



AGENDA

SPECIAL CITY / COUNTY JOINT MEETING

WASTEWATER TREATMENT FACILITY 210 BATTERY STREET CRESCENT CITY STATE OF CALIFORNIA

TUESDAY, MARCH 29, 2022, 5:30 P.M.

ZOOM PHONE NUMBER: (253) 215-8782

ZOOM WEBINAR ID: 837 6294 1110

MUTE / UNMUTE PRESS *6

RAISE HAND PRESS *9

The public may access and participate in the public meeting using one or more of the following methods:

- 1) Attend the meeting in person, public comment at the podium will be allowed.
- 2) Participate live online via Zoom (details below) or by utilizing the link to join the meeting posted on both the City of Crescent City – City Hall Facebook page and the City of Crescent City website (www.crescentcity.org), public comment may be made by using the raise hand feature on Zoom;
- 3) Watch the meeting via livestream on YouTube (channel: City of Crescent City, California), public comment may be made by calling in to the meeting using the Zoom phone number;
- 4) Public comments may be made in advance by submitting written comment via publiccomment@cityofcrescentcity.org or by filing it with the City Clerk at 377 J Street, Crescent City, California, 95531. All public comments (via email or mail) must be received by the City Clerk prior to 12:00 p.m. the day of the meeting. Please identify the meeting date and agenda item to which your comment pertains in the subject line. Public

comments so received will be forwarded to the City Council and posted on the website next to the agenda. **Written public comments will not be read aloud during the meeting.**

Notice regarding Americans with Disabilities Act: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meeting, please contact the City Clerk's office at (707)464-7483, ext. 223. Notification 48 hours before the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting [28 CFR 35.102-35.104 ADA Title II]. For TTYDD use for speech and hearing impaired, please dial 711. A full agenda packet may be reviewed at City Hall, 377 J Street, Crescent City, CA or on our website: www.crescentcity.org

Call to order

Roll call

Pledge of Allegiance

PUBLIC COMMENT PERIOD

Any member of the audience is invited to address the City Council on any matter that is within the jurisdiction of the City of Crescent City. Comments of public interest or on matters appearing on the agenda are accepted. Note, however, that the Council is not able to undertake extended discussion or act on non-agendized items. Such items can be referred to staff for appropriate action, which may include placement on a future agenda. All comments shall be directed toward the entire Council. Any comments that are not at the microphone are out of order and will not be a part of the public record. After receiving recognition from the Mayor, please state your name and city or county residency for the record. Public comment is limited to three (3) minutes. The public is additionally allotted three minutes each in which to speak on any item on the agenda prior to any action taken by the Council.

PRESENTATION

1. Tobacco Retail License Ordinances Discussion

- *Recommendation: Hear presentation from legal counsel*
- *Council and Board discussion*
- *Receive public comment*
- *Provide direction to City and County staff regarding the development of tobacco retail license ordinances*

ADJOURNMENT

City Council: Adjourn the meeting to the next regularly scheduled meeting of April 4, 2022, at 6:00 p.m. at the Flynn Center, 981 H Street, Crescent City, CA 95531

Board of Supervisors: Adjourn the meeting to the next regularly scheduled meeting of April 12, 2022, at 10:00 a.m. at the Flynn Center, 981 H Street, Crescent City, CA 95531



**JOINT WORKSHOP
CITY COUNCIL
BOARD OF SUPERVISORS**



STAFF REPORT

**TO: MAYOR GREENOUGH AND MEMBERS OF THE CITY COUNCIL
CHAIR HEMMINGSEN AND BOARD OF SUPERVISORS**

**FROM: MARTHA D. RICE, CITY ATTORNEY
JOEL CAMPBELL-BLAIR, COUNTY COUNSEL**

DATE: MARCH 29, 2022

SUBJECT: TOBACCO RETAIL LICENSE ORDINANCES DISCUSSION

RECOMMENDATION

- Hear presentation from legal counsel
- Council and Board discussion
- Receive public comment
- Provide direction to City and County staff regarding the development of tobacco retail license ordinances

BACKGROUND

Both the City Council and the Board of Supervisors received presentations from Amber Wier of NorCal4Health and students from Del Norte High School regarding vaping among youth in our community. The presentation also requested that the City and County consider implementing a tobacco retail license ordinance (“TRL”), which could potentially assist in curbing the use of tobacco and vape products in our youth.

