



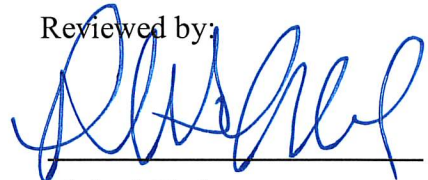
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ATTACHMENT

1. Jurupa Valley Municipal Code Chapter 5.68, Permitting of Tobacco Retailers



CHAPTER 5.68. - PERMITTING OF TOBACCO RETAILERS

Footnotes:

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Editor's note— Ord. No. 838.1, §§ 1—9, adopted January 26, 2010, amended chapter 5.68 in its entirety to read as herein set out. Former chapter 5.68, §§ 5.68.010—5.68.100, pertained to licensure of tobacco retailers, and derived from Ord. No. 838, §§ 2—11, 2005.

Sec. 5.68.010. - Purpose and intent.

The city has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; in protecting children from being lured into illegal activity through the misconduct of adults; and in reducing the incidence of tobacco related disease. It is the intent of this chapter to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided therefore.

(Ord. No. 838.1, § 1, 1-26-2010)

Sec. 5.68.020. - Definitions.

For the purposes of this chapter, the following words and terms shall have the following meanings:

Arm's length transaction shall mean a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this chapter is presumed not to be an arm's length transaction.

Department shall mean the City Department of Environmental Health, including the director of the department of environmental health or his or her designee.

Enforcement officer shall mean the director of environmental health or his or her designee.

Person shall mean any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

Proprietor shall mean a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent 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 can or does have, or can or does share ultimate control over the day-to-day operations of a business.

Self-service display shall mean the open display of tobacco products or tobacco paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.

Tobacco paraphernalia shall mean cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

Tobacco product shall mean (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence.

Tobacco retailer shall mean any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia; "tobacco retailing" shall mean the performance of any of these things. This definition is without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Tobacco retailer's permit or *permit* means the certificate issued by the director of the department of environmental health which allows a facility to sell tobacco, tobacco products, and tobacco paraphernalia. The issuance of this permit does not indicate or imply that the facility is in compliance with all state and city regulations related to its operation; and may be suspended or revoked by the department.

(Ord. No. 838.1, § 2, 1-26-2010)

Sec. 5.68.030. - Tobacco retailer's permit requirements and application process.

- A. Application for a tobacco retailer's permit 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. It is the responsibility of each proprietor to be informed of the laws

affecting the issuance of a tobacco retailer's permit. A permit that is issued in error or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 5.68.080(C) of this chapter.

- B. All applications shall be submitted on a form supplied by the department and shall contain the following information:
 - (1) The name, address, and telephone number of each proprietor.
 - (2) The business name, address, and telephone number of the single fixed location for which a tobacco retailer's permit is sought.
 - (3) The name and mailing address authorized by each proprietor to receive all permit-related communications and notices (the "authorized address"). If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (2) of this section.
 - (4) Proof that the location for which a tobacco retailer's permit is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
 - (5) Whether or not any proprietor is a person who has been determined to have violated this chapter or has been a proprietor at a location that has been determined to have violated this chapter and, if so, the dates and locations of all such violations.
 - (6) Such other information as the department deems necessary for the administration or enforcement of this chapter.
- C. It shall be unlawful for any person to act as a tobacco retailer without first obtaining and maintaining a valid tobacco retailer's permit pursuant to this chapter for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer's permit shall constitute a public nuisance.
- D. Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's permit any status or right other than the right to act as a tobacco retailer at the location in the city identified on the face of the permit. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by California Labor Code Section 6404.5.

(Ord. No. 838.1, § 3, 1-26-2010)

Sec. 5.68.040. - Permit issuance; standards.

- A. Upon the receipt of an application for a tobacco retailer's permit and the permit fee, the department shall issue a permit unless substantial record evidence demonstrates that one of the following bases for denial exists:

- (1) The application is incomplete or inaccurate.
- (2) The application seeks authorization for tobacco retailing at a location for which a prohibition on issuing permits is in effect pursuant to Section 5.68.080(B) of this chapter. However, this subparagraph shall not constitute a basis for denial of a permit if the applicant provides the city with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an arm's length transaction.
- (3) The application seeks authorization for tobacco retailing for a proprietor for which a prohibition on issuing permits is in effect pursuant to Section 5.68.080(B) of this chapter.
- (4) The application seeks authorization for tobacco retailing that is prohibited pursuant to this section of this chapter; that is unlawful pursuant to any other city ordinance; or that is unlawful pursuant to any other local, state, or federal law.

