63150.5 Tobacco and Electronic Cigarette Permit – Purpose.

The purpose of this Section is to encourage responsible tobacco and electronic cigarette retailing and to discourage violations of tobacco-related laws that (1) prohibit the sale or distribution of tobacco and electronic cigarette products to minors and (2) prohibit the display of tobacco and electronic cigarette products from being within reach of the public. This permit process is not intended to expand or reduce the degree to which tobacco-related activities are regulated by Federal or State law, including criminal prosecution for violations of such laws, or to alter the penalty provided therefor. (Ord. 06-1365, § 1; Ord. 14-1547, § 2)

63150.5.1 Definitions.

“Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including but not limited to tastes or aromas relating to menthol, mint, wintergreen, chocolate, vanilla, honey, cocoa, cotton candy, bubble gum, or any type of fruit, candy, alcoholic beverage, dessert, herb, or spice.

“City” means the City of Carson, California.

“Code Enforcement Officer” means any employee or agent of the City who is designated to enforce any provision of this Code.

“Director” means the City’s Finance Officer or his or her designee.

“Electronic cigarette” means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances in an aerosol or other related form. The term includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an e-cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape, a vape pen, an advanced personal vaporizer, a vape mod, a vaping device of any kind, or any other product name or descriptor. The term does not include any inhaler prescribed by a licensed doctor.

“Flavored tobacco product” means any tobacco product that imparts a characterizing flavor. 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, to the effect that such tobacco product has or produces a characterizing flavor, shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

“Newly established business” means a business which was not engaged in tobacco and electronic cigarette retailing within the City during the immediately preceding permit renewal period.

“Person” means any natural person, partnership, cooperative association, domestic or foreign corporation, receiver, trustee, assignee, or any other legal entity.

“Tobacco and electronic cigarette paraphernalia” means cigarette papers or wrappers, pipe holders, smoking materials of all types, cigarette rolling machines, hookahs, and any other item designed to facilitate smoking or the ingestion of tobacco products. “Tobacco and electronic cigarette paraphernalia” includes “electronic cigarette.”

“Tobacco and electronic cigarette retailer” means any person who sells, offers for sale, or offers to exchange, for any form of consideration, tobacco, tobacco products or tobacco and electronic cigarette paraphernalia; “tobacco and electronic cigarette retailing” shall mean engaging in any of these things.

“Tobacco product” means any substance containing, made, or derived from tobacco leaf or nicotine, including but not limited to any tobacco cigarette, cigar, pipe tobacco, snuff, hookah shisha, smokeless tobacco or any other form of tobacco which may be utilized for smoking, chewing, inhaling or other manner of ingestion. (Ord. 06-1365, § 2; Ord. 14-1547, § 2; Ord. 19-1940, § 3)

63150.5.2 Requirements for Tobacco and Electronic Cigarette Permit.

It shall be unlawful for any person to act as a tobacco and electronic cigarette retailer without first obtaining and maintaining a valid tobacco and electronic cigarette permit pursuant to CMC 63150.5 et seq., for each location at which such activity is to occur. No permit will be issued to authorize tobacco and electronic cigarette retailing at any place other than a fixed location; peripatetic tobacco and electronic cigarette retailing and tobacco and electronic cigarette retailing from vehicles are prohibited.

Each day that a person offers tobacco, tobacco products or tobacco paraphernalia for sale or exchange within the City without a valid permit shall constitute a separate violation of this Code. (Ord. 06-1365, § 3; Ord. 14-1547, § 2)

63150.5.3 Application Procedure.

A completed application for a tobacco and electronic cigarette permit (including the payment of all necessary fees) shall be submitted to the Director. The application shall be sought in the name of the person proposing to conduct retail tobacco sales and shall be signed by such person or, in the case of a business, by an authorized agent thereof. A valid City business license is also required before a tobacco and electronic cigarette permit may be issued. Each person applying for a tobacco and electronic cigarette permit shall be responsible for reviewing the conditions of conducting retail tobacco sales within the City and shall agree to abide by these conditions by signing the application under penalty of perjury. All applications shall be submitted on the form supplied by the Director and shall contain the following information:

1. The legal name, address, and telephone number of the applicant.

2. The business name, address and telephone number of the fixed location for which a tobacco and electronic cigarette permit is sought.

