

## CHAPTER 6.20 - LICENSURE OF TOBACCO RETAILERS

### Sec. 6.20.010 - Definitions.

The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

- (a) "Agency" means the County Health and Human Services Agency, Public Health Branch or the duly authorized designee of the County Health and Human Services Agency, Public Health Branch.
- (b) "Hearing Officer" means person assigned by the Agency to conduct a hearing pursuant to this Chapter, who is qualified by training and experience to conduct such an adjudicatory hearing.
- (c) "Person" shall mean any person, firm, partnership, trust, estate, association, corporation, or organization of any kind. Where a principal acts through an agent, the word "person" shall include both such principal and agent.
- (d) "Tobacco Product" shall refer to, and is limited to, substances containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.
- (e) "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco or Tobacco Products: "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco or Tobacco Products sold, offered for sale, exchanged, or offered for exchange.
- (f) "Youth Decoy" shall refer to a participant in a compliance check who is under the age of eighteen (18), reasonably appears under the age of eighteen (18) and who has participated in the Public Health Branch training for youth involved with the tobacco control program compliance surveys.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

### Sec. 6.20.020 - Requirement for Tobacco Retailer License.

- (a) It shall be unlawful for any Person to act as a Tobacco Retailer without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this Chapter for each location at which that activity is to occur. No license may be issued to authorize Tobacco Retailing at other than a fixed location. For example, Tobacco Retailing by Persons on foot and Tobacco Retailing from vehicles are prohibited.
- (b) The payment of the license fee designated in Section 6.20.060 confers paid status upon a license for a term of one year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's license no later than thirty (30) days prior to expiration of the payment term.
- (c) Nothing in this Chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the right to act as a Tobacco Retailer at the location in the County of Mendocino identified on the face of the permit. For example, nothing in this Chapter shall be construed to render inapplicable, supercede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by Labor Code §6404.5.
- (d) It is the responsibility of each Tobacco Retailer to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Retailer may rely on the issuance of a license as a determination by the Agency that the Retailer has complied with all laws applicable to Tobacco Retailing.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

Sec. 6.20.030 - Application Procedure.

Application for a Tobacco Retailer's license shall be submitted in the name of each Person proposing to conduct retail tobacco sales and shall be signed by each Person or an authorized agent thereof. It is the responsibility of each Person to be informed of the laws affecting the issuance of a Tobacco Retailer's license. A license that is issued in error or on the basis of false or misleading information supplied by a Person may be revoked pursuant to Section 6.20.090(c) of this Chapter. All applications shall be submitted on a form supplied by the Agency and shall contain the following information:

1. The name, address, and telephone number of each Person.
2. The business name, address, and telephone number of each location for which a Tobacco Retailer's License is sought.
3. The name and mailing address authorized by each Person to receive all license-related communications and notices (the "Authorized Address"). If an Authorized Address is not supplied, each Person shall be understood to consent to the provision of notice at the business address specified pursuant to subparagraph 2 above.
4. Whether or not any Person has previously been issued a license pursuant to this Chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.
5. Such other information as the Agency deems necessary for the administration or enforcement of this ordinance.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

Sec. 6.20.040 - Issuance of License.

Upon the receipt of an application for a Tobacco Retailer's license and the license fee, the Agency shall issue a license unless substantial record evidence demonstrates one of the following bases for denial:

- (a) the application is incomplete or inaccurate; or
- (b) the application seeks authorization for Tobacco Retailing by a Person for which or whom a suspension is in effect pursuant to Section 6.20.090 of this Chapter; or by a Person which or who has had a license revoked pursuant to Section 6.20.090 of this Chapter.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

Sec. 6.20.050 - Display of License.

Each license shall be prominently displayed in a publicly visible location at the licensed premises.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

Sec. 6.20.060 - Fees for License.

The fee to issue or to renew a Tobacco Retailer's license shall be established by resolution of Board of Supervisors of the County of Mendocino.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

Sec. 6.20.070 - Licenses Nontransferable.

A Tobacco Retailer's license is nontransferable. If the information required in the license application pursuant to Section 6.20.030, items 1, 2, or 3, changes, Tobacco Retailer must notify the Agency within 14 days, and update all information on the license application form in order to continue to act as a Tobacco Retailer. For example, if a Tobacco Retailer to whom a license has been issued changes business location, that Tobacco Retailer must supply updated license information within 14 days of acting as a Tobacco Retailer at the new location. If a business is sold, the new owner must apply for a license for that location before acting as a Tobacco Retailer. The current licensee shall notify the Agency of the sale of the business.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

Sec. 6.20.080 - License Violation.