The City Council directed staff to bring back additional information regarding the contents of a TRL ordinance for further discussion and consideration. The Board of Supervisors requested coordination with the City on the implementation of any tobacco retail license policy. Therefore, staff from both agencies suggested setting up a joint workshop for the

two legislative bodies to discuss implementing a tobacco retail ordinance in their respective jurisdictions.

ITEM ANALYSIS

Current laws governing the manufacture and sale of tobacco products are primarily contained in the following laws:

- Federal Family Smoking Prevention and Tobacco Control Act (21 USC § 387, et seq.), a federal law that authorizes the FDA to regulate the manufacturing of tobacco products, including the flavors or additives that they contain, the sale and distribution of tobacco products and the advertising and promotion of tobacco products. The law specifically prohibits all flavored cigarettes, except menthol.
- Federal Cigarette Labeling and Advertising Act (Pub. L. No. 89-92, 79 Stat. 282 (1965)), established a comprehensive federal program governing cigarette labeling and advertising. State and local laws may address specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of cigarettes (required warning labels, no television advertisements).¹ Municipalities can adopt laws that regulate the advertising / promotion of other tobacco products (cigars, vape pens).
- Comprehensive Smoking Education Act of 1984 (Pub. L. No. 98-474, 98 Stat. 2200 (1984)) requires the rotating of health warning labels (Surgeon General's Warnings) on cigarette packages and advertisements.
- Federal Comprehensive Smokeless Tobacco Health Education Act (Pub. L. No. 99-252, 100 Stat. 30 (1986)) established a federal program governing smokeless tobacco labeling and advertising. Smokeless tobacco is limited to tobacco products that consist of cut, ground, powdered, or leaf tobacco intended to be placed in the nose or mouth. The Act requires the rotating of health warning labels (Surgeon General's Warnings) on packages and advertisements and prohibits advertising on television and radio.
- California's STAKE Act (Bus. & Prof. Code 22950-22963) sets minimum requirements on retailers relating to the sale, distribution and display of tobacco products while expressly allowing municipalities to impose stricter regulations.
- California's Cigarette and Tobacco Products Licensing Act of 2003 (Bus. & Prof. Code § 22970-22991) requires retailers, wholesalers, distributors, manufacturers and importers to obtain a license from the California Dept. of Tax and Fee

¹ Even if a local regulation is compliant with the FCLAA, the First Amendment places significant limitations on regulations on commercial speech that must be analyzed in each instance. *Central Hudson Gas v. Public Service of Commission of New York* (1980) 447 U.S. 557.

Administration. The primary purpose of this Act is to track and collect taxes on tobacco products sold in California.

- 1998 Tobacco Master Settlement Agreement between 52 states and territories and the four largest tobacco companies (R.J. Reynolds, Phillip Morris, Brown & Williamson and Lorillard and the tobacco industry's trade associations), which places limitations on advertising, marketing and promotion of tobacco products (no cartoon characters in advertising, packaging, or promotion of products). The agreement also required the payment of money to the settling parties for the purpose of funding smoking prevention programs.
- 1998 Smokeless Tobacco Master Settlement Agreement between 44 states and the United States Smokeless Tobacco Company (brands include Copenhagen, Skoal, and others), which places limitations on outdoor tobacco advertisements and promotional activities and requires payments to the fund tobacco prevention education.

While there are several federal and state laws governing the manufacture, sale, and advertising of tobacco products, many communities are still facing troubling levels of tobacco use among their youth, most commonly in the form of vaping. Vaping involves the heating of a liquid to create a vapor to be inhaled with a battery-powered device (vape pen, tank, pod, or other form of electronic cigarette). Del Norte County is not immune to this trend and recent surveys conducted at our local schools confirm the pervasiveness of vaping among our youth.

One suggestion brought forth by Amber Wier of NorCal4Health, a California Health Collaborative, is for the City and County to adopt a tobacco retail license ordinance requiring tobacco retailers to obtain a local license, thereby subjecting them to local control and enforcement of tobacco regulations.

