

# PLANNING COMMISSION

# ATTACHMENT A

Resolution No. P-24-005  
Draft Development Code Amendment

RESOLUTION NO. P-24-005

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF VICTORVILLE RECOMMENDING TO THE CITY COUNCIL THE ADOPTION OF MUNICIPAL CODE AMENDMENT CASE PLAN22-00002, AN AMENDMENT TO THE VICTORVILLE MUNICIPAL CODE WITH AN ENVIRONMENTAL EXEMPTION MAKING VARIOUS CHANGES TO TITLE 16 TO REGULATE THE RETAIL SALE OF ALCOHOL AND TOBACCO FOR OFF-SITE CONSUMPTION BY UPDATING EXISTING OPERATING STANDARDS AND INTRODUCING NEW OPERATING STANDARDS APPLICABLE TO NEW AND EXISTING BUSINESSES WITHIN THE CITY OF VICTORVILLE, WHICH INCLUDE BUT ARE NOT LIMITED TO STANDARDS RELATING TO PROPERTY MAINTENANCE, ALCOHOL AND TOBACCO DISPLAY AREA, ALCOHOL AND TOBACCO SIGNAGE, TOBACCO PARAPHERNALIA, AND THE PROHIBITED SALES OF SINGLE-SERVE ALCOHOLIC BEVERAGES AND DRUG PARAPHERNALIA, AS WELL AS INITIAL AND ANNUAL COMPLIANCE INSPECTION AND LICENSING PROCESSES.

WHEREAS, pursuant to Section 16-2.01.020 of the Victorville Municipal Code, the City of Victorville has initiated amendments to Title 16 of the Victorville Municipal Code; and

WHEREAS, pursuant to Section 16-2.01.030 of the Victorville Municipal Code, the City of Victorville Planning Department prepared a Staff Report detailing the proposed Victorville Municipal Code amendments as well as their conformance with applicable standards and requirements; and

WHEREAS, on the 12th day of July, 2023, the Planning Commission reviewed a draft of the proposed amendments to the Victorville Municipal Code during a public meeting and recommended that City staff proceed with initiating a Victorville Municipal Code Amendment to formally consider the proposal at a duly noticed public hearing; and

WHEREAS, a public hearing was held on the 13th day of March 2024, pursuant to Title 7, Division I, Chapter 4, Article 2 of the California Government Code to hear arguments for and against the issue; and

WHEREAS, pursuant to Title 7, Division 1, Chapter 4, Article 2, Section 65850 of the California Government Code, the City may adopt by ordinance regulations affecting: the use of buildings, structures and land; signs; the size of lots, yards, courts and other open spaces; and the intensity of land use; and

WHEREAS, pursuant to Title 7, Division 1, Chapter 4, Article 2, Section 65850 of the California Government Code, the City has adopted Title 16, Chapter 2, Article 1, Section 16-2.01.010 of the Victorville Municipal Code, providing the authority to amend Title 16 of the Victorville Municipal Code and the various regulations, requirements, exceptions and guidelines located therein; and

WHEREAS, pursuant to Title 7, Division 1, Chapter 4, Article 2, Section 65860 of the California Government Code, the City of Victorville Zoning Ordinance shall be amended to be consistent with the General Plan within reasonable time; and

WHEREAS, the City of Victorville previously adopted Ordinance No. 2299 on June 18, 2013, that established the prohibition of single-serve alcohol sales for any new business seeking approval to sell alcoholic beverages for off-site consumption; and

WHEREAS, the City of Victorville previously adopted Ordinance No. 2324 on October 7, 2014, that: required most existing and new business selling alcoholic beverages to obtain a discretionary conditional use permit; instituted limited exceptions for the issuance of a Finding of Public Convenience or Necessity in census tracts overconcentrated with licenses to sell alcohol as determined by the California Department of Alcoholic Beverage Control; added distance requirements for the placement of establishments selling alcoholic beverages in relation to the location of sensitive uses such as residentially zoned property, schools, religious facilities, and parks/playgrounds; and introduced design and operating standards for businesses selling alcohol for off-site consumption aimed at public nuisance prevention that include requirements such as sufficient lighting, adequate refuse collection, discouragement of loitering, signage limitations, prohibited sale of drug paraphernalia, site maintenance, and sufficient employee training; and

WHEREAS, the City of Victorville previously adopted Ordinance No. 2339 on August 18, 2015, that: established that retail tobacco and tobacco paraphernalia sales would only be possible at locations permitted to sell alcohol for off-site consumption and regulated the display of tobacco products as well as prohibited smoking or vaping on the business premises and the sale of drug

paraphernalia; and prohibited any new smoke shops or smoking lounges within the City of Victorville; and

WHEREAS, on January 1, 2023, California Senate Bill 793 became effective and prohibits tobacco retailers from selling, offering to sell, or possessing flavored tobacco products; excepting for hookah tobacco, loose leaf tobacco, and handmade premium cigars; and

WHEREAS, on January 1, 2024, California Assembly Bill 935 became effective and strengthened the California flavored tobacco products prohibition by establishing the California Department of Public Health (CDPH) as the primary state enforcement agency, increased penalties for retailers who do not comply with the law, and changed the definition of a retail location to include mobile units such as booths and stands; and

WHEREAS, the Planning Commission finds that the proposed Victorville Municipal Code Amendment will further consistency with the General Plan in compliance with Title 7, Division 1, Chapter 4, Article 2, Section 65860 of the of California Government Code since the Land Use Element of the General Plan includes Policy LU-N.7 which requires that properties are adequately maintained, both for safety and aesthetic reasons, by encouraging voluntary compliance whenever possible, and utilizing Code enforcement as necessary, which the proposed amendment will address due to the inclusion of an annual inspection process for applicable alcohol sales establishments and tobacco retailers; and

WHEREAS, the Planning Commission finds that the proposed amendments to Title 16 of the Victorville Municipal Code (also known as the “Development Code”) relating to tobacco sales are necessary to comply with current State laws and ensure business locations area adequately maintained as required by the General Plan; and

WHEREAS, the Planning Commission finds that local tobacco control laws that provide for the suspension or revocation of local licenses for the violation of California tobacco control laws are authorized pursuant to Section 22971.3 of the California Business and Professions Code; and