(Ord. No. 838.1, § 4, 1-26-2010)

Sec. 5.68.050. - Permits are nontransferable.

- A. A tobacco retailer's permit is nontransferable. If the information provided in the permit application pursuant to Section 5.68.030(B) changes, a new tobacco retailer's permit is required before the proprietor may continue to act as a tobacco retailer. For example, if a proprietor to whom a permit has been issued changes business location, that proprietor must apply for a new permit prior to acting as a tobacco retailer at the new location. Or if the business is sold, the new owner must apply for a new permit for that location before acting as a tobacco retailer.
- B. Notwithstanding any other provision of this chapter, violations against a location or business shall continue to be counted against the location or business unless the location or business has been transferred to a new proprietor and the new proprietor provides the city with documentation demonstrating by clear and convincing evidence that the new proprietor has acquired or is acquiring the location or business in an arm's length transaction.

(Ord. No. 838.1, § 5, 1-26-2010)

Sec. 5.68.060. - Fees for permit.

A tobacco retailer permit is invalid unless the appropriate fee has been paid in full as required by Ordinance No. 640 and the term of the permit has not expired. All applicable late payment penalties indicated by Ordinance No. 640 shall apply. The term of a tobacco retailer permit is one year. Each tobacco retailer shall apply for annual renewal of his or her tobacco retailer's permit no later than the expiration of the term.

Sec. 5.68.070. - Permit violations.

- A. *Violation of tobacco-related laws.* It shall be a violation of a tobacco retailer's permit for a proprietor, including his or her agent or employee, to violate any local, state, or federal tobacco-related law including, but not limited to:
- (1) *Minimum age for persons buying tobacco.* It is unlawful for any person, firm, tobacco retailer, or corporation to sell, give, or in any way furnish to a person any tobacco product or tobacco paraphernalia if that person, firm, or corporation knows or should have grounds to know that the recipient is a person who is not at least the minimum age required by state law to purchase or possess any tobacco product. Proof that a retailer, or his or her employee or agent, demanded, was shown, and reasonably relied upon evidence of legal age (such as identification) shall be a defense to any action.
 - (2) *Positive identification required.* No tobacco retailer shall engage in tobacco retailing without first examining the identification of the purchaser, if the purchaser reasonably appears underage, and confirming that the proposed sale is to a purchaser who is at least the minimum age in state law for being sold the tobacco product or tobacco paraphernalia.
 - (3) *Minimum age for persons selling tobacco.* No tobacco retailer shall engage in tobacco retailing if the person is younger than the minimum age in state law for being sold or for possessing any tobacco product.
 - (4) *Display of tobacco related licenses/permits.* Each tobacco retailer must maintain a license from the California State Board of Equalization as well as a tobacco retailer's permit allowing the sale of tobacco products for each tobacco retail location. Both permits shall be prominently displayed in a publicly and readily visible location at the permitted location.
 - (5) *Self-service displays prohibited.* No tobacco retailer shall display tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display. A tobacco retailer who chooses to display tobacco products or tobacco paraphernalia in a locked cabinet, case or similar structure must post a clear and conspicuous sign on or within five feet of the display stating that the cabinet, case or structure is locked at all times.
 - (6) *Tobacco sales public notification signs posted.* Every store that sells tobacco must post a boldly-printed, contrasting color sign in a conspicuous place at each point of purchase saying that tobacco products may not be sold to minors. The sign must contain the following words: "The Sale of Tobacco Products to Persons Under 18 Years of Age Is Prohibited by Law and Subject to Penalties. Valid Identification May Be Required. To Report

an Unlawful Tobacco Sale Call 1-800-5 ASK-4-ID. Business and Professions Code Section 22952." The sign must be square (at least 5.5 inches by 5.5 inches) or rectangular (3.66 inches by 8.5 inches), and the required notice must meet specified font sizes.