TOBACCO RETAIL LICENSE ORDINANCE

A model TRL ordinance was developed by ChangeLab Solutions in 2018 and updated by the Public Health Law Center at Mitchell Hamline School of Law and the American Lung Association of California in 2020. The model ordinance uses tobacco retailer licensing as the enforcement mechanism. Thus, every tobacco retailer in the City / County would be required to have a tobacco retailer license. The license would be subject to suspension or revocation if the tobacco retailer is not compliant with the tobacco retailer regulations. Many of the proposed regulations are already contained in Federal or State laws, however, putting them in a TRL ordinance gives the City / County a greater role in enforcement. Rather than face a fine from the State, the retailer could risk losing their ability to sell tobacco altogether by the City / County revocation of their local tobacco

retailer license. There are a variety of regulations that the City Council or Board of Supervisors may select to impose.

The regulations in the model ordinance include the following subject / restrictions:

General Regulations	Current Laws
1. Minimum purchaser age of 21	CA: min. age is 21 (BPC § 22951; Penal Code § 308.) FED: min. age is 21 (21 USC 387f.)
2. Identification required for all purchasers of tobacco products	CA: positive identification for any person reasonably appearing under the age of 21. (BPC § 22956.) FED: positive identification for any person appearing under the age of 27. (21 USC § 387f; 21 CFR § 1140.14.) – to be raised to 30.
3. Self-service displays prohibited	CA: Currently prohibited with exceptions for pipe tobacco, snuff, chewing tobacco and dipping tobacco sold in “tobacco stores.” (BPC § 22962). FED: Currently prohibited by Tobacco Control Act with exceptions for mail orders and adult only facilities. (21 USC 387f; 21 CFR §§ 1140.14, 1140.16.)
4. On-site sales only (no delivery)	CA: The retail shipment of tobacco products is regulated. (BPC § 22963; BPC § 17537.3.); verification of age is required. FED: The retail shipment of cigarettes and smokeless tobacco though the USPS is prohibited. Cigars are specifically exempt. (18 USC § 1716E.); verification of age is required.
5. No smoking within a tobacco retailer or within a specified distance of tobacco retailer [25 ft].	CCMC: § 9.17.050(c) smoking is prohibited within 25-feet of public entrances to buildings open to the public. CA: Labor Code prohibits indoor smoking in “places of employment”; various exceptions including retail or wholesale tobacco shops and private smokers’ lounges. (LC §6404.5.)

Tobacco Product Regulations	Current Laws
6. Prohibition on Flavored Tobacco Products – defined as any tobacco product that smells or tastes like anything other than tobacco. TRL ordinances tend to use the same language as is contained in SB 793.	<p>CA: California lawmakers passed SB 793, which would prohibit the sale of flavored tobacco products and tobacco product flavor enhancers, including cigarettes, cigars, chewing tobacco, e-cigarettes and pipe tobacco (with exceptions for hookah tobacco retailers, premium cigar lounges). A referendum on SB 793 will be presented to the voters on the November 2022 ballot.</p> <p>FED: Federal law prohibits flavored cigarettes, other than menthol, but the same restriction does not apply to other tobacco products. (21 USC § 387g.)</p> <p>The FDA is on track to adopt two new tobacco product standards this Spring – one prohibiting menthol flavoring in cigarettes and one prohibiting all flavors in cigars.</p>
7. Must be sold in manufacturer’s packaging, compliant with federal law	<p>CA: Single cigarettes (“loosies” or “singles”) are unlawful. (PC § 308.2.)</p> <p>FED: Tobacco Control Act and implementing regulations require:</p> <ul style="list-style-type: none"> • Cigarettes, min packages of 20. (21 CFR § 1140.16(d).) • Surgeon General’s Warnings (fed)
<p>8. May not distribute tobacco products as a promotion</p> <p>9. May not honor or issue coupons or discounts for tobacco products</p>	<p>CA: California law prohibits free or nominal-cost cigarettes or smokeless tobacco products to be sold or distributed in any public grounds or any private grounds open to the public. Exceptions include other tobacco products (cigars), distribution in connection with the sale of another item, and the law does not apply to grounds where minors are prohibited and the minors are denied access by a peace officer or security guard. (HSC § 118950; 18 CCR § 4081.)</p> <p>FED: Federal law prohibits manufacturers, distributors, and retailers from distributing free samples of tobacco products, with exceptions for “qualified adult only facilities.” (21 U.S.C. § 387a-1; 21 CFR § 1140.16(d).)</p>
10. Min. package size for little cigars and cigars	FED: not regulated; however, Federal law mandates <i>cigarettes</i> not be sold in quantities of less than 20. (21 CFR § 1140.16(b).)