WHEREAS, the Planning Commission finds that current operating standards required by the Development Code for businesses selling alcohol and tobacco for off-site consumption are limited to enforcement during initial business opening without a means to ensure ongoing compliance; and

WHEREAS, the Planning Commission finds that ongoing compliance inspections and an associated violation schedule is necessary to ensure compliance with existing and proposed operating standards for applicable business engaging in sale of alcohol and tobacco for off-site consumption due to the potential for non-compliance and a changing marketplace with evolving technologies and alcohol and tobacco products; and

WHEREAS, the Planning Commission finds that proposed Development Code amendments relating to new and updated definitions are necessary for clarity and to facilitate implementation of the proposed compliance inspections; and

WHEREAS, the Planning Commission finds that the removal of allowances to sell single-serve alcoholic beverages for non-conforming business existing prior to the prohibition of single-serve alcoholic beverages will ensure that applicable businesses are all operating under the same standards, and a minimum of twelve (12) months is sufficient to clear remaining stock of single-serve alcoholic beverages; and

WHEREAS, the Planning Commission finds on their own independent judgment that this project is exempt from the California Environmental Quality Act (CEQA) based upon CEQA Guidelines Section 15061(b)(3), as there is no possibility that the proposed amendment will have a significant effect on the environment inasmuch as the proposed amendment will adopt operating standards, annual inspection and licensing procedures, and other standards that will not: directly impact the environment; modify existing codes in a manner that is inconsistent with the General Plan; or allow development without its own specific environmental review process in accordance with CEQA.

THEREFORE, BE IT RESOLVED by the Planning Commission, pursuant to Section 16-2.01.050 of the Victorville Municipal Code, that it recommends to the City Council that Development Code Amendment PLAN22-00002, an amendment to Title 16 of the Victorville Municipal Code, be adopted as follows, including any non-substantive changes or other changes deemed necessary by the City Attorney for clarity or to comply with State law:

Legend
Existing Text
<del>Deleted Text</del>
<i>Revised Text</i>
<u>New Text</u>
{Editing Notes}

## Chapter 1: Development Department

### Article 3: Definitions

#### Section 16-1.03.010: - Definitions

##### Arm's length transaction

*means a sale of a tobacco retailer location or business in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of violations of the Development Code is not an arm's length transaction.*

##### Alcoholic Beverage

means any liquid or solid containing alcohol, spirits, liquor, wine, or beer, that contains one-half of one percent or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed or combined with other substances, the sale of which requires an ABC license.

##### Alcoholic beverage, single-serve

*means an alcoholic beverage, as defined, that is packaged for sale in single unit quantities described as: individual containers of beer, malt liquor and alcoholic energy drinks of any size; individual containers of wine of less than 750 ml in size; individual containers of distilled spirits of less than 375 ml in size; or any other individual container of alcoholic beverage for single-serve consumption.*

*This definition does not include:*

- (i) beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings; or*
- (ii) alcoholic beverages sold in manufacturers pre-packaged multi-unit quantities to include: wine in bottles or containers smaller than 750 ml; individual containers of distilled spirits of less than 375 ml in size; wine coolers, beer, malt liquor and alcoholic energy drinks in containers of any size; and/or any other individual alcoholic beverage for single-serve consumption.*

Alcoholic beverage sales establishment

including “alcohol sales establishment” or “alcoholic beverage establishment”, means an establishment that conducts sales of alcoholic beverages for consumption on or off the premises where sold.

Alcoholic beverage sales establishment, nonconforming

means any alcoholic beverage sales establishment that does not conform to the regulations of this Title, and for which a valid California Department of Alcoholic Beverage Control license had been issued and used in the exercise of the rights and privileges conferred by the license, which lawfully existed at the time the regulations with which it does not conform became effective. Such an establishment shall be considered a deemed approved establishment and shall no longer be considered a legal nonconforming use.

~~On-site alcoholic beverage establishment~~Alcoholic beverage establishment, on-site

means an establishment that conducts sales of alcoholic beverages for consumption on the premises where sold.

~~Off-site alcoholic beverage establishment~~Alcoholic beverage establishment, off-site

means an establishment that conducts retail sales of alcoholic beverages for consumption off the premises where sold.

Deemed approved establishment

means any nonconforming alcoholic beverage sales establishment or nonconforming tobacco retailer. Such establishment shall be considered a deemed approved establishment effective on the date the regulations with which it does not conform became effective.

Deemed approved status

means the permitted use of land for a deemed approved establishment that conducts retail sales of alcoholic beverages for consumption off the premises where sold. Deemed approved status remains in effect as long as an alcohol sales establishment complies with the applicable operational standards provided in the Development Code.

Drug paraphernalia

as defined in California Health and Safety Code sections 11014.5 and 11364.5. “Drug paraphernalia” means all equipment products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance (as defined in California Health and Safety Code Section 11054 et seq.) in violation of the California Uniform Controlled Substances Act, commencing with California Health and Safety Code section 11000.



**Electronic smoking product and/or device**

(also known as "electronic cigarette," "e-cigarette," "electronic nicotine delivery system," "e-cigar," "e-cigarillo," "e-pipe," "e-hookah," "hookah pen," "vape pen" etc.) is a battery operated device used to inhale a aerosolized or vaporized substance that frequently, though not always, contains nicotine. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device. The sale of electronic smoking products and devices are hereby regulated by the Victorville Municipal Code in the same manner as tobacco product and paraphernalia sales. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

**Person**

means any natural person, partnership, cooperative association, corporation, joint venture, limited liability company, personal representative, receiver, trustee, assignee, or any other legal entity or combination of the foregoing acting as a single unit.

**Proprietor**

means 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.

**Tobacco paraphernalia**

shall mean any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco or tobacco products. Items or devices classified as tobacco paraphernalia include but are not limited to the following: cigarette papers or wrappers, blunt wraps as defined in Section 308 of the California Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products, including electronic smoking products and/or devices. Lighters and matches shall be excluded from the definition of tobacco paraphernalia.

**Tobacco product**

shall mean any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. Tobacco product includes any component, part, or accessory used to enable human consumption of tobacco or nicotine, regardless of if that product contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, and tobacco paraphernalia as defined. For purposes of the Development Code, the term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

**Tobacco product coupon**

means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

**Tobacco product, flavored**

means any tobacco product that imparts a taste or odor distinguishable by an ordinary consumer, other than the taste or odor of tobacco, either prior to or during the consumption of such tobacco product, including but not limited to tastes or odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or a cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product.