3. A statement whether or not the applicant has ever applied for and was denied or has been issued a tobacco and electronic cigarette permit from the City or any other jurisdiction which was revoked or suspended and the dates and circumstances surrounding the suspension and/or revocation.

4. A statement of whether the applicant, its agents or employees have been convicted of a felony involving or related to the sale of tobacco, tobacco paraphernalia or tobacco products within the past five (5) years.

5. Such additional information as the Director may reasonably require. (Ord. 06-1365, § 4; Ord. 14-1547, § 2)

63150.5.4 Issuance and Renewal of Permit.

Upon the receipt of a complete application for a tobacco and electronic cigarette permit and the payment of the applicable permit fee, the City shall issue a permit unless any of the following occur:

1. The application is incomplete or inaccurate.

2. The application seeks authorization for tobacco and electronic cigarette retailing at an address that appears on a permit that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of CMC 63150.5 et seq.; provided, however, this subsection shall not constitute a basis for denial of a permit if either or both of the following apply:

a) The applicant provides the City with documentation demonstrating, to the Director's satisfaction, that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For the purposes of this subsection, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two (2) 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 Section that have occurred at the location, will be presumed not to be an “arm’s length transaction.”

b) It has been more than three (3) years since the most recent permit for that location was revoked.

3. The application seeks authorization for tobacco and electronic cigarette retailing by a person who has a currently suspended tobacco and electronic cigarette permit or who has had a permit revoked, pursuant to CMC 63150.5 et seq., within the last three (3) years.

4. The application seeks authorization for tobacco and electronic cigarette retailing in a manner which would violate this Code or any other local, State or Federal law.

5. The applicant, or its agents or employees, has been convicted of a felony involving or related to the sale of tobacco, tobacco paraphernalia or tobacco products within the past five (5) years.

6. The issuance of a tobacco and electronic cigarette permit would be in conflict with any other City ordinance. (Ord. 06-1365, § 5; Ord. 14-1547, § 2)

63150.5.5 Permits Not Transferable.

A tobacco and electronic cigarette permit shall be nontransferable. Should a new person acquire a business that is engaged in tobacco and electronic cigarette retailing, that person must apply for a new permit prior to the commencement of any retail activity. (Ord. 06-1365, § 6; Ord. 14-1547, § 2)

63150.5.6 Display of Permit.

Each tobacco and electronic cigarette permit shall be prominently displayed in a publicly visible location where tobacco and electronic cigarette retailing occurs. (Ord. 06-1365, § 7; Ord. 14-1547, § 2)

63150.5.7 Permit Fee.

The fee for filing an application for a tobacco and electronic cigarette permit shall be established by resolution of the City Council and may be amended from time to time. The application fee is nonrefundable; however, if a permit is denied, the business license fee paid shall be refunded. This permit fee is calculated so as to recover the cost of both the administration and enforcement of the permit, including the cost of issuing the permit, renewing the permit, administering the tobacco and electronic cigarette permit program, retailer inspection and compliance checks, documentation of violations, adjudications and prosecutions of violators. (Ord. 06-1365, § 8; Ord. 14-1547, § 2)

63150.5.8 Permit Violation – Compliance Monitoring.

It shall be a violation of a tobacco and electronic cigarette permit for any tobacco and electronic cigarette permittee, or his or her agents or employees, to violate any local, State or Federal tobacco-related law.

