

**TOWN OF AVON, COLORADO
ORDINANCE 18-08**

**ADOPTING A NEW CHAPTER 5.10 OF TITLE 5 OF THE AVON
MUNICIPAL CODE ESTABLISHING LICENSING OF TOBACCO
RETAILERS**

WHEREAS, the Town of Avon, Colorado (the "Town") is a home rule municipality existing pursuant to the laws of the Colorado Constitution, the Colorado Revised Statutes and the Town's Home Rule Charter; and

WHEREAS, Smoking rates in the U.S. have declined substantially since the Surgeon General's 1964 report, from 42 percent to now about 18 percent; however, it remains one of the biggest public health problems in the United States as almost 500,000 Americans still die prematurely each year from diseases related to cigarette smoking. This makes up 85% of deaths from lung cancer. In Colorado, like most other states, it is the number one cause of preventable death, and accounts for 5,100 deaths a year; and

WHEREAS, 90% of adult smokers started smoking before the age of 18 and each day more than 3,000 adolescents in the U.S. try their first cigarette; and

WHEREAS, youth use of e-cigarettes and similar products is associated with future cigarette use; and

WHEREAS, since 2014, after decades of effective anti-smoking campaigns and decreasing smoking rates in the U.S., there has been a surprising upturn in youth tobacco use; and

WHEREAS, over 330 U.S. localities and the states of California, Hawaii, New Jersey, Maine, Oregon, and Massachusetts, as well as the District of Columbia and the U.S. territory of Guam, have enacted into law regulations prohibiting the sale of tobacco products to individuals under the age of 21 and research has shown such regulations are effective in decreasing high school tobacco use by up to 50%; and

WHEREAS, research has shown that teens purchase cigarettes from their peers and that 90% of the "social sources" (friends and family) of tobacco for the 12-18 year olds are 18-21 year olds. It has also been shown that youth typically do not make the effort to travel to neighboring localities if the age has increased to 21 in their city; and

WHEREAS, the Town Council finds that this ordinance furthers and is necessary for the promotion of public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF AVON, COLORADO the following:

Section 1. Recitals Incorporated. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council.

Section 2. Addition of Chapter 5.10 to Title 5 of the Avon Municipal Code. Title 5 of the Avon Municipal Code is hereby amended by the addition of a new Chapter 5.10, to read as set forth in **Exhibit A: Addition of Chapter 5.10 to Title 5 of the Avon Municipal Code**, attached hereto.

Section 3. Codification Amendments. The codifier of the Town's Municipal Code, Colorado Code Publishing, is hereby authorized to make such numerical and formatting changes as may be necessary to incorporate the provisions of this Ordinance within the Avon Municipal Code. The Town Clerk is authorized to correct, or approve the correction by the codifier, of any typographical error in the enacted regulations, provided that such correction shall not substantively change any provision of the regulations adopted in this Ordinance. Such corrections may include spelling, reference, citation, enumeration, and grammatical errors.

Section 4. Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. The Town Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term "provision" means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term "application" means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the Town.

Section 5. Effective Date. This Ordinance shall take effect thirty (30) days after the date of final passage in accordance with Section 6.4 of the Avon Home Rule Charter.

Section 6. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Avon, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 7. No Existing Violation Affected. Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions,

suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

Section 8. Publication. The Town Clerk is ordered to publish this Ordinance in accordance with Chapter 1.16 of the Avon Municipal Code.

INTRODUCED AND ADOPTED ON FIRST READING AND REFERRED TO PUBLIC HEARING on August 14, 2018 and setting such public hearing for August 28, 2018 at the Council Chambers of the Avon Municipal Building, located at One Lake Street, Avon, Colorado.

BY: 

Jennie Fancher, Mayor

ATTEST: 

Debbie Hoppe, Town Clerk



ADOPTED ON SECOND AND FINAL READING on August 28, 2018.

BY: 


Jennie Fancher, Mayor

ATTEST: 

Debbie Hoppe, Town Clerk



APPROVED AS TO FORM:



Eric J. Heil, Town Attorney

EXHIBIT A: ADDITION OF CHAPTER 5.10 TO TITLE 5 OF THE AVON MUNICIPAL CODE

CHAPTER 5.10 LICENSING OF TOBACCO RETAILERS

Section 5.10.010 Incorporation of general licensing provisions.