**Tobacco product, presumptive flavored**

Means any communication by or on behalf of the manufacturer or retailer of a tobacco product that such tobacco product imparts a taste or odor other than the taste or odor of tobacco, or that imparts a cooling or numbing sensation, constitutes presumptive evidence that the tobacco product is a flavored tobacco product. This includes but is not limited to public statements that a product has a minty or cooling effect, such as describing the product as "chill," "ice," "fresh," "arctic," or "frost."

**Tobacco retailer**

means any person or entity that sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, tobacco paraphernalia, or any electronic smoking product and/or device. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

**Tobacco retailer, nonconforming**

means any tobacco retailer that does not conform to the regulations of the Development Code, and which lawfully existed at the time the regulations with which it does not conform became effective. Such an establishment shall be considered a deemed approved establishment and shall no longer be considered a legal nonconforming use.

**Tobacco retailer status**

means the permitted use of land for a tobacco retailer, including a deemed approved establishment. Tobacco retailer status remains in effect as long as a tobacco retailer complies with the applicable operational standards provided in the Development Code.

{Position new/revised definitions in alphabetical order within existing definitions table}

## Chapter 3: Zoning and Land Use Requirements

### Article 7: Land Use and Special Requirements

#### Section 16-3.07.010: - Permitted and conditional land uses – All zoning districts

T Y P E	USE	ZONE																
		AE	A	SR	R1	R2	R3	R4	MDR	RMPD	C1	C2/ C4	CA	CM	IPD	M1	M2	PC
COMMERCIAL	<b>14) ALCOHOL</b>																	
	Alcoholic beverage sales for consumption on or off the premises (See Sec. 16-3.07.020 <del>15</del> ;- alcohol sales)	-	-	-	-	-	-	-	-	-	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C
	<b>25) TOBACCO</b>																	
	Tobacco sales (See Sec. 16-3.07.020; Tobacco product and paraphernalia sales requirements)																	

{Delete “Tobacco” Land Use – Renumber Uses 26) through 32) as 25) through 31) accordingly}

T Y P E	USE	ZONE																
		AE	A	SR	R1	R2	R3	R4	MDR	RMPD	C1	C2/ C4	CA	CM	IPD	M1	M2	PC
COMMERCIAL	<b>30) ACCESSORY USES (Subject to Sections 16-3.07.030 &amp; 16-3.07.040 of the V.M.C.)</b>																	
	<u>Tobacco sales (See Sec. 16-3.07.015)</u>	=	=	=	=	=	=	=	=	=	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

{Add Accessory Use – Position in alphabetical order within existing list of accessory uses}

#### Section 16-3.07.020: - Special requirements for certain permitted and conditional uses

{Remove subsections (a) “Alcohol sales” and (k) “Tobacco product and paraphernalia sales requirements” in their entirety; reassign remaining subsections as (a) through (j) accordingly.}

**Section 16-3.07.015: - Special requirements for alcoholic beverage sales establishments and tobacco retailers**

Because the use of alcohol and tobacco are restricted for use by adults twenty-one years of age or older and in an effort to prevent minors from accessing alcohol or tobacco, as well as to ensure alcoholic beverage establishments and tobacco retailers do not negatively impact neighboring properties and businesses, the City has developed minimum standard licensing and operating requirements. These requirements implement an annual inspection process applicable to the majority of the off-site alcoholic beverage establishments and tobacco retailers operating within the City of Victorville, and are provided in order to help ensure these uses are not injurious to the health, safety and welfare of the community.

(a) Alcoholic beverage sales

(1) Conditional use permit required

- (i) Except as provided in subsections (ii), (iii) and (iv) below, all alcoholic beverage establishments to which this Chapter is applicable shall obtain a conditional use permit pursuant to Article 2 of this Chapter and satisfy all conditions as set forth in any applicable law or regulation, including any law or regulation of the Victorville Municipal Code, in any entitlement, and in any license issued, prior to engaging in any alcoholic beverage sales activity.
- (ii) Unless otherwise required by this Chapter, a conditional use permit shall not be required of an off-site alcoholic beverage sales establishment consisting of a general retail store, a grocery store, or a retail pharmacy with greater than 8,000 square feet of gross floor area and a maximum of 10 percent of the gross floor area devoted to the sale and display of alcoholic beverages. If found to be in violation of this Chapter, such alcoholic beverage establishments exempt from the requirement of a conditional use permit pursuant to this subsection, can lose their exemption pursuant to the business license revocation procedures provided in Chapter 7 of this Title. If such revocation is granted, such establishment will need to comply with obtaining a conditional use permit prior to continuing the sale of alcoholic beverages.
- (iii) Unless otherwise required by this Chapter, a conditional use permit shall not be required of a restaurant, as defined in the Development Code, establishment that serves alcoholic beverages for on-site consumption, limited to on-sale beer and wine, non-fortified products only.
- (iv) Unless otherwise required by this Chapter, a deemed approved establishment operating in accordance with applicable deemed approved operating standards and maintaining a valid deemed approved status shall not be required to obtain a conditional use permit.

(2) Finding of public convenience or necessity

- (i) In areas with an over-concentration of off-site alcoholic beverage establishment licenses, as defined in the Development Code, pursuant to California Business and Professions Code Section 23958.4, the City desires to strike a balance between the number of off-site licenses and the convenience of store customers. As a result, consideration to approve a finding of public convenience or necessity may be given by either the City Council, Planning Commission, or Zoning Administrator, as applicable, to businesses wishing to obtain an off-site license in over-concentrated areas that comply with the following criteria:

- a. The retailer must occupy greater than 8,000 square feet of gross floor area or be tied to a fueling station on the premises with fuel sales comprising the majority of the business's sales;
  - b. A retailer tied to a fueling station with less than 8,000 square feet of gross floor area shall be limited to off-site beer and wine, non-fortified products only;
  - c. No more than 10% of the floor area may be devoted to alcoholic beverage display, unless a larger percentage of display is otherwise approved by the Planning Commission;
  - d. At least 10% of the floor area must be devoted to food sales and non-alcoholic beverages;
  - e. If location of the proposed business is within a high crime area, which is defined as Police Department calls for service for alcoholic beverage-related incidents of 20% greater than the average number of such incidents reported for the City as a whole, the hearing body may use that fact in denying the application or the Public Convenience or Necessity finding required for the Department of Alcoholic Beverage Control;
  - f. The property/building/use has no outstanding Building or Health Code violations or Code Enforcement activity;
  - g. The site is properly maintained, including building improvements, landscaping, and lighting; and
  - h. The owner/applicant has no history of violations with the Alcoholic Beverage Control Board and/or City of Victorville.
- (ii) Prior to the establishment of any business selling alcoholic beverages, when within the Zoning Administrator's purview, the Zoning Administrator, when required pursuant to California Business and Professions Code Section 23958.4 shall make the finding of public convenience or necessity. Prior to making said finding, the Zoning Administrator shall consult with the City Police Department to receive that agency's comments. If the comments received indicate concerns, the Zoning Administrator shall not make the finding, but shall require the applicant to submit an application for a conditional use permit for Planning Commission review, when not otherwise required.
- (iii) If any other discretionary approvals are required, the public convenience or necessity finding shall be incorporated into the process for such discretionary approval review.

### (3) Deemed Approved

- (i) Applicability
  - a. The provisions of this subsection shall be applicable to any nonconforming off-site alcoholic beverage sales establishment operating without a conditional use permit otherwise required by the Development Code.
  - b. The provisions of this section shall apply to the extent permissible under other laws to all nonconforming off-site alcoholic beverage sales establishments, as defined in the Development Code, located in the City of Victorville.
  - c. Whenever any provision in this section, in an existing conditional use permit, or in any other law, ordinance, or regulation of any kind, imposes overlapping or contradictory regulations, or contains restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in this section.
  - d. The requirements provided herein are in addition to any other applicable requirements found within the Victorville Municipal Code, and any other applicable law.



(ii) Nonconforming off-site alcoholic beverage establishments; Notice

- a. The City shall notify the owner and/or operator of an off-site alcoholic beverage establishment of its nonconforming status at the address as shown on their City business license, and also, if not the same, shall notify any property owner at the address shown on the county assessor's property tax assessment records. The notice shall be sent by certified mail with return receipt requested and shall include a copy of the operational standards in this section with the requirement that they be posted in a conspicuous and unobstructed place visible from the entrance of the alcohol sales establishment for public review. Should the notice be returned, then the notice shall be sent via first-class mail and hand delivered by City Code Enforcement or Planning Department staff to the alcohol sales establishment. Failure of any person to receive notice given pursuant to this section shall not affect the nonconforming status of the establishment.
- b. Upon receipt of notification, nonconforming off-site alcoholic beverage establishments shall be provided twelve (12) months to comply with the operational standards outlined in this section, unless otherwise granted an exception by the Planning Commission in conjunction with approval of a conditional use permit pursuant to Article 2 of this Chapter.
  1. Within the 12-month compliance period provided, off-site alcoholic beverage establishments in full compliance with deemed approved operational standards, as determined by the City of Victorville Code Enforcement and Planning Departments, shall be granted deemed approved status.
  2. Those nonconforming off-site alcoholic beverage establishments maintaining non-compliance with deemed approved operational standards at the conclusion of the 12-month compliance period shall be deemed a public nuisance, with abatement proceedings to proceed in accordance with Title 13, Chapter 13.02 and Title 16, Chapter 6 of the Victorville Municipal Code.

(iii) Operational standards

- a. Applicable to off-site alcoholic beverage establishments with a valid deemed approved status.
  1. Off-site alcoholic beverage sales activities shall be designed, constructed, and operated to conform with all of the operational standards and alcoholic beverage sales limitations outlined in Section 16-3.07.015(a)(5)(i) of this Chapter.
- b. Failure to comply with any of these requirements shall constitute grounds for revocation of deemed approved status and/or a City business license. The above requirements shall not be considered the sole grounds for revocation of a deemed approved status and/or business license.

(4) Distance requirements

- (i) No off-site alcoholic beverage establishment shall be located within 600 feet of residentially zoned property, public or private schools, religious facilities, or parks or playgrounds, except:
  - a. A general retail store, or grocery store, or retail pharmacy with greater than 8,000 square feet of gross floor area and a maximum of 10 percent of the gross floor

- area devoted to the sale and display of alcoholic beverages, unless a larger percentage of display is otherwise approved by the Planning Commission; or
- b. A convenience market, as defined in the Development Code, with a maximum of 10 percent of the retail display area devoted to the sale and display of alcoholic beverages, limited to off-site beer and wine, non-fortified products only. Retail display area includes all floor area within the establishment that is accessible and within view of customers, including aisles, and floor area occupied by shelves, counters, and refrigerator coolers.
- (ii) No bar/nightclub, as defined in the Development Code, that sells alcoholic beverages for on-site consumption shall be located within 600 feet of residentially zoned property, public or private schools, religious facilities, or parks or playgrounds. A micro-brewery, licensed and classified by the California Department of Alcoholic Beverage Control as a Small Beer Manufacturer (License Type 23), or a billiard parlor as defined in the Development Code, shall not be considered a bar/ nightclub.
- (iii) For purposes of this section, distances shall be measured between the closest property lines of the affected locations.

(5) Operational standards

- (i) Off-site alcoholic beverage establishments shall be designed, constructed, and operated to conform to all of the following operational standards and alcoholic beverage sales limitations:
- a. An establishment selling alcoholic beverages shall not result in adverse effects to the health, peace, or safety of persons residing or working in the surrounding area.
- b. An establishment selling alcoholic beverages for off-site consumption shall be prohibited from selling single-serve alcoholic beverages as follows:
1. Individual containers of beer, malt liquor and alcoholic energy drinks of any size; individual containers of wine of less than 750 ml in size; individual containers of distilled spirits of less than 375 ml in size; or any other individual container of alcoholic beverage for single-serve consumption. This restriction shall not be required of an establishment consisting of a general retail store, a grocery store, or a retail pharmacy with greater than 8,000 square feet of gross floor area. This restriction is not intended to prohibit the sale of such beverages in kegs or other types of containers, with a volume of two or more gallons, which are clearly designed to dispense multiple servings.
  2. Wine in bottles or containers smaller than 750 ml; individual containers of distilled spirits of less than 375 ml in size; wine coolers, beer, malt liquor and alcoholic energy drinks in containers of any size; and/or any other individual alcoholic beverage for single-serve consumption shall only be sold in the manufacturer's pre-packaged multi-unit quantities.
- c. An establishment selling alcoholic beverages shall not result in nuisance activities within the premises or on adjacent properties or roadways, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, sales to minors or police detentions and arrests that were not otherwise mitigated during the early stages of disturbance.