(7) *Tobacco sales and advertising location.*

(i) It is unlawful for a tobacco retailer engaged in the retail sale of tobacco or tobacco paraphernalia to place or maintain, or to cause to be placed or maintained, any tobacco or tobacco paraphernalia or its advertising within two feet of candy, snacks, or nonalcoholic beverages or less than four feet above the floor inside any store or business.

(ii) Tobacco product advertising which faces outdoors cannot occupy an area larger than fourteen (14) square feet.

(8) *Sale of bidis.* No tobacco retailer shall sell, offer for sale, distribute, or import any tobacco product commonly referred to as "bidis" or "beedies," unless that tobacco product is sold, offered for sale, or intended to be sold in a business establishment that prohibits the presence of persons under eighteen (18) years of age on its premises.

(9) *Tobacco sales at non-fixed sites.* It is unlawful for any person, agent, tobacco retailer, or employee of a person in the business of selling or distributing tobacco products to engage in tobacco retailing at other than a fixed, permitted location. For example, tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.

(10) *Tobacco coupons and samples.* It is unlawful for any person, agent, tobacco retailer, or employee of a person in the business of selling or distributing tobacco products, including but not limited to smokeless tobacco, cigarettes or tobacco paraphernalia, to engage in the non-sale distribution of any tobacco products to any person on any private property that is open to the general public. "Non-sale distribution" means to give tobacco products or tobacco paraphernalia to the general public at no cost, or at nominal cost, or to give coupons, coupon offers, gift certificates, gift cards, or other similar offers", or rebate offers for tobacco products to the general public at no cost or at nominal cost.

(11) *Single sale of cigarettes.* No tobacco retailer may sell one or more cigarettes, other than in a sealed and properly labeled package. A sealed and properly labeled package means the original packaging of the manufacturer or importer which meets federal labeling requirements, including the federal warning label. Cigarettes may not be manufactured, distributed, sold, or offered for sale except in a package containing at least twenty (20) cigarettes. Roll-your-own tobacco may not be manufactured, distributed, sold, or offered for sale except in a package containing at least 0.60 ounces of tobacco.

B. *Permit compliance monitoring.*

(1)

Compliance with this chapter shall be monitored by the department. Any peace officer or enforcement officer may enforce the penal provisions of this chapter.

- (2) The department shall check the compliance of each tobacco retailer as necessary to carry out the purpose and intent of this chapter. Subject to the discretion of the department, the department may check the compliance of tobacco retailers previously found to be in compliance a fewer number of times so that the department may check the compliance of tobacco retailers previously found in violation a greater number of times.
 - (3) Compliance checks shall determine, at a minimum, check compliance with the requirements of this chapter and specifically if the tobacco retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco. When appropriate, the department may also determine compliance with other tobacco-related laws.
 - (4) The city shall not enforce any tobacco-related minimum age law against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:
 - (i) The youth decoy is participating in a compliance check supervised by a peace officer or an enforcement officer; or
 - (ii) The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the department.
- C. *No contest plea.* A plea of "no contest" or its equivalent by a tobacco retailer for a violation of any law designated in subsection (A) of this section shall operate as an admission that this chapter has been violated for the purposes of permit revocation.

(Ord. No. 838.1, § 7, 1-26-2010)

Sec. 5.68.080. - Revocation of permit.

A. *Revocation of permit for violation.*

- (1) In addition to any other penalty authorized by law, a tobacco retailer's permit may be revoked if the department finds that the proprietor, including his or her agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter (hereinafter "permit violation").
- (2) A tobacco retail proprietor may appeal the department's determination to revoke its tobacco retail permit in the same manner and in conjunction with an appeal of an administrative citation as provided by Section 5.68.090(8) of this chapter.
- (3) A proprietor or tobacco retailer without a valid tobacco retail permit, including, for example, a revoked permit:
 - (i)

Shall keep all tobacco products and tobacco paraphernalia from public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute an "offer for sale."

- (ii) Shall not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that would lead a reasonable consumer to believe that such products can be obtained at the tobacco retailer's location.
- (iii) Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this chapter may be destroyed.