Section 5.10.020 Legislative intent.

Section 5.10.030 Definitions.

Section 5.10.040 Minimum legal sales age.

Section 5.10.050 License requirements and prohibitions.

Section 5.10.060 Conditions of the Tobacco Product Retail License.

Section 5.10.070 Application procedure.

Section 5.10.080 Issuance of a Tobacco Product License.

Section 5.10.090 Denial of Tobacco Product License.

Section 5.10.100 License term, renewal and expiration.

Section 5.10.110 License non-transferable.

Section 5.10.120 Fee for License.

Section 5.10.130 Compliance monitoring.

Section 5.10.140 Suspension or revocation of License.

Section 5.10.150 Violation, Penalties and Fines.

Section 5.10.160 Enforcement.

Section 5.10.170 No rights in License.

Section 5.10.180 Violations

Section 5.10.190 Effective date.

5.10.010 Incorporation of general licensing provisions.

The provisions of Chapter 5.04 Town of Avon Municipal Code (Business Licenses) and Chapter 1.09 (Civil Infractions), shall apply to this Chapter except where they are specifically modified by the provisions of this Chapter.

5.10.020 Legislative Intent

It is the intent of the Town in enacting this Chapter to establish License requirements for Tobacco Product and Tobacco Paraphernalia Retailers and to set forth the requirements for the sale of Tobacco Products and Tobacco Paraphernalia to persons under twenty-one years of age to protect the health, safety and welfare of individuals in the Town, to encourage responsible Tobacco Product and Tobacco Paraphernalia retailing and to reduce illegal sales of said products in Avon, Colorado.

5.10.030 Definitions.

The following definitions shall apply throughout this Chapter:

Accessory means any product that is intended or reasonably expected to be used with or for the human consumption of a Tobacco Product; does not contain tobacco and is not made or derived from tobacco; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, Constituents, or characteristics of a Tobacco Product; or (2) is intended or reasonably expected to affect or maintain the performance, composition,

Constituents, or characteristics of a Tobacco Product but (a) solely controls moisture and/or temperature of a stored Tobacco Product; or (b) solely provides an external heat source to initiate but not maintain combustion of a Tobacco Product. Accessory includes, but is not limited to, carrying cases, lanyards and holsters.

Adult-Only Establishment means a facility where the operator ensures or has a reasonable basis to believe, such as by checking the identification of any person appearing to be under the age of thirty (30), that no person under the Legal Age is permitted entrance.

Cigarette means any product that contains tobacco or nicotine, that is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

- (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- (2) tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by consumers as a cigarette; or
- (3) roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1)(a) above.
- (4) the term includes all "roll-your-own," i.e., any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by consumers as tobacco for making cigarettes.

Component or Part means any software or assembly of materials intended or reasonably expected: (1) to alter or affect the Tobacco Product's performance, composition, Constituents, or characteristics; or (2) to be used with or for the human consumption of a Tobacco Product or Electronic Smoking Device. Component or Part excludes anything that is an Accessory, and includes, but is not limited to e-liquids, cartridges, certain batteries, heating coils, programmable software and flavorings for Electronic Smoking Device.

Electronic Smoking Device means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to simulate smoking in the delivery of nicotine or any other substance, even if marketed as nicotine-free, through inhalation of vapor from the product. Electronic Smoking Device includes any refill, cartridge or component part of a product, whether or not marketed or sold separately. Electronic Smoking Device does not include any product that has been approved or certified by the United States Food and Drug Administration for sale as a tobacco - cessation product, as a tobacco-dependence product, or for other medical purposes, and is marketed and sold for such an approved purpose.

Hearing Officer means the Town Manager or person appointed by the Town Manager.

Licensee means the owner or holder of a Tobacco Product Retailer License.

License refers to the Tobacco Product Retailer License.

Licensing Administrator means the person(s) within the Town government designated with responsibilities by the Town Manager for license issuance, renewal and collection of fees.