11. Min. price for cigarettes, little cigars and cigars	
12. Must display price on package or on shelf next to package	
13. Prohibit placement of tobacco products within [x] feet of candy, snack, or non-alcoholic beverage displays	(not within model ordinance but requested by NorCal4Health as additional measure to consider)
14. Prohibit placement of tobacco advertisements within [x] feet of candy, snack or non-alcoholic beverage displays	(not within model ordinance but requested by NorCal4Health as additional measure to consider)
Retail Location Regulations	Current Laws
15. No mobile vendors	CA: The Cal. Dept. of Tax and Fee Administration will not issue a state retail license to a mobile retailer. It is illegal to sell tobacco products without a CDTFE license. "Cigarette and Tobacco Products Licensing Act Annotations (Business Taxes Law Guide – Revision 2019)."
16. No cannabis retailers	CA: State law prohibits the sale of tobacco products where cannabis is sold. (BPC § 26054; 16 CCR § 5026.)
17. No pharmacies	
18. Proximity to other tobacco retailers	
19. Proximity to cannabis retailers	
20. Proximity to youth-oriented facility, other tobacco retailers, or cannabis retailers	
21. Maximum number of licenses to be issued within a jurisdiction	

Any combination of the above regulations may be incorporated into a TRL ordinance.

ADMINISTRATION AND ENFORCEMENT

Creating a local licensing scheme requires a certain level of administrative effort to set up initially and then to track over time. Each tobacco retailer will have to apply for a license and once granted, renew their license each year. Staff will need to review and process these applications / renewals. There will also need to be outreach and education for local tobacco retailers prior to implementation and/or enforcement.

It is anticipated that if a local TRL ordinance is adopted, we would see a significant amount of voluntarily compliance. However, if there is no enforcement or compliance monitoring, then compliance will likely decrease over time. Enforcement can range from only responding to complaints to periodic overt compliance checks to random covert compliance checks.

In the event of a violation, there will need to be a hearing process whereby the licensee can contest the facts underlying the violation. Such hearings would likely be infrequent, but they would require additional staff time to attend and administer the process. Ultimately, however, if a tobacco retailer is found to be in violation of the terms of the TRL ordinance, the retailer can face anything from a warning to a fine to the revocation of their license. Without a license, it would be unlawful for the retailer to sell tobacco products altogether within the jurisdiction.

ATTACHMENTS

- Model Tobacco Retail License Ordinance
- “Product Placement and Ads Increase Youth Tobacco and Nicotine Use” publication from NorCal4Health and Cal. Dept. of Public Health

TOBACCO RETAIL LICENSE MODEL ORDINANCE

Sec. [____ (*2)]. GENERAL REQUIREMENTS AND PROHIBITIONS.

- (A) TOBACCO RETAILER'S LICENSE REQUIRED. It shall be unlawful for any person to engage in tobacco retailing in the [city/county] without first obtaining and maintaining a valid tobacco retailer's license for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law.
- (B) LAWFUL BUSINESS OPERATION. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [article/chapter] for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to the sale of tobacco products.
- (C) SMOKING PROHIBITED. Smoking, including smoking for the purpose of sampling any tobacco product, is prohibited within the indoor area of any retail establishment licensed under this chapter. Smoking also prohibited outdoors within 25 feet of any retail establishment licensed under this [article/chapter].
- (D) MINIMUM LEGAL SALES AGE. No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.
- (E) DISPLAY OF LICENSE. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- (F) POSITIVE IDENTIFICATION REQUIRED. No person engaged in tobacco retailing shall sell a tobacco Product to another person without first verifying by means of government issued photographic identification that the recipient is at least 21 years of age.
- (G) SELF-SERVICE DISPLAYS PROHIBITED. Tobacco retailing by means of a self-service display is prohibited.
- (H) ON-SITE SALES. All sales of tobacco products shall be conducted in-person in the licensed location. It shall be a violation of this [article/chapter] for any tobacco retailer or any of the tobacco retailer's agents or employees to engage in the delivery sale of tobacco products or to knowingly or recklessly sell or provide tobacco products to any person that intends to engage in the delivery sale of the tobacco product in the [city/county].