- d. An establishment shall comply with all provisions of local, state or federal laws, regulations or orders, including without limitation, those of the California Department of Alcoholic Beverage Control; California Business and Professions Code sections 24200, 24200.6, and 25612.5; as well as any condition imposed on any permits issued pursuant to such applicable laws, regulations or orders. This includes payment of annual City business license fees.
- e. The premises upkeep and operating characteristics shall be compatible with, and shall not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
- f. An establishment shall comply with the following public nuisance prevention measures:
  - 1. Lighting: Exterior areas of the premises and adjacent parking lots shall be provided with sufficient lighting in a manner that provides adequate illumination for alcohol establishment patrons while not spilling onto surrounding residential and commercial properties. A photometric study may be required to demonstrate compliance.
  - 2. Litter: Adequate litter receptacles shall be provided on site and in the building. The premises shall be kept free of the accumulation of litter and shall be removed no less frequently than once each day the business is open.
  - 3. Loitering: The establishment's operators or employees shall be required to discourage loiterers and to ask persons loitering longer than fifteen minutes to leave the area and contact local law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so.
  - 4. Signage: There shall be no exterior advertising of alcoholic products, or tobacco and paraphernalia or similarly controlled products.
  - 5. Signs: The following signs shall be required to be prominently posted in a readily visible manner on an interior wall or fixture, and not on windows, in English and Spanish:
    - i. "California State Law prohibits the sale of alcoholic beverages to persons under 21 years of age."
    - ii. "No Loitering or Public Drinking."
    - iii. "It is illegal to possess an open container of alcohol in the vicinity of this establishment."
  - 6. Mitigating Alcohol Related Problems: The establishment shall be required to operate in a manner which mitigates alcohol related problems that negatively impact those individuals living or working in the neighborhood, including without limitation, loitering, violence, drunkenness, public urination, solicitation, drug-dealing, drug use, and loud noise on or near the premises. Such mitigation measures shall include the operators and employees of the establishment maintaining adequate surveillance of the premises and nearby areas and contacting local law enforcement officials during the early stages of a disturbance.
  - 7. Drug Paraphernalia: An off-site alcohol establishment shall be prohibited from selling drug paraphernalia as defined in Health and Safety Code sections 11014.5 and 11364.5. "Drug paraphernalia" means all equipment products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance (as defined in California Health and Safety Code Section 11054 et seq.) in



- violation of the California Uniform Controlled Substances Act commencing with California Health and Safety Code section 11000.
8. Prohibited Vegetation: Exterior vegetation shall not be planted or maintained that could be used as a hiding place for persons on the premises. Exterior vegetation may be planted and maintained in a manner that minimizes its use as a hiding place.
  9. Window Obstructions: To ensure a clear and unobstructed view of the interior of the premises from the exterior public sidewalk or entrance, including the area in which the cash registers are maintained, no more than 15% of windows and entry doors shall be blocked by signs, vending machines, shelves, racks, storage, etc.
  10. Training: Each off-site alcoholic beverage establishment operator and their employees selling alcohol shall complete the Licensee Education on Alcohol and Drugs (LEAD) program training provided by the California Department of Alcoholic Beverage Control. LEAD certificates shall be kept on the premises and provided to City officials within 48 hours of a written request.
  11. Posting of Documents: A copy of these operational standards, any applicable California Department of Alcoholic Beverage Control or City operating conditions, and any training requirements shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment as well as any City code enforcement officer, or authorized state or county official.
- (ii) Failure to comply with any of these requirements shall constitute grounds for revocation of a conditional use permit and/or business license. The above requirements, shall not be considered the sole grounds for revocation of a conditional use permit and/or business license.

(b) Tobacco retailers

(1) Tobacco retailer status required

- (i) Except as provided in subsection (iii) below, all tobacco retailers engaging in retail tobacco sales shall obtain tobacco retailer status for each location at which that tobacco retailing is to occur pursuant to Section 16-3.07.015(b)(2) of this Article and satisfy all conditions, as set forth in any applicable law or regulation, including any provision of the Development Code, in any entitlement granted, and in any license issued, prior to engaging in any tobacco sales activity.
- (ii) No tobacco retailer status may be granted to authorize retail tobacco sales at any location that is not licensed under state law to sell alcoholic beverages for consumption off the premises (e.g., an off-site alcoholic beverage sales establishment with a license issued by the California Department of Alcoholic Beverage Control), except a deemed approved establishment with or seeking tobacco retailer status pursuant to Sections 16-3.07.015(b)(2) and (3) of this Article.
- (iii) Tobacco retailer status shall not be required of a tobacco retailer operating as an accessory use to an alcoholic beverage sales establishment that is exempt from obtaining a conditional use permit or deemed approved status.