Compliance with this Section shall be monitored by the Los Angeles County Sheriff’s Department – Carson Station. Notwithstanding the foregoing, any City peace officer or code enforcement officer is authorized to enforce CMC 63150.5 et seq. The City shall request that the Los Angeles County Sheriff’s Department verify compliance of each tobacco and electronic cigarette permittee with CMC 63150.5 et seq., a minimum of one (1) time per twelve (12) month period. Compliance checks shall include an investigation into whether a tobacco and electronic cigarette permittee is complying with tobacco laws prohibiting the sale of tobacco products to minors. The Los Angeles County Sheriff’s Department may use youth decoys and shall comply with protocols for the compliance checks developed in consultation with the Los Angeles County Department of Health Services.

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 such person’s age (herein “youth decoy”) if the potential violation

occurs when the youth decoy is participating in a compliance check supervised by a peace officer, a code enforcement official or an agent of another governmental agency. (Ord. 06-1365, § 9; Ord. 14-1547, § 2)

63150.5.9 Permit Compliance Incentives.

Upon a finding by the City that a tobacco and electronic cigarette permittee has not violated CMC 63150.5 et seq., within the preceding three (3) year period, the Director shall grant a ten (10) percent discount from the permit fee set forth in CMC 63150.5.7.

Upon a finding by the City that a tobacco and electronic cigarette permittee has not violated CMC 63150.5 et seq., within the preceding six (6) year period, the Director shall grant an additional ten (10) percent discount, for a total of a twenty (20) percent discount, from the permit fee set forth in CMC 63150.5.7. (Ord. 06-1365, § 10; Ord. 14-1547, § 2)

63150.5.10 Suspension or Revocation of Permit.

A. In addition to any other penalty authorized by law, a tobacco and electronic cigarette permit may be suspended or revoked if the City finds, after notice to the tobacco and electronic cigarette permittee and an opportunity for the permittee to be heard, that the permittee, or his or her agents or employees, has violated any of the provisions of CMC 63150.5 et seq., or any other local, State or Federal law relating to tobacco; provided, however, that a violation by a permittee at one (1) location may not be cause for such permittee to lose its permit at any other location within the City where such permittee is engaged in the retail sale of tobacco. Similarly, the violation of a tobacco and electronic cigarette permit at a particular location will not bar the City from granting a new tobacco and electronic cigarette permit to another applicant who is unrelated to the prior permittee for the same location.

1. Upon a finding by the City of a first violation of any provision of CMC 63150.5 et seq., within any three (3) year period, the Director may:

a) Issue a written warning to the permittee.

b) Advise the permittee of the penalties for further violations of CMC 63150.5 et seq.

c) Require the permittee to provide documentation to the City that all employees engaged in the retail sales of tobacco have received training in a City-approved program within sixty (60) days after the warning, or such other time as shall be set by the Director.

2. Upon a finding by the City of a second permit violation of any provision of CMC 63150.5 et seq., within any three (3) year period, the tobacco and electronic cigarette permit may be suspended up to thirty (30) days.

3. Upon a finding by the City of a third permit violation of any provision of CMC 63150.5 et seq., within any three (3) year period, the tobacco and electronic cigarette permit may be suspended up to ninety (90) days.

4. Upon a finding by the City of a fourth permit violation of any provision of CMC 63150.5 et seq., within any three (3) year period, the tobacco and electronic cigarette permit may be suspended for up to one (1) year.

5. Upon a finding by the City of a fifth permit violation of any provision of CMC 63150.5 et seq., within any three (3) year period, the tobacco and electronic cigarette permit may be revoked.

B. A tobacco and electronic cigarette permit shall be revoked if the City finds, after notice to the permittee and an opportunity for the permittee to be heard, that any one (1) of the conditions listed below existed at the time of the violation. The revocation of a tobacco and electronic cigarette permit shall prohibit the permittee from tobacco and electronic cigarette retailing within the City for a period of three (3) years. The revocation shall be without prejudice to the filing of a new application for a tobacco and electronic cigarette permit by a new applicant at an address where a permit has been revoked.

1. One (1) or more of the bases for denial of the tobacco and electronic cigarette permit listed in CMC 63150.5.4 existed at the time the tobacco and electronic cigarette permit application was made or at any time before the permit was issued.