Sec. [____ (*3)]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

- (A) FLAVORED TOBACCO PRODUCT SALES PROHIBITED. It shall be unlawful for any tobacco retailer to sell any flavored tobacco product.
- (B) PRESUMPTIVE FLAVORED TOBACCO PRODUCT. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has a taste or smell other than tobacco shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Sec. [____ (*4)]. TOBACCO PRODUCT PRICING AND PACKAGING.

- (A) PACKAGING AND LABELING. No tobacco retailer shall sell any tobacco product to any consumer unless the tobacco product:
 - (1) is sold in the manufacturer’s packaging intended for sale to consumers;
 - (2) conforms to all applicable federal labeling requirements; and
 - (3) conforms to all applicable child-resistant packaging requirements.
- (B) DISPLAY OF PRICE. The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.
- (C) DISTRIBUTION OF TOBACCO SAMPLES OR PROMOTIONAL ITEMS. It is unlawful for any person to distribute free or nominally priced tobacco products.
- (D) PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS. No tobacco retailer shall:
 - (1) honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;
 - (2) sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item; or
 - (3) provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.
- (E) MINIMUM PACKAGE SIZE FOR LITTLE CIGARS AND CIGARS. No tobacco retailer shall sell:
 - (1) any little cigar unless it is sold in a package of at least [20] little cigars; or
 - (2) any cigar unless it is sold in a package of at least at least [6] cigars ; provided, however, that this subsection shall not apply to a cigar that has a price of at least [\$X.00] per cigar, including all applicable taxes and fees.
- (F) MINIMUM PRICES FOR CIGARETTES, LITTLE CIGARS, AND CIGARS. No tobacco retailer shall sell:
 - (1) Cigarettes at a price that is less than [\$X.00] per package of 20 cigarettes, including all applicable taxes and fees;
 - (2) Little cigars at a price that is less than [\$X.00] per package of little cigars, including all applicable taxes and fees; or
 - (3) Cigars at a price that is less [\$X.00] per cigar, including all applicable taxes and fees.
 - (4) The minimum prices established in this section shall be adjusted annually by the Department in proportion with the Consumer Price Index, using a system established by the Department.

Sec. [____ (*5)]. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

- (A) MOBILE VENDING. No license may issue to authorize tobacco retailing at other than a fixed location. No tobacco retail license will be issued to a moveable place of business.
- (B) LICENSED CANNABIS BUSINESSES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing at a location licensed for commercial cannabis activity by the State of California under Business and Professions Code Division 10.
- (C) PHARMACIES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.
- (D) PROXIMITY TO YOUTH-ORIENTED FACILITIES. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of a youth-oriented facility as

measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.

- (E) PROXIMITY TO OTHER TOBACCO RETAILERS. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of a tobacco retailer location already licensed pursuant to this [article/chapter] as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing licensee's business is located.
- (F) PROXIMITY TO CANNABIS RETAILERS. No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of an existing cannabis retailer as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing cannabis retailer is located.
- (G) POPULATION AND DENSITY. The issuing of tobacco retailer licenses is limited as follows:
 - (1) The total number of tobacco retailer licenses within the [city/county] shall be limited to one for each [2,500] inhabitants of the [city/county].
 - (2) For the purposes of this subsection, the total population of the [city/county] shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed.
 - (3) No new license may issue to authorize tobacco retailing if the number of tobacco retailer licenses already issued equals or exceeds the total number authorized pursuant to subsection (1).

Sec. [____ (*6)]. APPLICATION PROCEDURE.