Legal Age means twenty-one (21) years of age.

License Fee means the annual fee for a Tobacco Product Retail License of \$500.00.

Licensed Premises means any location where Tobacco Products and/or Tobacco Paraphernalia are authorized to be sold or distributed to a consumer including, but not limited to, the grounds occupied by a Licensee, and any store, outlet, location, vending machine or structure where Tobacco Products and/or Tobacco Paraphernalia are sold, as designated in the approved License application.

Minimum Legal Sales Age means twenty-one (21) years of age or older.

Mobile Vending means any sales of Tobacco Products and/or Tobacco Paraphernalia at other than a fixed location.

Retail Tobacco Business means any retail location that sells, offers for sale or does or offers for exchange for any form of consideration Tobacco Products or Tobacco Paraphernalia. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged or offered for exchange.

Self-Service Display means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without assistance from the Licensee or an employee of the Licensee through a direct, person-to-person transfer between the recipient and the Licensee or an employee of the Licensee. A vending machine is a form of Self-Service Display.

Tobacco Paraphernalia means any item designed for the consumption, use, or preparation of Tobacco Products.

Tobacco Product means and includes any product that is made or derived from tobacco or that contains nicotine or synthetic nicotine that is intended for human consumption or is likely to be consumed whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means including, but not limited to a cigarette, cigar, pipe tobacco, chewing tobacco, snuff or snus. Tobacco Product also means any Electronic Smoking Device and any Component or Part used in the consumption of a Tobacco Product(s) such as filters, rolling papers pipe and liquids used in Electronic Smoking Devices whether or not said product contains nicotine. Tobacco

Product does not include drugs, devices or combination products authorized for sale as a cessation product by the United States Food and Drug Administration as the terms are defined in the Federal Food, Drug and Cosmetic Act.

Tobacco Product Retail Location or Retail Location means any premises where Tobacco Products or Tobacco Paraphernalia are sold or distributed to a consumer including, but not limited to, hookah bar, lounge or café, any grounds occupied by a retailer, any store, outlet, location, vending machine or structure where Tobacco Products are sold.

Tobacco Product Retailer means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, Tobacco or Nicotine Products, or Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Tobacco Product Retailing means the selling, offering for sale, or exchanging for any form of consideration a Tobacco Product or Tobacco Paraphernalia.

Vending machine shall mean any mechanical, electrical, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment, dispenses product.

Youth Centered Facility means a school, park, playground, recreation center and any other facility frequented by youth.

5.10.040 Minimum legal sales age.

Tobacco Products shall not be sold to any person younger than the Minimum Legal Sales Age.

5.10.050 License requirements and prohibitions.

(a) Tobacco Product Retailer License required.

(1) It shall be unlawful for any person to act as a Tobacco Product Retailer in the Town unless a License has been first obtained from the Town and such License is maintained in full force and effect pursuant to this Chapter for each location where Tobacco Product Retailing occurs.

(2) No license may be issued to authorize Tobacco Product retailing anywhere other than at a fixed location that is designated in the License application and approved by the Licensing Administrator. Tobacco Product Retailing by a persons on foot, from vehicles or through Mobile Vending is prohibited.

(3) Tobacco Retailing without a valid License is a violation of this Chapter.

(b) Display of License. Each License shall be prominently displayed in a publicly visible location at the licensed Tobacco Product Retail Location.

- (c) Display of Minimum Legal Sales Age Requirements. The requirement of the Minimum Legal Sale Age for the purchase of Tobacco Retail Products and Tobacco Paraphernalia shall be prominently displayed in the entrance (or other clearly visible location) of the Tobacco Product Retail Location.
- (d) Other Prohibitions.
 - (1) A Tobacco Product Retail Location may only have one active License at one time. Every License is separate and distinct and specific to a designated location. The License cannot be assigned, delegated, sold, inherited or otherwise transferred between persons or transferred to a different location, except as provided in this Chapter. No Licensee shall exercise the privileges of any other License or delegate the privileges of its own License.
 - (2) A person or entity may not apply for a License for a one-year period after a License has been revoked.
 - (3) No License shall be issued to any person under twenty-one (21) years of age.

