

Article 3: Police Regulated Occupations and Businesses

**Division 45: Permits for Sale of Tobacco Products, Electronic Cigarettes,
Electronic Cigarette Paraphernalia, and Vaping Juice**

*(“Permits for Tobacco Products Sales” added 11-15-2007 by O-19674 N.S.)
(Retitled to “Permits for Sale of Tobacco Products, Electronic Cigarettes, Electronic
Cigarette Paraphernalia, and Vaping Juice” on 10-2-2014 by
O-20409 N.S.; effective 11-1-2014.)*

§33.4501 Purpose and Intent

It is the purpose and intent of this Division to provide for local regulation of retail businesses that sell tobacco products, tobacco paraphernalia, electronic cigarettes, electronic cigarette paraphernalia, and vaping juice by requiring police permits. The intent is to discourage violations of law prohibiting the sale or distribution of tobacco products and electronic cigarettes to minors to protect their health, welfare, and safety. Further, because of the increasing popularity of electronic cigarettes and the unknown health risks associated with their use, it is the purpose of this Division to regulate the sale of vaping juice, which is often packaged and marketed to attract youth. It is also the intent that all costs associated with the administration and enforcement of this Division be borne by tobacco retailer and electronic cigarette retailer applicants and permittees. It is further the intent that recoveries hereunder shall be used to pay the costs of administering and enforcing this Division.

*(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)
(Amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)*

§33.4502 Definitions

For purposes of this Division, defined terms appear in italics. The following definitions apply in this Division:

Electronic cigarette has the same meaning as in San Diego Municipal Code section 43.1001.

Electronic cigarette paraphernalia includes any refill, cartridge, component, accessory, appurtenance, attachment, accoutrement, fitting, apparatus, hardware, material, or equipment designed, packaged, marketed, or displayed for the purpose of use with an *electronic cigarette*. *Electronic cigarette paraphernalia* does not include any charging device intended for the battery component of an *electronic cigarette*.

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Electronic cigarette retailer means any person who owns or operates, in whole or in part, a business for profit or not for profit who engages in *electronic cigarette retailing*.

Electronic cigarette retailing means selling, offering for sale, or offering to exchange for any form of consideration, *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice*.

License has the same meaning as in San Diego Municipal Code section 33.0201.

Person has the same meaning as in San Diego Municipal Code section 11.0210.

Police permit has the same meaning as in San Diego Municipal Code section 33.0201.

Tobacco paraphernalia means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed, packaged, marketed, or displayed for the purpose of smoking or ingestion of *tobacco products*, excluding lighters.

Tobacco products means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, or any other preparation of tobacco.

Tobacco retailer means any *person* who owns or operates, in whole or in part, a business for profit or not for profit who engages in *tobacco retailing*.

Tobacco retailing means selling, offering for sale, or offering to exchange for any form of consideration, tobacco, *tobacco products* or *tobacco paraphernalia*.

Vaping juice means any liquid or flavoring, which may or may not contain nicotine, designed, packaged, marketed, or displayed for the purpose of use with an *electronic cigarette*.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

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§ 33.4503 Police Permit Required for Tobacco Retailer and Electronic Cigarette Retailer

- (a) It is unlawful for any *person* to operate as a *tobacco retailer* or as an *electronic cigarette retailer* without a *police permit*.
- (b) It is unlawful for any *person* to engage in *tobacco retailing* or *electronic cigarette retailing* unless the owner or operator has been issued a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* at that location.
- (c) A *tobacco retailer* or *electronic cigarette retailer* shall obtain a separate *police permit* for each fixed location from which he or she engages in *tobacco retailing* or *electronic cigarette retailing*.
- (d) No *police permit* shall be issued for any *person* operating as a *tobacco retailer* or *electronic cigarette retailer* at any location other than a fixed location.
- (e) This section does not apply to sales or exchanges not made to the public.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Retitled from “Police Permit Required for Tobacco Retailer” to “Police Permit Required for Tobacco Retailer and Electronic Cigarette Retailer” and amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4504 Enforcement Authority

The *Chief of Police* shall administer and enforce this Division. The *Chief of Police* shall be responsible for accepting applications for a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer*, and for issuing the permit. The *Chief of Police* shall be responsible for determining the fitness of applicants for a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer*, investigating any violations of this Division, and for taking administrative action against any *police permit* issued under this Division.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4505 Tobacco Retailer or Electronic Cigarette Retailer Permit Application Contents