- (A) An application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. All applications shall be submitted on a form supplied by the Department.
- (B) A license issued contrary to this [article/chapter], contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to Section [____ (*13) (c)] of this [article/chapter]. Nothing in this [article/chapter] shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.
- (C) Applicant submissions shall contain the following information:
 - (1) The name, address, and telephone number of each proprietor of the business seeking a license.
 - (2) The business name, address, and telephone number of the location for which a license is sought.
 - (3) The 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 [article/chapter].

- (4) Proof that the location for which a tobacco retailer's license is sought has been issued all necessary state licenses for the sale of tobacco products.
 - (5) Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this [article/chapter] or any other local, state, or federal law governing the sale of tobacco products and, if so, the dates and locations of all such violations within the previous five years.
 - (6) A signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product without a license required by this [article/chapter].
 - (7) Such other information as the Department deems necessary for the administration or enforcement of this [article/chapter] as specified on the application form required by this section.
- (D) A licensed tobacco retailer shall inform the Department in writing of any change in the information submitted on an application for a tobacco retailer's license within [10] business days of a change.

Sec. [____ (*7)]. LICENSE ISSUANCE OR DENIAL.

- (A) ISSUANCE OF LICENSE. Upon the receipt of a complete and adequate application for a tobacco retailer's license and the license fee required by this [article/chapter], the Department may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.
- (B) DENIAL OF APPLICATION. The department may deny an application for a tobacco retailer's license based on any of the following:
 - (1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this [article/chapter];
 - (2) The application seeks authorization for tobacco retailing at a location for which this [article/chapter] prohibits a license to be issued;
 - (3) The application seeks authorization for tobacco retailing for a proprietor to whom this [article/chapter] prohibits a license to be issued; or
 - (4) The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this [article/chapter], that is unlawful pursuant to any other [article/chapter] of this Code, or that is unlawful pursuant to any other law.
 - (5) Any other any other suitable reason the granting of a license to the applicant is not consistent with the public health and welfare, including the applicant's history of noncompliance with this [Article/chapter] and other laws relating to the sale of tobacco products.

Sec. [____ (*8)]. LICENSE RENEWAL AND EXPIRATION.

- (A) RENEWAL OF LICENSE. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is [1 year]. Each tobacco retailer shall apply for the renewal of their tobacco retailer's license and submit the license fee no later than [30] days prior to expiration of the current license. A retailer that fails to timely submit a renewal application and fee is ineligible for license renewal and must submit a new application pursuant to Section [____ (*6)].

Sec. [____ (*9)]. LICENSES NOT TRANSFERABLE, PAST VIOLATIONS AT RETAIL LOCATION.

- (A) LICENSES NOT TRANSFERRABLE. A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietors.
- (B) PAST VIOLATIONS. Notwithstanding any other provision of this [article/chapter], prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
 - (1) the location has been transferred to new proprietor(s) in an arm's length transaction; and
 - (2) the new proprietor(s) provide the [city/county] with clear and convincing evidence that the new proprietor(s) have acquired the location in an arm's length transaction.

Sec. [____ (*10)]. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this [article/chapter] shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the [City/County] identified on the face of the permit. Nothing in this [article/chapter] shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

Sec. [____ (*11)]. FEE FOR LICENSE.

The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the [city council/board of supervisors]. The fee shall be calculated so as to recover the total cost of administration and enforcement of this [article/chapter], including, but not limited to, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this [article/ chapter]. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

Sec. [____ (*12)]. COMPLIANCE MONITORING.

- (A) Compliance with this [article/chapter] shall be monitored by the Department. In addition, the [City/County] may designate additional persons to monitor compliance with this [article/chapter]. All licensed premises must be open to inspection by [city/ county] staff or designated persons during regular business hours.
- (B) The Department shall inspect each tobacco retailer at least [3] times per 12 month period to ensure compliance with this [article/chapter].
- (C) The [city/county] will conduct at least [one] compliance check per 12-month period that involves the participation of persons between the ages of 18 and 20 to enter licensed premises to attempt to purchase tobacco products.
- (D) Nothing in this section shall create a right of action in any licensee or other person against the [city/county] or its agents.

Sec. [____ (*13)]. SUSPENSION OR REVOCATION OF LICENSE.