2. The application is incomplete for failure to provide the information required by CMC 63150.5.3.

3. The information contained in the application, including any supplemental information, is found to be false in any material respect.

4. The application seeks authorization for a type of tobacco and electronic cigarette retailing that is unlawful pursuant to this Code or any other local, State or Federal law.

C. In the event the City denies, suspends or revokes a tobacco and electronic cigarette permit, written notice of the denial, suspension or revocation shall be served upon the applicant or permittee, as the case may be, within five (5) days of the decision to deny, suspend or revoke the permit to the mailing address specified in the application.

D. During a period of suspension of a tobacco and electronic cigarette permit, the permittee must remove from public view all tobacco products and tobacco paraphernalia at the address that appears on the suspended or revoked tobacco and electronic cigarette permit. (Ord. 06-1365, § 11; Ord. 14-1547, § 2)

63150.5.11 Notification and Appeals.

1. Any notice of denial, suspension or revocation of a tobacco and electronic cigarette permit shall state the reasons for such action and the appropriate remedy or cure, if applicable.

2. Any notification to be given pursuant to CMC 63150.5 et seq., shall be deemed given once the notice is sent by facsimile to the facsimile number listed on the application, or if no number is listed, when notice is placed, postage prepaid, in the United States mail, addressed to the applicant at the address shown on the permit application.

3. Any applicant or permittee aggrieved by a decision or action of the Director under CMC 63150.5 et seq., shall have the right to appeal such decision to the City Council.

(a) Any appeal that is filed pursuant to this Section shall be filed, and all appropriate fees shall be paid, with the City Clerk within fourteen (14) calendar days after notice of denial, approval or revocation is given by the City. The City Council shall act upon any such appeal within twenty-eight (28) calendar days of the filing of the appeal.

(b) Upon receipt of an appeal that is filed pursuant to this Section, the City Clerk shall set a date for a hearing of the matter and give notice of the date, time and place of the hearing to the applicant/appellant. Prior to such hearing, the Director shall transmit to the City Clerk a report of his/her findings. At the hearing by the City Council, the Director shall present all documents on file with respect to the matter being appealed.

(c) The City Council shall consider the record and such additional evidence as may be offered and may affirm, reverse or modify, in whole or in part, the action that was appealed. The City Council may also make or substitute additional decisions or determinations as it finds warranted under the provisions of CMC 63150.5 et seq., and may waive any requirement of CMC 63150.5 et seq., where it is found to be in the public interest. The City Clerk shall transmit a written copy of the City Council's decision to the applicant/appellant within five (5) days of the hearing. (Ord. 06-1365, § 12; Ord. 14-1547, § 2)

63150.5.12 Sale of Electronic Cigarettes Not Approved by FDA Prohibited.

Notwithstanding any provision of CMC 63150.5 et seq. (CMC 63150.5 through 63150.11, inclusive), or any other provision of the Carson Municipal Code, is it unlawful in the City to sell, offer to sell, exchange, or offer to exchange, for any form of consideration, any electronic cigarette unless and until that product has been approved and authorized for introduction into interstate commerce by the United States Food and Drug Administration pursuant to 21 U.S.C. § 387j, as may be amended from time to time. Neither this Section nor any other provision of CMC 63150.5 et seq. shall be construed or interpreted to apply to the

sale of “drug paraphernalia,” as that term is defined in California Health and Safety Code Section 11014.5, and as may be amended from time to time. (Ord. 19-1940, § 4)

63150.5.13 Sale of Flavored Tobacco Products Prohibited.

Notwithstanding any provision of CMC 63150.5 et seq. (CMC 63150.5 through 63150.11, inclusive), or any other provision of the Carson Municipal Code, it is unlawful in the City for any tobacco and electronic cigarette retailer to sell, offer to sell, exchange, or offer to exchange, for any form of consideration, any flavored tobacco product. (Ord. 19-1940, § 5)