- (a) Each applicant for a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* shall furnish the following information to the *Chief of Police*:
- (1) The full true name and any other names ever used by the applicant.
 - (2) The current residential address and telephone number of the applicant.
 - (3) The address of the proposed *tobacco retailer* or *electronic cigarette retailer* business location.
 - (4) Each residential address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address.
 - (5) All fictitious business names ever used by applicant and the respective addresses of those businesses.
 - (6) Written proof that the applicant is at least eighteen years of age.
 - (7) A valid social security number.
 - (8) Applicant's height, weight, and color of eyes and hair.
 - (9) Photographs of the applicant as specified by the *Chief of Police*.
 - (10) Applicant's business, occupation, and employment history for the five years immediately preceding the date of application, including addresses and dates of employment.
 - (11) Whether the applicant has ever had any *license* or *permit* issued by any agency or board, or any city, county, state or federal agency suspended or revoked, or has had any professional or vocational *license* or *permit* suspended or revoked within five years immediately preceding the application, and the reason for the suspension or revocation.
 - (12) All criminal *convictions*, including those dismissed pursuant to Penal Code section 1203.4, except traffic infractions, and a statement of the dates and places of such *convictions*.

- (13) The name and address of the current owner and lessor of the real property upon which the proposed *tobacco retailing* or *electronic cigarette retailing* business is to be conducted, and a copy of the lease or rental agreement.
 - (14) Copies of all business tax certificates.
 - (15) For *tobacco retailers*, information regarding *licenses* required under the “Cigarette and Tobacco Products Licensing Act of 2003,” found in Business and Professions Code sections 22970, et seq., including, but not limited to, copies of applications for *licenses*, *licenses* issued, and any documentation regarding the reasons for the denial of such *license*.
 - (16) Such other identification and information, including fingerprints, as may be required in order to discover the truth of the matters herein specified as required to be set forth in the application.
- (b) In addition to the information required by San Diego Municipal Code section 33.4505(a), an applicant for a *tobacco retailing permit* or *electronic cigarette retailing permit* shall furnish the following information to the *Chief of Police*:
- (1) If the applicant is a corporation, the name of the corporation exactly as shown in its Articles of Incorporation or Charter, together with the state and date of incorporation, and names and residential addresses of each of its current officers and directors, and of each stockholder holding more than 25 percent of the stock of the corporation;
 - (2) If the applicant is a partnership, the name and residential address of each of the partners, including limited partners;
 - (3) If the applicant is a limited partnership, a copy of the limited partnership's certificate of limited partnership as filed with the County Clerk;
 - (4) If one or more of the limited partners is a corporation, the applicant shall provide the information about that partner required by Municipal Code section 33.4505(b)(1);
 - (5) If the applicant is a corporation or partnership, the name of the responsible managing officer.

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- (c) An applicant for a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* shall submit a signed declaration certifying that he or she has not been convicted of or faced administrative action based on violations of the offenses listed in San Diego Municipal Code section 33.4510.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Retitled from “Tobacco Retailer Permit Application Contents” to “Tobacco Retailer or Electronic Cigarette Retailer Permit Application Contents” and amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4506 Corporate Officers and Partners Deemed Applicants

Each corporate officer or partner of a *tobacco retailing* or *electronic cigarette retailing* business is deemed an applicant and each shall provide the information required in San Diego Municipal Code section 33.4505.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4507 Designation of Responsible Managing Officer, Signature on Applications

An applicant that is a corporation or partnership shall designate one of its officers or general partners to act as its responsible managing officer. The responsible managing officer may complete and sign all applications on behalf of the corporate officers and partners.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

§33.4508 Proof of State Licenses, Permits, and Certifications Required Before Issuance of Tobacco Retailer or Electronic Cigarette Retailer Permit

In addition to the requirements of San Diego Municipal Code section 33.4505, any *person* desiring a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* shall furnish to the *Chief of Police* copies of all state *licenses, permits, and certifications* related to the sale of *tobacco products* and alcoholic beverages at the fixed location of the proposed *tobacco retailing* or *electronic cigarette retailing* business.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Retitled from “Proof of State Licenses, Permits, and Certifications Required Before Issuance of Tobacco Retailer Permit” to “Proof of State Licenses, Permits, and Certifications Required Before Issuance of Tobacco Retailer or Electronic Cigarette Retailer Permit” and amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