- (a) VIOLATION OF TOBACCO-RELATED LAWS. It shall be a violation of a Tobacco Retailer's license for a Person or his or her agent or employee to violate any local, state, or federal tobacco-related law.
- (b) LICENSE COMPLIANCE MONITORING. The County anticipates that compliance checks of each Tobacco Retailer will be conducted at least two (2) times during each twelve-month period by the Agency. County shall not enforce any tobacco-related minimum-age law against a person who otherwise would be in violation of such law because of the person's age (hereinafter "youth decoy") if the violation occurs when:
  - 1. the youth decoy is participating in a compliance check supervised by a law enforcement official, a code enforcement official, or any peace officer; or
  - 2. the youth decoy is participating in a compliance check funded or supervised in part by County or, funded or supervised in any part by the California Department of Health Services.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

Sec. 6.20.090 - Suspension, Termination or Revocation of License.

- (a) ADMINISTRATIVE PENALTIES. The remedies provided by these provisions are cumulative and in addition to any other remedies available at law or in equity. Upon a determination by the Agency that a Person has engaged in any conduct that violates the provisions of this Chapter, the Agency may impose the following administrative penalties. All penalties resulting from violation of this Chapter and collected by the Agency shall be maintained in a fund specifically designated for compliance monitoring, enforcement efforts and education related to the sale of tobacco products to minors.
- (b) SETTLEMENT OF ADMINISTRATIVE PENALTIES. The Agency shall verbally notify a Tobacco Retailer found violating this Chapter within 48 (forty-eight) hours or by written notice within five (5) days. The Agency head or his/her designee may engage in settlement negotiations with the Tobacco Retailer regarding violations upon written notification by the Tobacco Retailer within fifteen (15) calendar days of receipt of notice of violation. Settlement discussions may include imposition of fines, suspensions or other reasonable conditions intended to avoid future violations. A Notice of Settlement shall be memorialized if an agreement is reached and provided to the Agency, and no appeal shall be taken. Settlements will not be confidential and will be conferred without approval from the Board of Supervisors. Settlements will include an admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.
  - (1) Upon a finding by the Agency of a first license violation within any thirty-six (36) month period, the Person shall receive a letter of reprimand from the Agency which shall advise the Person

that if Person trains all sales employees at the location of the sale in the laws pertaining to the sale of tobacco products to minors and techniques to ensure future compliance with said laws no penalty will be imposed. Person must file with the Department, within 30 days of the issuance of the letter advising Person of this, an affidavit signed by Person and the sales employees that said training has been completed. If Person fails to timely submit the affidavit, the Agency shall impose a fine not less than two hundred fifty dollars (\$250.00) and not exceeding one thousand dollars (\$1,000.00) for a first violation in any thirty-six (36) month period.

- (2) Upon a finding by the Agency of a second license violation within any thirty-six (36) month period, the Tobacco Retailer shall pay a fine of not less than fifteen hundred dollars (\$1,500.00) and not exceeding two thousand dollars (\$2,000.00) or the Person's license shall be suspended for not less than fourteen (14) days and not more than twenty-one (21) days.
  - (3) Upon a finding by the Agency of a third license violation within any thirty-six (36) month period, the Tobacco Retailer shall pay a fine not less than three thousand dollars (\$3,000.00) and not exceeding five thousand (\$5,000.00) or the Person's license shall be suspended for not less than thirty (30) nor more than sixty (60) days for a third violation.
  - (4) Upon a finding by the Agency of a fourth license violation within any thirty-six (36) month period, the Tobacco Retailer shall pay a fine of not less than ten thousand dollars (\$10,000.00) and not exceeding twenty thousand dollars (\$20,000.00) or the Person's license shall be suspended for not less than ninety (90) nor more than one hundred eighty (180) days.
  - (5) Upon a finding by the Agency of a fifth or subsequent license violation within any thirty-six (36) month period the Person's license shall be revoked for not less than one year.
- (c) **TERMINATION OF LICENSE FOR FAILURE TO PAY RENEWAL FEES.** A Tobacco Retailer's license which is not timely renewed pursuant to §6.20.020(b) shall automatically be deemed terminated by operation of law.
- (d) **REVOCATION OF LICENSE ISSUED IN ERROR.** A Tobacco Retailer's license shall be revoked if the Agency finds, after notice and opportunity to be heard, that one or more of the bases for denial of a license under §6.20.040 existed at the time application was made or at anytime before the license issued. The revocation shall be without prejudice to the filing of a new application for a license.
- (e) **APPEAL OF SUSPENSION, PENALTIES OR REVOCATION.** If the parties cannot negotiate a settlement agreement, a decision of the Agency to impose penalties or to revoke or suspend a license is appealable to the Agency, who shall appoint a Hearing Officer to conduct an evidentiary hearing. Requests for appeal must be filed with the Agency within ten (10) calendar days of personal service of the notice of the decision on the Person or Persons subject to the decision or within fifteen (15) calendar days if the Person or Persons subject to the decision are served by mail. An appeal shall stay all proceedings in furtherance of the appealed action. A suspension or revocation pursuant to Section 6.20.090(b) is not subject to appeal.
- (f) **APPEAL HEARINGS.**
- (1) Not later than fifteen (15) calendar days after receipt of a Retailer's request for appeal, the Agency shall provide written notice to the parties of the date, time, and place of the hearing.
  - (2) The Administrative Procedure Act (commencing with Government Code Section 11500) shall not be applicable to such hearing nor shall formal rules of evidence in civil or criminal proceedings be applicable.
  - (3) A record of the hearing shall be made by any means, as long as a reasonably accurate and complete written transcription of the proceedings can be derived from the recording. Although technical rules of evidence shall not apply, relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious business.
  - (4) A decision by the Hearing Officer shall be supported by substantial evidence. Following conclusion of the hearing, the Hearing Officer shall prepare a written decision that either grants