(2) Tobacco retailer status procedure

- (i) Application for tobacco retailer status shall be submitted in the name of each proprietor of the business 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 all applicable federal, state, and local statutes, laws, regulations and ordinances, including, without limitation, the City's laws affecting the granting of tobacco retailer status.
- (ii) All applications for tobacco retailer status shall be submitted in conjunction with the location's business license application and shall contain, at a minimum, the following information:
  - a. The name, address, telephone number, driver's license or similar identification, including date of birth, of each proprietor of the business that is seeking tobacco retailer status.
  - b. The business name, address, telephone number and business hours of the single fixed location for which tobacco retailer status is sought.
  - c. If the single fixed location is leased, a copy of the lease and the name, address and phone number of the property owner of the single fixed location.
  - d. A single name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this Chapter (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 b above.
  - e. A statement signed by each proprietor that no drug paraphernalia is or will be sold at the business seeking tobacco retailer status.
  - f. Proof that the location for which tobacco retailer status is sought has been issued a valid California Cigarette and Tobacco Products Retailer's License by the California Department of Tax and Fee Administration.
  - g. Whether or not any proprietor or prior proprietor of the business, to the best of applicant's knowledge, has admitted violating, or has been found to have violated, this Chapter or whose proprietorship has admitted violating, or has been found to have violated, this Chapter, and, if so, the dates and locations of all such violations within the previous six years.
  - h. Such other information as the Zoning Administrator deems necessary for the administration or enforcement of this Chapter.
  - i. All information required to be submitted in order to apply for tobacco retailer status shall be updated with the City whenever the information changes. A tobacco retailer shall provide the City with any updates within ten (10) business days of a change.
  - j. A copy of the conditional use permit, if applicable (or an explanation as to why such permit is not required).
- (iii) Upon the receipt of an application for tobacco retailer status and the business license fee required by the Development Code, the City shall grant tobacco retailer status in conjunction with the City business license unless substantial evidence demonstrates that one or more of the following bases for denial exists:
  - a. The information presented in the application is incomplete, inaccurate, or false. Intentionally supplying inaccurate or false information shall be a violation of the Development Code.
  - b. The application seeks authorization for tobacco retailing at a location for which this Chapter prohibits issuance of tobacco retailer licenses. However, this paragraph shall not constitute a basis for denial of tobacco retailer status 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.
- c. The application seeks authorization for tobacco retailing for a proprietor to whom the Development Code prohibits tobacco retailer status to be granted.
  - d. The application seeks authorization for tobacco retailing that is prohibited pursuant to this Chapter (e.g., mobile vending), that is unlawful pursuant to any provision of the Victorville Municipal Code, or that is unlawful pursuant to any other law.
  - e. The application seeks authorization for tobacco retailing at a location in non-compliance with the operating standards and/or compliance monitoring requirements pursuant to Sections 16-3.07.015(b)(4) and 16-3.07.015(c) of this Article.
  - f. A denial of a license application shall be in writing, citing the reasons for such denial and shall be appealable in accordance with the administrative appeal procedures outlined in Chapter 2, Article 2 of this Title.
- (iv) Granted tobacco retailer status is non-transferable and shall be valid for a period of one year and be subject to annual renewal, including fees, in conjunction with the business license renewal process.
- a. Tobacco retailer status renewal shall only be granted if no violations are found during annual compliance monitoring required by Section 16-3.07.015(c)(1) of this Article.
- (v) Tobacco retailer status may be denied pursuant to Section 16-3.07.015(b)(2)(iii) of this Article.

(3) Deemed approved

(i) Applicability

- a. The provisions of this subsection shall be applicable to any nonconforming tobacco retailer operating as a primary use or as an accessory use to an alcoholic beverage sales establishment operating with or without a conditional use permit or deemed approved status otherwise required by this Chapter.
- b. The provisions of this section shall apply to the extent permissible under other laws to all nonconforming tobacco retailers, as defined in the Development Code, located in the City of Victorville.
- c. Whenever any provision in this section, in an existing conditional use permit, or in any other law, ordinance, or regulation of any kind, imposes overlapping or contradictory regulations, or contains restrictions covering any of the same subject matter, the provision which is more restrictive or imposes higher standards shall control, except as otherwise expressly provided in this section.
- d. The requirements provided herein are in addition to any other applicable requirements found within the Victorville Municipal Code, and any other applicable law.

(ii) Nonconforming tobacco retailers; Notice

- a. The City shall notify the proprietor of a tobacco retailer of its nonconforming status at the address as shown on their City business license, and also, if not the same, shall notify any property owner at the address shown on the county assessor's property tax assessment records. The notice shall be sent by certified mail with return receipt requested and shall include a copy of the operational standards in this section with the requirement that they be posted in a conspicuous and unobstructed place visible from the entrance of the tobacco retailer for public review. Should the notice be returned, then the notice shall be sent via first-class

mail and hand delivered by City Code Enforcement or Planning Department staff to the subject tobacco retailer business location. Failure of any person to receive notice given pursuant to this section shall not affect the nonconforming status of the establishment.

b. Upon receipt of notification, nonconforming tobacco retailers shall be provided twelve (12) months to comply with the operational standards outlined in this section, unless otherwise granted an exception by the Planning Commission in conjunction with approval of a conditional use permit pursuant to Article 2 of this Chapter.

1. Within the 12-month compliance period provided, tobacco retailers in full compliance with deemed approved operational standards, as determined by the City of Victorville Code Enforcement and Planning Departments, shall be granted tobacco retailer status.

2. Those nonconforming tobacco retailers maintaining non-compliance with deemed approved operational standards at the conclusion of the 12-month compliance period shall be deemed a public nuisance, with abatement proceedings to proceed in accordance with Title 13, Chapter 13.02 and Title 16, Chapter 6 of the Victorville Municipal Code.

(iii) Operational standards

a. Applicable to tobacco retailers with or seeking a valid tobacco retailer status.

1. Tobacco retailer sales activities shall be designed, constructed, and operated to conform with all of the operational standards and display limitations outlined in Section 16-3.07.015(b)(4) of this Article.

b. Failure to comply with any of these requirements shall constitute grounds for revocation of tobacco retailer status and/or business license. These above requirements shall not be considered the sole grounds for revocation of a tobacco retailer status and/or business license.

(4) Operational standards

(i) Tobacco retailer business locations shall be designed, constructed, and operated to conform to all of the following operational standards and tobacco sales limitations:

a. An establishment selling tobacco products and/or tobacco paraphernalia shall not result in adverse effects to the health, peace, or safety of persons residing or working in the surrounding area.

b. An establishment selling tobacco products and/or tobacco paraphernalia shall not result in nuisance activities within the premises or on adjacent properties or roadways, including without limitation, disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd conduct, sales to minors, or police detentions and arrests that were not otherwise mitigated during the early stages of disturbance.

c. An establishment shall comply with all provisions of local, state or federal laws, regulations or orders, including without limitation, those in the California Health and Safety Code sections 11014.5 and 11364.5; the California Uniform Controlled Substances Act, commencing with California Health and Safety Code section 11000; California Business and Professions Code Sections 22950-22964; as well as any condition imposed on any permits issued pursuant to applicable laws,