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§33.4509 Investigation Prior to Issuance of Tobacco Retailer or Electronic Cigarette Retailer Permit

- (a) Upon completion of the investigation required in San Diego Municipal Code section 33.0301 the *Chief of Police* shall have authority to grant or deny a *police permit*, and to determine whether to take administrative action against a *police permit* under this Division.
- (b) An investigation for a permit to operate as a *tobacco retailer* or *electronic cigarette retailer* shall be conducted as prescribed in Chapter 3, Article 3, Division 3 of the San Diego Municipal Code.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Retitled from “Investigation Prior to Issuance of Tobacco Retailer Permit” to “Investigation Prior to Issuance of Tobacco Retailer or Electronic Cigarette Retailer Permit” and amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4510 Grounds for Denial of Tobacco Retailer or Electronic Cigarette Retailer Permit

- (a) In addition to the grounds for denial stated in San Diego Municipal Code section 33.0305(a)-(f), an application for a *police permit* to operate as a *tobacco retailer* shall be denied for any of the following reasons: The applicant has within five years immediately preceding the date of the filing of the application been *convicted* of, suffered any civil penalty, or faced administrative action against any type of *license* for violations of any tobacco control law, including, but not limited to, the following offenses: Penal Code section 308, Business and Professions Code sections 22950, et seq. (“Stop Tobacco Access to Kids Enforcement Act” or the “STAKE Act”), Business and Professions Code sections 22970, et seq. (“Cigarette and Tobacco Products Licensing Act of 2003”), or a charge of violating a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of any of the offenses listed in this section.

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- (b) In addition to the grounds for denial stated in San Diego Municipal Code section 33.0305(a)-(f), an application for a *police permit* to operate as an *electronic cigarette retailer* shall be denied if within five years immediately preceding the date of the filing of the application the applicant has been convicted of violating California Health and Safety Code section 119405(a), or a charge of violating a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of Health and Safety Code section 119405(a).

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Retitled from “Grounds for Denial of Tobacco Retailer Permit” to “Grounds for Denial of Tobacco Retailer or Electronic Cigarette Retailer Permit” and amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4511 Right to Appeal Denial of Tobacco Retailer or Electronic Cigarette Retailer Permit

Any applicant denied a permit to operate as a *tobacco retailer* or *electronic cigarette retailer* shall be afforded an appeal as prescribed in Chapter 3, Article 3, Division 5 of the San Diego Municipal Code.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Retitled from “Right to Appeal Denial of Tobacco Retailer Permit” to “Right to Appeal Denial of Tobacco Retailer or Electronic Cigarette Retailer Permit” and amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4512 Permit Fees

- (a) All costs associated with administration and enforcement of this Division including, but not limited to, investigating *permit* applications, processing *permit* applications, inspecting, regulating, and enforcing this Division, and providing for appeals, shall be borne by applicants and *permittees*. The Mayor shall assess a fee for a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* according to the schedule set in the City Clerk’s Composite Rate Book. Fees will be reviewed annually.
- (b) A *permit* issued under this Division shall be valid for a period of one year from the date of issuance or from the date of renewal.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4513 Tobacco Retailer and Electronic Cigarette Retailer Operating Requirements

- (a) *Tobacco retailers and electronic cigarette retailers shall keep and post police permits, issued under this Division, in the manner prescribed in San Diego Municipal Code sections 33.0105(a) and (c). This subsection is regulatory only.*
- (b) *Tobacco retailers shall not allow, at any location for which they have a police permit to operate as a tobacco retailer, a violation of any tobacco control law including, but not limited to, the offenses listed in Municipal Code section 33.4510. Tobacco retailers shall be responsible for the acts of others who violate tobacco control laws at any location for which the tobacco retailer possesses a police permit to operate as a tobacco retailer. This subsection is regulatory only.*
- (c) *Electronic cigarette retailers shall not allow, at any location for which they have a police permit to operate as an electronic cigarette retailer, a violation of California Health and Safety Code section 119405(a). Electronic cigarette retailers shall be responsible for the acts of others who violate section 119405(a) at any location for which they have a police permit to operate as an electronic cigarette retailer. This subsection is regulatory only.*
- (d) *A tobacco retailer shall display in a conspicuous and prominent location near tobacco products, information, in a manner established by the Chief of Police, on how to report violations of tobacco control laws including, but not limited to, reporting sales of tobacco products to minors, to the Chief of Police.*
- (e) *Clerks who transact sales of tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice in tobacco retailer or electronic cigarette retailer establishments shall be the minimum legal age to purchase tobacco products and electronic cigarettes (currently 18 years of age). This subsection is regulatory only.*
- (f) *Tobacco retailers and electronic cigarette retailers shall check the age of purchasers of tobacco products, electronic cigarettes, electronic cigarette paraphernalia, and vaping juice who reasonably appear to be under the age of 27. This subsection is regulatory only.*

