

# ORDINANCE NO. 2024-01-23-1212

## AN ORDINANCE AMENDING TITLE 5, CHAPTER 5.104, SECTION 5.104.060 OF THE STOCKTON MUNICIPAL CODE CONCERNING TOBACCO RETAILER LICENSES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

### SECTION I. AMENDMENT OF CODE

Title 5, Chapter 5.104, section 5.104.060 of the Stockton Municipal Code is amended to read as follows:

#### **5.104.060 Issuance and renewal of license; grounds for denial.**

A. Upon the receipt of an application for a license and the applicable fee, the City shall issue a license unless any of the following exist:

1. The application is incomplete or inaccurate.
2. The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this chapter; provided, however, this subsection shall not constitute a basis for denial of a license if either or both of the following apply:
  - a. The applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction.
  - b. It has been more than five (5) years since the most recent license for that location was revoked.
3. The application seeks authorization for tobacco retailing that is unlawful pursuant to this code, or that is unlawful pursuant to any other local, State, or Federal law.
4. Making any false statements in the application or as to any other information presented as part of the application process.
5. Evidence of current or prior unlawful or nuisance-creating operation in this or another jurisdiction.
6. The application seeks authorization for tobacco retailing at any location within 600 feet of a school, public park, public playground, public recreational area, or

youth facility, as measured in a straight line from the parcel boundary of these locations to the boundary lines of the parcel of the tobacco retail license applicant's proposed business location. However, the prohibition contained in this subsection (A)(6) shall not apply to the following:

a. Any tobacco retailer operating lawfully on the day before the effective date of City of Stockton Ordinance 2023-06-20-1502.

b. Any lawfully operating tobacco retailer that would otherwise become ineligible to receive a new license due to the creation or relocation of a school, public park, public playground, public recreational area, or youth facility.

c. Any location that satisfies both of the following:

(i) A tobacco retailer was lawfully operating at the location on the day before the effective date of City of Stockton Ordinance 2023-06-20-1502, or a tobacco retailer was lawfully operating at the location pursuant to subsection (d) of this section, and

(ii) Either (a) The location has since been a licensed tobacco retail location, without interruption, except that the most recently issued license for the location may have expired no more than six (6) months from the date of the present application, or (b) the present application has been submitted less than one year since the effective date of City of Stockton Ordinance 2023-06-20-1502.

d. Any location that was a qualified development project, as defined below, before the effective date of City of Stockton Ordinance 2023-06-20-1502. A "qualified development project" for purposes of this section is one where a land use permit or entitlement application has been determined by the Community Development Department to be complete before the effective date of City of Stockton Ordinance 2023-06-20-1502, and said land use permit or entitlement application has not expired pursuant to SMC Section 16.96.020(B).

7. The application seeks authorization for tobacco retailing at any location within 600 feet of a location occupied by another tobacco retailer, as measured in a straight line from the parcel boundary of an existing tobacco retailer's business location to the boundary lines of the parcel of the tobacco retailer license applicant's proposed business location. However, the prohibition contained in this subsection (A)(7) shall not apply to the following:

a. Any tobacco retailer operating lawfully on the day before the effective date of City of Stockton Ordinance 2023-06-20-1502; or

b. Any location that satisfies both of the following:

(i) A tobacco retailer was lawfully operating at the location on the day before the effective date of City of Stockton Ordinance 2023-06-20-1502, or a tobacco retailer was lawfully operating at the location pursuant to subsection (c) of this section, and

(ii) Either (a) The location has since been a licensed tobacco retail location, without interruption, except that the most recently issued license for the location may have expired no more than six (6) months from the date of the present application, or (b) the present application has been submitted less than one year since the effective date of City of Stockton Ordinance 2023-06-20-1502.

c. Any location that was a qualified development project, as defined below, before the effective date of City of Stockton Ordinance 2023-06-20-1502. A "qualified development project" for purposes of this section is one where a land use permit or entitlement application has been determined by the Community Development Department to be complete before the effective date of City of Stockton Ordinance 2023-06-20-1502, and said land use permit or entitlement application has not expired pursuant to SMC Section 16.96.020(B).

8. Any exemption granted to a tobacco retailer pursuant to subsections (A)(6)(a)-(d) and (A)(7)(a)-(c) of this section shall cease to apply if a tobacco retailer fails to timely renew the tobacco retail license pursuant to this chapter or shall cease to apply if the tobacco retail license is revoked pursuant to this chapter.

9. The City is in possession of information that the applicant or his agents or employees has violated any local, State, or Federal tobacco control law within the preceding 30-day period.

10. The applicant does not have a valid current permit or license from the California Board of Equalization or any other applicable tobacco retail licensing agency, where the applicant is required to obtain any such permit or license in order to lawfully engage in tobacco retailing in the State of California and/or in the County of San Joaquin.

B. If the City does not approve a license or renewal of a license, the City shall notify the applicant of the specific grounds for the denial in writing. The notice shall be served personally, by regular mail, or by certified mail not later than five (5) days after the denial. If notice is delivered by mail, it shall be addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated in the California Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

C. The denial of a tobacco retail license or renewal of a license may be appealed. Notice of such appeal, in writing stating the grounds for such appeal, and admitting or denying those determinations of the City included in the denial notice, shall be filed with the Chief of Police, or designee, within 10 days of the giving of the denial notice as specified in subsection B above. Upon failure to file the notice of appeal within the 10-day period, the action of the City in denying such tobacco retail license or renewal of such license shall be final and conclusive. If the notice of appeal is filed in timely order, accompanied by payment of an appeal fee in an amount as may be established from time to time by resolution of the City Council, the Chief of Police, or designee, shall refer the matter to the City Attorney for scheduling of an administrative appeal hearing in accordance with the provisions of Chapter 1.44 of this code.

D. Notwithstanding Section 5.104.070, in the event a tobacco retailer files a timely appeal from the denial of the renewal of a license pursuant to subsection C above, the tobacco retailer may continue to operate under the existing license pending the appeal decision. The determination of the administrative hearing officer shall be final.

**SECTION II. SEVERABILITY.**

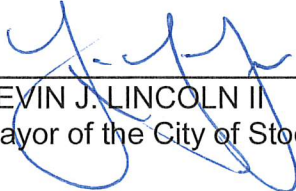
If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions, or applications of the fact which can be given without the invalid provision or application, and to this end the provisions of this act are severable.

**SECTION III. EFFECTIVE DATE.**


This ordinance shall be in full force and take effect 30 days after its passage.

ADOPTED: 01/29/2024

EFFECTIVE: 02/22/2024

  
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KEVIN J. LINCOLN II  
Mayor of the City of Stockton

ATTEST:

  
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ELIZA R. GARZA, CMC  
City Clerk City of Stockton