- regulations, or orders. This includes payment of annual City business license fees.
- d. The premises upkeep and operating characteristics shall be compatible with, and shall not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood.
- e. The following shall be prohibited at any tobacco retailer business location:
1. Smoking or vaping on the premises at any time.
  2. The sale of tobacco products and paraphernalia to a person under the age of 21.
  3. Sales solicited or conducted on the premises by minors.
  4. The sale of drug paraphernalia.
  5. The sale of flavored tobacco products or presumptive flavored tobacco products.
  6. Distribution of free or low-cost tobacco, tobacco products or tobacco paraphernalia, as well as tobacco coupons for said items.
  7. The sale of tobacco products and paraphernalia via a vending machine, by a sidewalk vendor or mobile vehicle vendor (mobile vending), or via temporary use permit.
- f. The display area of tobacco products, including tobacco paraphernalia, shall be subject to the following limitations:
1. Shall not exceed 10 percent of the total floor area of a business establishment, excluding nonconforming smoke shops, as defined in this Title, with a valid deemed approved status.
  2. Shall be located behind a service counter in a manner that prohibits self-service by the customer.
  3. Display area devoted to tobacco paraphernalia shall not exceed a 2 foot in depth by 4 foot in length section of a single shelf space, excluding non-conforming smoke shops with a valid deemed approved status.
- g. An establishment shall comply with the following public nuisance prevention measures:
1. Lighting: Exterior areas of the premises and adjacent parking lots shall be provided with sufficient lighting in a manner that provides adequate illumination for tobacco retailer patrons while not spilling onto surrounding residential and commercial properties. A photometric study may be required to demonstrate compliance.
  2. Litter: Adequate litter receptacles shall be provided on site and in the building. The premises shall be kept free of the accumulation of litter and shall be removed no less frequently than once each day the business is open.
  3. Loitering: The establishment's operators or employees shall be required to discourage loiterers and to ask persons loitering longer than fifteen minutes to leave the area and contact local law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so.
  4. Signage: There shall be no exterior advertising of alcoholic products, or tobacco and paraphernalia or similarly controlled products.
  5. Signs: The following signs shall be required to be prominently posted in a readily visible manner on an interior wall or fixture, and not on windows, in English and Spanish:
    - i. "California State Law prohibits the sale of tobacco products to persons under 21 years of age."
    - ii. "No Loitering or Public Drinking."
    - iii. "It is illegal to possess an open container of alcohol in the vicinity of this establishment."
  6. Mitigating Related Problems: The tobacco retailer shall be required to operate

in a manner which mitigates problems related to its business operations that negatively impact those individuals living or working in the neighborhood, including without limitation, loitering, violence, drunkenness, public urination, solicitation, drug-dealing, drug use, and loud noise on or near the premises. Such mitigation measures shall include the operators and employees of the establishment maintaining adequate surveillance of the premises and nearby areas and contacting local law enforcement officials during the early stages of a disturbance.

7. Prohibited Vegetation: Exterior vegetation shall not be planted or maintained that could be used as a hiding place for persons on the premises. Exterior vegetation may be planted and maintained in a manner that minimizes its use as a hiding place.
  8. Window Obstructions: To ensure a clear and unobstructed view of the interior of the premises from the exterior public sidewalk or entrance, including the area in which the cash registers are maintained, no more than 15% of windows and entry doors shall be blocked by signs, vending machines, shelves, racks, storage, etc.
  9. Posting of Documents: A copy of these operational standards, any applicable California Department of Tax and Fee Administration or city operating conditions and licenses, and any training requirements shall be posted in at least one prominent place within the interior of the establishment where it will be readily visible and legible to the employees and patrons of the establishment as well as any City code enforcement officer or authorized state or county official.
- (ii) Failure to comply with any of these requirements shall constitute grounds for revocation of an associated conditional use permit, tobacco retailer status and/or business license. The above requirements, shall not be considered the sole grounds for revocation of a conditional use permit, tobacco retailer license and/or business license.

(c) Monitoring, inspections, and violations

(1) Compliance monitoring

- (i) Applicability. All off-site alcoholic beverage sales establishments and tobacco retailers required to obtain a conditional use permit, deemed approved status, or tobacco retailer status shall be subject to an initial inspection upon approval of a conditional use permit as well as upon notification provided in accordance with Sections 16-3.07.015(a)(3)(ii) or (b)(3)(ii) of this Article, and an annual monitoring inspection thereafter by the City Manager or his/her designee for compliance with all applicable laws and operating standards outlined in the Development Code, including the collection of the compliance inspection fee set forth in the City's most recently adopted master fee schedule.
- (ii) Scope of Alcohol Sales Establishment and Tobacco Retailer Inspections. The City Manager, or his or her designee shall conduct an interior and exterior site inspection of public areas of each off-site alcoholic beverage establishment and tobacco retailer prior to the initial issuance of a business license or granting of tobacco retailer status, prior to the annual issuance of a renewal business license or renewal tobacco retailer status, or prior to the granting of deemed approved status. The scope of the inspection shall include, but is not limited to:
  - a. Exterior property maintenance and cleanliness;
  - b. Landscape maintenance in accordance with the Development Code;