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Retitled from "Tobacco Retailer Operating Requirements" to "Tobacco Retailer and Electronic Cigarette Retailer Operating Requirements" and amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

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§33.4514 Penalties and Regulatory Action

- (a) All penalties and regulatory action related to a *police permit* issued to operate as a *tobacco retailer* or *electronic cigarette retailer* shall be conducted as prescribed in San Diego Municipal Code sections 33.0401 to 33.0406.
- (b) If a *police permit* issued under this Division is suspended or revoked, all *tobacco products, tobacco paraphernalia, electronic cigarettes, electronic cigarette paraphernalia, and vaping juice* shall be removed from public view for the duration of the suspension or revocation.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)
(Amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4515 Additional Penalties

A *police permit* issued under this Division may be revoked if a *person* operating as a *tobacco retailer* or *electronic cigarette retailer* is convicted of a violation of Health and Safety Code section 11364.7, or a lesser-included or lesser-related offense including, but not limited to, Penal Code section 415, in satisfaction of, or as a substitute for, an original charge of Health and Safety Code section 11364.7.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)
(Amended 2-26-2010 by O-19928 N.S.; effective 3-28-2010.)
(Amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4516 Tobacco Retailer and Electronic Cigarette Retailer Permits Not Transferable

A *police permit* issued under this Division is not transferable.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)
(Retitled from “Tobacco Retailer Permit Not Transferable” to “Tobacco Retailer and Electronic Cigarette Retailer Permits Not Transferable” on 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4517 Grandfather Clause

For *electronic cigarette retailers*, notwithstanding section 33.4510(b), *convictions* for offenses listed in section 33.4510(b) shall not be used to deny an application for a *police permit* under this Division if the date of the *conviction* was prior to the passage of Ordinance No. O-20409.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)
(Amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

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§33.4518 Operative Date, Requirement for Police Permit

For a new business, a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* must be obtained upon the issuance of a business tax certificate. For an existing business, a *police permit* to operate as a *tobacco retailer* or *electronic cigarette retailer* must be obtained upon renewal of the tax certificate. For *electronic cigarette retailers*, during the first year in which Ordinance No. O-20409 is in effect, any existing business whose tax certificate renewal has not yet become due may operate as an *electronic cigarette retailer* only if a currently valid business tax certificate is in effect for each location where *electronic cigarettes*, *electronic cigarette paraphernalia*, or *vaping juice* is sold.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)

§33.4519 Reporting

The *Chief of Police* shall, on a yearly basis or as requested by the Public Safety and Livable Neighborhoods Committee, report to the Public Safety and Livable Neighborhoods Committee the following information:

- (a) A summary of activity related to the administration and enforcement of this Division, including:
 - (1) Number of violations,
 - (2) Number and amount of fines,
 - (3) Number and type of penalties,
 - (4) How the fine revenues are being used, and
 - (5) Detailing the program budget; and
- (b) An accounting of all funds received and used for the administration and enforcement of this Division; and
- (c) The estimated rate of illegal sales of *tobacco products* to minors within the City of San Diego.
- (d) The estimated rate of illegal sales of *electronic cigarettes*, *electronic cigarette paraphernalia*, and *vaping juice* to minors within the City of San Diego.

(Added 11-15-2007 by O-19674 N.S.; effective 12-15-2007.)

(Amended 10-29-2013 by O-20316 N.S.; effective 11-28-2013.)

(Amended 10-2-2014 by O-20409 N.S.; effective 11-1-2014.)