5.10.060 Conditions of the Tobacco Product Retail License.

The following conditions shall apply to the Licensee:

- (a) Minimum age for persons handling Tobacco Products. No person who is younger than 18 years of age shall, while employed at a Tobacco Product Retail Location, sell, stock, retrieve, or otherwise handle Tobacco Products or Tobacco Paraphernalia.
- (b) Prohibition of Self-Service Displays. Licensees shall stock and display all Tobacco Products and Tobacco Paraphernalia in a manner so as to make all such products inaccessible to customers without the assistance of a retail clerk, thereby requiring a direct face-to-face exchange of the Tobacco Product or Tobacco Paraphernalia from an employee of the business to the customer except in an Adult-Only Establishment.
- (c) Requirements of positive identification. No person engaged in Tobacco Product Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another person who appears to be under the age of forty (40) years without first examining the identification of the recipient to confirm that the recipient is at least twenty-one (21) years of age.
- (d) No Licenses shall be issued within 500' of schools. No Licenses will be issued to retailers located within 500 feet from schools or youth populated areas (community specific locations, playgrounds, parks etc.), as determined by the Licensing Administrator. This restriction shall not apply to a Retail Location within 500 feet of a youth populated area that existed as of the date of first reading of this Ordinance.

5.10.070 Application procedure.

- (a) An application for a License shall be submitted and signed by an individual authorized by the person or entity making application for the License. It is the responsibility of each applicant and/or Licensee to be informed regarding all laws applicable to tobacco retailing, including those laws

affecting the issuance of said License. No applicant and/or Licensee may rely on the issuance of a License as a determination by the Town that the proprietor has complied with all applicable Tobacco Product Retailing laws.

- (b) All applications shall be submitted on a form supplied by the Licensing Administrator.
- (c) A licensed Tobacco Product Retailer shall inform the Licensing Administrator in writing of any change in the information submitted on an application for a License within thirty (30) business days of a change.
- (d) All License applications shall be accompanied by the payment in full of all fees as required in this Chapter.

5.10.080 Issuance of a Tobacco Product License.

Upon the receipt of a completed application for a License as required by this Chapter, the Licensing Administrator shall review and act on a License application within thirty (30) days, which period may be extended by the Licensing Administrator for good cause, including but not limited to a request for more information. The Licensing Administrator consider the following criteria reviewing a License application and may deny such application based on non-compliance with the following review criteria:

- (a) The information presented in the application is incomplete, inaccurate or false;
- (b) The applicant seeks authorization for a License at a location where this Chapter prohibits the issuance of a License;
- (c) The applicant seeks a License for a location that is not appropriately zoned for the use;
- (d) The applicant previously held and operated a License under this Chapter which License was revoked during the last three (3) years or the applicant has held multiple Licenses which were revoked in the last twenty (20) years;
- (e) The applicant is not qualified to hold the requested License under the provisions of this Chapter; or
- (f) The applicant and/or retail location is not in compliance with all Town, state or federal laws;
- (g) The applicant is indebted to, or obligated in any manner to the Town for unpaid taxes, liens or other monies; or
- (h) The payment of the licensing fee in the full amount chargeable for such License does not accompany such License application.

5.10.090 Denial of Tobacco Product License.

- (a) If the Licensing Administrator denies the issuance of the License, the Licensing Administrator shall notify the applicant in writing by regular mail postage prepaid on the address shown in the

application. The notice shall include the grounds for denial. Notice is deemed to have been properly given upon mailing.

- (b) An applicant has the right to appeal the Licensing Administrator's denial of an application to the to the Avon Town Council. Such an appeal shall be initiated by filing a written request with the Town Clerk within thirty (30) days of the date of the notice of denial of the issuance of a License. The failure to file a written appeal within thirty (30) days after the date of transmittal of the decision to deny the application shall bar any further consideration of the application, shall bar any appeal to the Town Council and shall bar any judicial review by a Colorado court. The written appeal shall state the reasons for the appeal. An appeal which is filed timely shall be considered and acted upon by the Town Council within forty-five (45) days after the date of receipt. The Town shall provide at least three (3) days' prior notice to the applicant stating the date, time and location where the Town Council will consider the appeal. The decision of the Town Council shall be in writing. The Town Council shall review the appeal and application de novo and shall act on the appeal based on compliance with the review criteria.