- c. Maintenance and upkeep of the primary structure such as windows, paint/stucco, weather protection, roof and other architectural features as well as ancillary site features such as off-street parking, trash enclosures, etc.; and
    - d. Compliance with operating standards outlined in Sections 16-3.07.015(a)(5) or (b)(4) of this Article, including without limitation, public nuisance prevention measures, display area limitations, and sales of permitted beverage type and container sizes.
  - (iii) Alcohol Sales Establishment and Tobacco Retailer Initial Inspections. An off-site alcoholic beverage sales establishment or tobacco retailer for which a conditional use permit has been approved or upon notification provided in accordance with Sections 16-3.07.015(a)(3)(ii) or (b)(3)(ii) of this Article shall undergo one initial compliance inspection conducted prior to the issuance of a business license, granting of tobacco retailer status or prior to the granting of deemed approved status, and one compliance re-inspection to be conducted 30 days after a failed initial compliance inspection unless the business owner requests the re-inspection take place at an earlier date.
    - a. Any new off-site alcohol sales or tobacco retailer establishment for which a conditional use permit has been approved shall not be issued a business license, granted deemed approved status, or granted tobacco retailer status until any violation found after the initial compliance inspection or the compliance re-inspection is resolved. Operation of a business without a business license shall be subject to the penalties and enforcement provisions of Section 16-6.01.100 of the Development Code.
    - b. Any violation found at a deemed approved establishment for which notification has been provided and the subsequent compliance period has been exhausted in accordance with Section 16-3.07.015(a)(3)(ii) or (b)(3)(ii) of this Article, shall be subject to the penalties and enforcement provisions of Section 16-6.01.100 of the Development Code.
  - (iv) Alcohol Sales Establishment and Tobacco Retailer Annual Renewal Inspections. An off-site alcoholic beverage sales establishment or tobacco retailer seeking a renewal business license or tobacco retailer status for which a conditional use permit has been approved, deemed approved status has been granted, or for which tobacco retailer status has been granted, shall undergo one compliance inspection conducted within 30 days prior to the expiration of the business license or tobacco retailer license, and one compliance re-inspection to be conducted no sooner than 15 days after a failed annual renewal inspection. Any violation found after the compliance re-inspection shall be subject to the penalties and enforcement provisions of Section 16-6.01.100 of the Development Code.
  - (v) Notice of Annual Alcohol Sales Establishment and Tobacco Retailer Renewal Inspection.
    - a. Prior to business license expiration for an off-site alcohol sales establishment or tobacco retailer, the City Manager, or his or her designee will mail a business license renewal notice to the business owner and the business owner's authorized representative (if any) notifying the business owner of the following:
      - 1. The business owner's requirement to renew the annual business license as well as deemed approved status and tobacco retailer status (as applicable); and
      - 2. Notice that Code Enforcement and/or Planning Department staff will inspect interior and exterior public areas of the business establishment within 30 days of the date of the renewal notice.

- b. Said notice will be mailed by first-class mail to the business owner and the business owner's authorized representative (if any) as it appears in the City business license records, and a copy will also be mailed to the alcohol sales establishment or tobacco retailer location to be inspected. In the case of multiple business owners of the same alcohol sales establishment or tobacco retailer, notice to any one of the business owners is sufficient notice.
          - c. In the event a business owner, business owner's authorized representative (if any), or tenant at the alcohol sales establishment or tobacco retailer location refuses to allow the City access to conduct the interior and exterior site inspection of public areas, the City Manager or his/her designee, the City Code Enforcement Official, or his/her designee, and the City Attorney may use all legal remedies to ensure that an inspection is conducted as required by this Article.
          - d. If the City is not able to obtain the consent of the business owner, business owner's authorized representative (if any), or tenant of the alcohol sales establishment or tobacco retailer to conduct an inspection, the City shall withhold the business license until the inspection is conducted.
  - (vi) Results of Initial/Annual Alcohol Sales Establishment and Tobacco Retailer Inspections. After completion of the alcohol sales establishment or tobacco retailer initial inspection, the annual business license, or any re-inspection following an initial/renewal inspection where the alcohol sales establishment or tobacco retailer fails the inspection due to having violation(s) on the property, the City shall issue a Notice of Violation to the property owner and the business owner as noted in the City's business license records pursuant to Section 16-6.01.080 of the Development Code. As applicable, the Notice of Violation shall contain all information required by Sections 16-6.01.060 and 16-6.01.070 of this Code, including but not limited to, the following:
    - a. An itemization of any violation(s) of the applicable laws identified during the inspection;
    - b. The period of time given for correcting each of the identified violations;
    - c. Notice that the City will re-inspect the alcohol sales establishment or tobacco retailer no sooner than the end of the period of time for correction;
    - d. A statement that if the violations found by the City Manager or his/her designee during the alcohol sales establishment or tobacco retailer re-inspection have not been corrected, the City will not issue or renew the business license or grant renewed deemed approved status or grant tobacco retailer status, and the City may pursue any legal remedies available to it under Section 16-6.01.100 of this Code, in order to abate said violations.
  - (vii) Passed Inspections. If no violations are found as a result of an initial or annual renewal inspection or re-inspection, the City's record shall so state and the City shall issue the business license and grant deemed approved status and/or tobacco retailer status to the business owner provided any other outstanding business license requirements are satisfied. All inspection reports shall be available as a public record upon request.
- (2) Violations
- (i) Whenever the City Manager or his/her designee determines that a violation of this Article exists, a Code Enforcement Officer shall issue a written Notice of Violation containing all information required by Development Code Sections 16-6.01.060 and 16-6.01.070, as applicable. The notice shall be provided pursuant to Section 16-



- 6.01.080. Said notice shall describe with reasonable detail the violation(s) so that the business owner has the opportunity to correct any identified violation(s). Any person who fails to comply with any provisions of this Article after receiving written notice of the violation(s) and who has exhausted the period of time provided to correct such violation(s) shall be deemed to be in violation of this Article.
- (ii) A violation of this Article shall be enforced in accordance with Section 16-6.01.100 of the Development Code. The City Manager or his/her designee may also take action to suspend or revoke the business license and/or granted deemed approved status or granted tobacco retailer status issued to the business if the business owner has failed to correct any or all violations.
- (iii) Any alcohol sales establishment or tobacco retailer that has been issued a citation or notice pertaining to a violation of the Development Code, shall have the option to appeal such citation or notice in accordance with Chapter 6, Article 1 of thereof.
- (iv) Any alcohol sales establishment or tobacco retailer that has been subjected to enforcement actions under Section 16-6.01.100 of the Development Code and remains non-compliant with any provisions thereof, including any alcohol sales establishment or tobacco retailer maintenance requirements and the adopted International Property Maintenance Code, or any state or local law relating to operating standards, property maintenance, building codes, or land use requirements, shall be considered a public nuisance and subject to abatement procedures set forth in Title 16, Chapter 6 of this Code.

(3) Complaint based inspections

Nothing contained in this Article shall prevent or restrict the City's authority to inspect any alcohol sales establishment or tobacco retailer in response to a complaint alleging Victorville Municipal Code violations or violations of any other applicable laws, or to pursue all remedies available under this Code or applicable laws.

(4) Failure to pay fees

Should an alcohol sales establishment or tobacco retailer business owner fail to timely pay the annual business license fee, compliance inspection fee, any cost recovery fee, or administrative fine related to the enforcement of and compliance with this Article, such unpaid fees or fines shall be a debt to the City enforceable in accordance with Sections 16-6.01.140 and 16-7.05.080 of the Development Code.