- (A) SUSPENSION OR REVOCATION OF LICENSE FOR VIOLATION. In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended or revoked if the Department finds, based on a preponderance of the evidence, after the licensee is afforded notice and an

opportunity to be heard, that the licensee, or any of the licensee's agents or employees, have violated any of the requirements, conditions, or prohibitions of this [article/chapter]; such violation is determined by any court of competent jurisdiction; or the licensee has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section [____(*2)] above.

- (1) Upon a finding by the Department of a first violation of this [article/chapter] at a location, the license shall be suspended for [30] days.
 - (2) Upon a finding by the Department of a second violation of this [article/chapter] at a location within any [5]-year period, the license shall be suspended for [90] days.
 - (3) Upon a finding by the Department of a third violation of this [article/chapter] at a location within any [5] year period, the license shall be suspended for [1] year.
 - (4) Upon a finding by the Department of four or more violations of this [article/chapter] at a location within any [5] year period, the license shall be revoked.
- (B) APPEAL OF SUSPENSION OR REVOCATION. A decision of the Department to suspend or revoke a license is appealable to [the name of appellate agency, panel, or person (for example, Board of Supervisors, city manager, or director of the health department)] and any appeal must be filed in writing with [the name of the agency, panel, or person to receive the notice (for example, Board of Supervisors)] within 10 days of mailing of the Department's decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to [the name of appellate agency, panel, or person] is not available for a revocation made pursuant to subsection (c) below.
- (C) REVOCATION OF LICENSE WRONGFULLY ISSUED. A tobacco retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section [____(*7)] existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the [city/county].

Sec. [____ (*14)]. TOBACCO RETAILING WITHOUT A VALID LICENSE.

- (A) INELIGIBLE FOR LICENSE. In addition to any other penalty authorized by law, if the Department finds, or if a court of competent jurisdiction determines, based on a preponderance of evidence after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows:
- (1) After a first violation of this section at a location, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until [30] days have passed from the date of the violation.
 - (2) After a second violation of this section at a location within any [5 year] period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until [90] days have passed from the date of the violation.
 - (3) After of a third or subsequent violation of this section at a location within any [5 year] period, no new license may issue for the person or the location (unless ownership of the

business at the location has been transferred in an arm's length transaction), until [5] years have passed from the date of the violation.

Sec. [____ (*15)]. ADDITIONAL REMEDIES.

- (A) The remedies provided by this [article/chapter] are cumulative and in addition to any other remedies available at law or in equity.
- (B) Whenever evidence of a violation of this [article/chapter] is obtained in any part through the participation of a person under the age of 18 years, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this [article/chapter] and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (C) Violations of this [article/chapter] are subject to a civil action brought by the [district attorney] or the [county counsel], punishable by a civil fine not less than [\$250] and not exceeding [\$1,000] per violation.
- (D) Violations of this [article/chapter] may, in the discretion of the [district attorney/county counsel], be prosecuted as infractions or misdemeanors when the interests of justice so require.
- (E) Violations of this [article/chapter] are hereby declared to be public nuisances.
- (F) In addition to other remedies provided by this [article/chapter] or by other law, any violation of this [article/chapter] may be remedied by a civil action brought by the [district attorney/county counsel], including administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.
- (G) Tobacco products offered for sale in violation of this [article/chapter] are subject to seizure by the Department or its designee and shall be forfeited after the licensee or any other owner of the tobacco products seized is given reasonable notice and an opportunity to demonstrate that the tobacco products were not offered for sale in violation of this [article/chapter]. The decision by the Department may be appealed pursuant to the procedures set forth in Section [____ (*13)(b)]. Forfeited tobacco products shall be destroyed and properly disposed of at the cost of the seller after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.
- (H) For the purposes of the civil remedies provided in this [article/chapter]:
 - (1) Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this [article/chapter] shall constitute a separate violation of this [article/chapter]; and
 - (2) Each individual tobacco product that is distributed, sold, or offered for sale in violation of this [article/chapter] shall constitute a separate violation of this [article/chapter].
- (I) All tobacco retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer.

Sec. [____ (*16)]. EXCEPTIONS.