5.10.100 License term, renewal and expiration.

- (a) Term. All Licenses issued under this Code shall be for the period of one (1) year or a fraction thereof and shall expire on the last day of December of each calendar year unless otherwise specifically provided.
- (b) Renewal of License. A Licensee shall apply for the renewal of the License and submit the renewal License fee no later than thirty (30) days prior to expiration of the existing term. The Licensing Administrator shall renew the License prior to the end of the term, provided that the renewal application and fee were timely submitted and the Licensing Administrator is not aware of any fact that would have prevented issuance of the original License or issuance of the renewal.
- (c) Expiration of License. A License that is not timely renewed shall expire at the end of its term. The failure to timely obtain a renewal of a License requires submission of a new application. There shall be no sale of any Tobacco Products or Tobacco Paraphernalia after the License expiration date and before the new License is issued.

5.10.110 License non-transferable.

- (a) A License shall not be transferred from one (1) person to another or from one location to another.
- (b) When a License has been issued to a husband and wife, or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new License for the remainder of the term of that License. All rights and privileges granted under the original License shall continue in full force and effect as to such survivors for the balance of the term of the License.

5.10.120 Fee for License.

- (a) The annual fee for original issuance of a License for applications filed in 2018 shall be two hundred fifty dollars (\$250). The fee to issue or to renew a License may be changed from time to time by resolution of the Town Council. The fee shall be calculated so as to recover the direct and indirect costs of administration and enforcement of this Chapter, including, for example, issuing a License, administering the License program, retailer education and training, retailer inspection, compliance checks, community outreach and education, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. Fees are nonrefundable except as may be required by law.
- (b) All fees and interest from proceeds of License fees under this Chapter shall be deposited in a separate cash account established by the Town. These funds are to be used exclusively to defray the costs of the local licensing program.
- (c) As part of the annual budget process, the amount of fees charged by the Town pursuant to this Section shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the Town in connection with the adoption, administration and enforcement of this Chapter.
- (d) Beginning with the fiscal 2018 budget, the amount of the fees charged by the Town pursuant to this Section shall be fixed by Town Council as part of its annual budget process. If, for any reason, such fees are not fixed by Town Council as part of its annual budget process, the fees for the preceding year shall continue to in full force and effect until changed by Town Council.

5.10.130 Compliance monitoring.

- (a) Compliance monitoring of this Chapter shall be by the Avon Police Department, as the Avon Police Department (or its designee) deems appropriate.
- (b) The Avon Police Department shall have discretion to consider previous compliance check history or prior violations of a Licensee in determining how frequently to conduct compliance checks of the Licensee with respect to individual Licensees.
- (c) The Avon Police Department may inspect each Tobacco Product Retailer for compliance with this Chapter.
- (d) Compliance checks shall be conducted as the Avon Police Department deems appropriate so as to allow the Avon Police Department to determine, at a minimum, if the Tobacco Product Retailer is conducting business in a manner that complies with laws regulating access to Tobacco Products. When the Avon Police Department deems appropriate, the compliance checks shall determine compliance with other laws applicable to Tobacco Products.

5.10.140 Suspension or revocation of License.

- (a) The following shall be grounds for suspension or revocation of the Licensee's License:

- (1) A violation by a Licensee or Licensee's officers, agents, or employees of any of the provisions of this Chapter, or any laws of the United States, the State of Colorado or ordinances of the Town relating to the sale or furnishing of tobacco or Cigarettes to minors, or the storage or display of Cigarettes or tobacco products;
 - (2) Violations of any conditions imposed by the Licensing Administrator, Hearing Officer or Town Council in connection with the issuance or renewal of a License;
 - (3) Failure to pay State or local taxes that are related to the operation of the business associated with the License;
 - (4) Loss of right to possession of the licensed premises; or,
 - (5) Fraud, misrepresentation, or a false statement of material fact contained in the original or renewal license application.
- (b) The Town Council shall hear all actions relating to the suspension or revocation of Licenses pursuant to this Chapter. The Town Council shall have the authority to suspend, revoke, or impose remedial sanctions for violations.
- (c) The Licensing Administrator shall commence suspension or revocation proceedings by petitioning the Town Council to issue an order to the Licensee to show cause why the Licensee's License(s) should not be suspended or revoked. The Town Council shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one or more grounds exist pursuant to subsection (a) to suspend or revoke the Licensee's License. The order to show cause shall set the matter for a public hearing before the Town Council.
- (d) Notice of the order to show cause order and hearing date shall be mailed to Licensee by regular mail, postage prepaid, at the address shown on the License no later than twenty (20) days prior to the hearing date. Notice is deemed to have been properly given upon mailing.
- (e) In determining whether a License should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the Town Council shall consider the following factors:
- (1) The nature and circumstances of the violation;
 - (2) Corrective action, if any taken by the Licensee;
 - (3) Prior violations, if any by the Licensee;
 - (4) The likelihood of recurrence of the violation;
 - (5) Whether the violation was knowing or willful; and

- (6) Previous suspensions, revocations, penalties, fines or other sanctions, if any, imposed on the Licensee.

5.10.150 Violation, Penalties and Fines.

- (a) Licensees: penalties and fines. In addition to any other penalty authorized by law, and if the Town Council determines based on a preponderance of the evidence, that the Licensee, or any of the Licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law relating to the sale of tobacco to minors including but not limited to C.R.S. sections 18-13-121 and 24-35-503, the Town Council may consider the following non-binding guidelines in determining the sanctions to be imposed upon a Licensee as follows:
 - (1) One violation within thirty-six (36) months: a civil penalty of five hundred dollars (\$500) and/or suspension of the License for three (3) days.
 - (2) Two violations within thirty-six (36) months: a civil penalty of one thousand five hundred dollars (\$1,500) and a minimum twenty (20) days suspension of the License.
 - (3) Three violations within thirty-six (36) months: a civil penalty of two thousand dollars (\$2,000) and revocation of License.

The actual sanction imposed upon a Licensee for any violation may vary from the above-stated guidelines when warranted by the specific facts and circumstances of the case.

- (b) After the effective date of this ordinance, it shall be unlawful for any Tobacco Product Retailer to sell a Tobacco Product or Tobacco Paraphernalia without a License as mandated under this Chapter, or with a suspended or revoked License. In addition, the Hearing Officer may impose civil penalties of up to \$2,500 for each separate Tobacco Product or Tobacco Paraphernalia sold during the period of non-compliance with this Chapter. A retailer whose License has been suspended or revoked 1) shall not display Tobacco Products or Tobacco Paraphernalia in public view during the timeframe in which the License is suspended or revoked; and 2) advertisements relating to Tobacco Products and/or Tobacco Paraphernalia that promote the sale or distribution of such products from the location that could lead a reasonable person to believe that such products can be obtained from that location shall not be displayed.

5.10.160 Enforcement.

- (a) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity. 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 Town Attorney, including but not limited to injunctive relief.
- (b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall cause the offender to be subject to the penalties set forth herein or in the Avon Municipal Code.

5.10.170 No rights in License.

Every License issued under this Chapter confers only a limited and conditional privilege subject to the requirements, conditions, limitations and qualifications of this Chapter. The License does not confer a property right of any kind. The License and privilege created by the License may be further regulated, limited or completely extinguished at the discretion of Town Council or the electorate of the Town, as provided in this Chapter, without any compensation to the Licensee. Nothing contained in this Chapter grants to any Licensee any vested right to continue operating under the provisions of this Chapter as they existed at the time the License was approved or issued, and every License shall be subject to any ordinance or prohibition adopted after the License was approved or issued.

5.10.180 Violations.

It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Chapter. Any person who violates any provisions of this Chapter shall be punished in accordance with the provisions of Chapter 1.08 – General Penalty of this Code.

5.10.190 Effective Date.

This Chapter shall become effective as of January 1, 2019 and shall be subject to enforcement on and after that date. Any Tobacco Product Retailer without a License after the effective date will be in violation of this Chapter.