B. New tobacco retailer's permit after revocation for violation.

- (1) After a first permit violation at a location no new tobacco retailer's permit may be issued for the location until a minimum of one (1) day has passed from the date of the last revocation or violation, whichever is later.
- (2) After a second permit violation at a location within any sixty-month period, no new tobacco retailer's permit may be issued for the location until a minimum of thirty (30) days have passed from the date of the last revocation or violation, whichever is later.
- (3) After a third permit violation at a location within any sixty (60) month period, no new tobacco retailer's permit may be issued for the location until a minimum of ninety (90) days have passed from the date of the last revocation or violation, whichever is later.
- (4) After four (4) or more permit violations at a location within any sixty-month period, no new tobacco retailer's permit may be issued for the location until five (5) years have passed from the date of the last revocation or violation, whichever is later.

C. Revocation of permit issued in error. A tobacco retailer's permit may be revoked if the department finds, after notice and opportunity to be heard, that one or more of the bases for denial of a permit under Section 5.68.040(A) existed at the time application was made or at any time before the permit issued. The revocation shall be without prejudice to the filing of a new application for a permit.

(Ord. No. 838.1, § 8, 1-26-2010)

Sec. 5.68.090. - Enforcement.

The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

- (1) Violators who operate without the necessary tobacco retailer's permit shall be subject to closure of the tobacco retail facility.
- (2)

Whenever evidence of a violation of this chapter is obtained in part through the participation of a person under the age of eighteen (18) years old, 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.

- (3) Violations of this chapter are subject to a civil action brought by the district attorney or city counsel, punishable by:
 - (a) A fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for a first violation in any sixty (60) month period; or
 - (b) A fine not less than one thousand five hundred dollars (\$1,500) and not exceeding two thousand five hundred dollars (\$2,500) for a second violation in any sixty (60) month period; or
 - (c) A fine not less than three thousand dollars (\$3,000) and not exceeding ten thousand dollars (\$10,000) for a third or subsequent violation in any sixty (60) month period.
- (4) Violations of this chapter may, in the discretion of the district attorney or city counsel, be prosecuted as infractions or misdemeanors.
- (5) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation.
- (6) Violations of this chapter are hereby declared to be public nuisances.
- (7) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city counsel, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- (8) Administrative citations and penalties. In addition to the remedies and penalties contained in this chapter, and in accordance with Government Code Section 53069.4, an enforcement officer may issue an administrative citation for any violation of this chapter. The following procedures shall govern the imposition, enforcement, collection and administrative review of administrative citations and penalties.
 - (i) Content of citation. The administrative citation shall be issued on a form approved by city counsel and shall at a minimum contain the following information:
 - a. Date, location and approximate time the violation was observed.
 - b. The ordinance violated and a brief description of the violation.
 - c. The amount of the administrative penalty imposed for the violation.
 - d. Instructions for the payment of the penalty, and the time period by which it shall be paid and the consequences of failure to pay the penalty within this time period.
 - e. Instructions on how to appeal the citation.

- f. The signature of the enforcement officer.

The failure of the citation to set forth all required contents shall not affect the validity of the proceedings.

(ii) Service of citation.

- a. If the proprietor, owner, employee, agent, occupant or other person who has violated this chapter is present at the scene of the violation, the enforcement officer shall attempt to obtain their signature on the administrative citation and shall deliver a copy of the administrative citation to them.
- b. If the proprietor, owner, employee, agent, occupant or other person who has violated this chapter is a business, and the business owner is on the premises, the enforcement officer shall attempt to deliver the administrative citation to them. If the enforcement officer is unable to serve the business owner on the premises, the administrative citation may be left with the manager or employee of the business. If left with the manager or employee of the business, a copy of the administrative citation shall also be mailed to the business owner by certified mail, return receipt requested.
- c. If no one can be located at the property, then the administrative citation shall be posted in a conspicuous place on or near the property and a copy mailed by certified mail, return receipt requested to the owner, occupant or other person who has violated the ordinance. The citation shall be mailed to the property address and/or the address listed for the owner on the last equalized assessment roll.
- d. The failure of any interested person to receive the citation shall not affect the validity of the proceedings.

(iii) Administrative penalties.

- a. The penalties assessed for each violation shall not exceed the following amounts:
 - 1. One hundred dollars (\$100) for a first violation;
 - 2. Two hundred dollars (\$200) for a second violation of this chapter within one (1) year; and
 - 3. Five hundred dollars (\$500) for each additional violation of this chapter within one (1) year.
- b. If the violation is not corrected, additional administrative citations may be issued for the same violation. The amount of the penalty shall increase at the rate specified above.
- c.

Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar further enforcement action.

d. The penalties assessed shall be payable to the city.

(iv) Administrative appeal.

a. Notice of appeal. The recipient of an administrative citation may appeal the citation by filing a written notice of appeal with the department. The written notice of appeal must be filed within twenty (20) days of the service of the administrative citation as set forth in Section 5.68.090(8)(ii). Failure to file a written notice of appeal within this time period shall constitute a waiver of the right to appeal the administrative citation. The notice of appeal shall be submitted on the administrative citation appeal forms and shall be accompanied by payment of the full penalty assessment, and shall contain the following information:

1. A brief statement setting forth the appellants interest in the proceedings;
2. A brief statement of the material facts which the appellant claims supports their contention that no administrative penalty should be imposed or that an administrative penalty of a different amount is warranted;
3. An address at which the appellant agrees notice of any additional proceeding or an order relating to the imposition of the administrative penalty may be received by mail.
4. The notice of appeal must be signed by the appellant.

b. Administrative hearing. Upon a timely written request by the recipient of the administrative citation, an administrative hearing shall be held as follows:

1. Notice of hearing. Notice of the administrative hearing shall be given at least ten (10) days before the hearing to the person requesting the hearing. The notice may be delivered to the person or may be mailed to the address listed in the notice of appeal.
2. Hearing Officer. The administrative hearing shall be held before the director of department of environmental health or their designee. The Hearing Officer shall not be the enforcement officer who issued the administrative citation or said enforcement officer's immediate supervisor. The director may contract with a qualified provider to conduct administrative hearings or to process administrative citations.
3. Conduct of the hearing. The enforcement officer who issued the administrative citation shall not be required to, but may, participate in the administrative hearing. The contents of the enforcement officer's file in the case shall be admitted as prima facie evidence of the facts stated therein. The Hearing

Officer shall not be limited by the technical rules of evidence. If the person requesting the appeal fails to appear at the administrative hearing, the Hearing Officer shall make his or her determination based on the information contained in the notice of appeal.

4. Hearing Officer's decision. The Hearing Officer, based upon the evidence submitted, shall either dismiss or uphold the citation. The citation recipient shall receive a refund of the full penalty assessment if the citation is dismissed. The Hearing Officer's decision following the administrative hearing shall be personally delivered to the person requesting the hearing or sent by first class mail. The Hearing Officer may allow payment of the administrative penalty in installments, if the person provides evidence satisfactory to the Hearing Officer of an inability to pay the penalty in full. The Hearing Officer's decision shall contain instructions for obtaining review of the decision by the superior court.

(v) Review of Administrative Hearing Officer's decision.

- a. Notice of appeal. Within twenty (20) days of the date of the delivery or mailing of the Hearing Officer's decision, a person may contest that decision by filing an appeal to be heard by the superior court. The failure to file the written appeal and to pay the court filing fee within this period shall constitute a waiver of the right to an appeal and the decision shall be deemed confirmed. A copy of the notice of appeal shall be served in person or by first class mail upon the issuing agency by the contestant.
- b. Conduct of hearing. The conduct of the appeal is a subordinate judicial duty and may be performed by traffic trial commissioners and other subordinate judicial officials at the direction of the presiding judge of the court. The appeal shall be heard de novo, except that the contents of the issuing agency's file in the case shall be received in evidence. A copy of the document or instrument of the issuing agency providing notice of the violation and imposition of the administrative penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. The court shall request that the issuing agency's file on the case be forwarded to the court, to be received within fifteen (15) days of the request.
- c. Judgment. The court shall retain the court's filing fee regardless of the outcome of the appeal. If the court finds in favor of the contestant, the amount of the fine or penalty shall be reimbursed to the contestant by the local agency. Any deposit of the fine or penalty shall be refunded by the issuing agency in accordance with the judgment of the court. If the fine or penalty has not been deposited and the

decision of the court is against the contestant, the issuing agency may proceed to collect the penalty pursuant to the procedures set forth in this chapter, or in any other manner provided by law.

(Ord. No. 838.1, § 9, 1-26-2010)