- (A) Nothing in this [article/chapter] prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious or spiritual ceremony or practice.
- (B) Nothing in this [article/chapter] shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

Sec. [____ (*17)]. CONSTRUCTION & SEVERABILITY. It is the intent of the [board of supervisors/city council] of [county/city] to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this [article/chapter], or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this [article/chapter], or its application to any other person or circumstance. The [board of supervisors/city council] of [jurisdiction] hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Sec. [____ (*18)]. PUBLIC RECORDS. All information provided to the Department by a licensee or license applicant pursuant to this [article/chapter] shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 et seq.) or any other applicable law.

PRODUCT PLACEMENT AND ADS INCREASE YOUTH TOBACCO AND NICOTINE USE

TOBACCO COMPANIES KNOW...¹

- 90% OF SMOKERS TODAY STARTED BEFORE THEY WERE 18
- EXPOSURE TO MARKETING MORE THAN DOUBLES THE ODDS THAT KIDS WILL USE TOBACCO
- YOUTH ARE MORE LIKELY TO BE INFLUENCED BY ADS THAN BY PEER PRESSURE
- YOUTH ARE 3 TIMES MORE SENSITIVE TO TOBACCO ADS THAN ADULTS



WHAT WE KNOW

POINT OF SALE ADVERTISING BANS ARE ASSOCIATED WITH LESS EXPERIMENTAL SMOKING AMONG YOUTH¹

ACTIONS COMMUNITIES CAN TAKE

- **LIMIT** storefront advertising to no more than 10% coverage of doors and windows.**
- **RESTRICT** placement of tobacco/vape advertising, displays and products within a certain distance of youth-oriented merchandise (candy, soda, snacks, etc.).

LOCAL TOBACCO CONTROL PROJECTS CAN HELP

- Provide model policy language.
- Offer free legal resources and technical assistance.
- Help draft retail licensing policy specific to the needs of local communities.
- Provide opportunities for community collaboration and action through local coalitions.



For assistance and more information visit:

www.NorCal4Health.org
Facebook: NorCal 4 Health



COMMUNITIES ARE CHANGING THE VIEW

EXAMPLE: IN 2015, THE CITY OF SAN DIEGO, CALIFORNIA ADOPTED THE FOLLOWING ORDINANCE ²

§58.0302 Location of Tobacco Products and Advertising Inside Retail Establishments

- (a) It is unlawful for any person, business, tobacco retailer, or electronic cigarette retailer to place or maintain, or cause to be placed or maintained, any displays containing tobacco products within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice.
- (b) It is unlawful for any person, business, tobacco retailer, or electronic cigarette retailer to place or maintain, or cause to be placed or maintained, any advertising display sign for tobacco products within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice.

§58.0303 Location of Electronic Cigarettes and Advertising Inside Retail Establishments

- (a) It is unlawful for any person, business, tobacco retailer, or electronic cigarette retailer to place or maintain, or cause to be placed or maintained, any displays containing electronic cigarettes, electronic cigarette paraphernalia, or vaping juice within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice.
- (b) It is unlawful for any person, business, tobacco retailer, or electronic cigarette retailer to place or maintain, or cause to be placed or maintained, any advertising display sign for electronic cigarettes, electronic cigarette paraphernalia, or vaping juice within two feet of candy, snack, or non-alcoholic beverage displays inside stores or businesses that sell tobacco products, electronic cigarettes, electronic cigarette paraphernalia, or vaping juice.

§58.0304 Exceptions to Location of Tobacco Products, Electronic Cigarettes, and Advertising Inside Retail Establishments

- (a) Sections 58.0302 and 58.0303 do not apply to commercial establishments where access to the premises by persons under 18 years of age is prohibited by law.
- (b) Sections 58.0302(a) and 58.0303(a) do not apply to displays in any establishment that are located behind a counter and not accessible to patrons.

1- The Association between Point-of-Sale Advertising Bans and Youth Experimental Smoking: Findings from the Global Youth Tobacco Survey (GYTS). DECEMBER, 2015. AIMS Public Health, 2 (4): 832-843 DOI: 10.3934/publichealth.2015.4.832

2- Available at <https://onbase.sandiego.gov/OnBaseAgendaOnline/Meetings/ViewMeeting?id=2019&doctype=1>. Item #54