or denies the appeal, contains findings of facts and conclusions of law in support of the Hearing Officer's decision to impose fines, a license suspension, condition or some combination thereof. The Hearing Officer's written decision shall be the final decision of the County and shall become final upon the date notice thereof is mailed to the appellant by certified mail.

- (5) Any determination of the Hearing Officer shall be subject to judicial review pursuant to Code of Civil Procedure Section 1094.5.
- (g) **LICENSE SUSPENSION REQUIRES THE REMOVAL OF ALL TOBACCO PRODUCTS FROM PUBLIC VIEW.** Tobacco Retailers whose license is suspended must remove from public view all tobacco products and tobacco advertising for the duration of their suspension. Failure to remove such items from view will be regarded as a violation of this ordinance equivalent to that of selling to minors.
- (h) **REVOCATION OF LICENSE OBTAINED UNDER FALSE PRETENSES.** Tobacco Retailers whose licenses are obtained under false pretenses shall have their license revoked. This revocation shall be with prejudice. One calendar year must elapse between any revocation pursuant to this subsection and any subsequent application.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

Sec. 6.20.100 - Administrative Fine.

- (a) **GROUND FOR FINE.** If the Agency finds, based on substantial record evidence, that any unlicensed person, including a person named on a revoked or suspended license, has engaged in Tobacco Retailing in violation of this Chapter, the Agency shall fine that Person as follows:
  - 1. a fine not exceeding one hundred dollars (\$100) for a first violation in any thirty-six (36) month period; or
  - 2. a fine not exceeding two hundred dollars (\$200) for a second violation in any thirty-six (36) month period; or
  - 3. a fine not exceeding five hundred dollars (\$500) for a third or subsequent violation in any thirty-six (36) month period.

Each day that such a Person engages in Tobacco Retailing shall constitute a separate violation.

- (b) **NOTICE OF VIOLATION.** A notice of violation and of intent to impose a fine shall be personally served on, or sent by certified mail to, the Person or Persons subject to the fine. The notice shall state the basis of the Agency's determinations and include an advisement of the right to request a hearing to contest the fine. Any request for a hearing must be in writing and must be received by the Agency within ten (10) calendar days of personal service of the notice on the Person or Persons subject to a fine or within fifteen (15) calendar days if the Person or Persons subject to a fine are served by mail.
- (c) **IMPOSITION OF FINE.** If no request for a hearing is timely received, the Agency's determination on the violation and the imposition of a fine shall be final and payment shall be made within thirty (30) calendar days of written demand made in the manner specified above for a notice of violation. If the fine is not paid within that time, the fine may be collected, along with interest at the legal rate, in any manner provided by law. In the event that a judicial action is necessary to compel payment of the fine and accumulated interest, the Person or Persons subject to the fine shall also be liable for the costs of the suit and attorney's fees incurred by the County in collecting the fine.
- (d) **NOTICE OF HEARING.** If a hearing is requested pursuant to subsection (b) of this section, the Agency shall provide written notice, within forty-five (45) calendar days of its receipt of the hearing request, to the Person or Persons subject to a fine of the date, time, and place of the hearing in the manner specified above for a notice of violation.

- (e) HEARING DECISION. The Hearing Officer shall render a written decision and findings within twenty (20) working days of the hearing. Copies of the decision and findings shall be provided to the Person or Persons subject to a fine in the manner specified above for a notice of violation.
- (f) FINALITY OF THE HEARING OFFICER'S DECISION. The decision of the Hearing Officer shall be the final decision of the County.
- (g) APPEAL TO SUPERIOR COURT OF LIMITED JURISDICTION. Notwithstanding the provisions of §1094.5 or §1094.6 of the Code of Civil Procedure, within twenty (20) days after personal service of the Hearing Officer's decision and findings, or within twenty-five (25) days if served by mail, any Person subject to a fine may seek review of the hearing officer's decision and findings by the Superior Court of limited jurisdiction. A copy of the notice of appeal to the Superior Court shall be timely served in person or by first-class mail upon the Agency by the contestant. The appeal shall be heard de novo, except that the contents of the Agency's file in the case shall be received in evidence. A copy of the records of the Agency of the notices of the violation and of the Hearing Officer's decision and findings shall be admitted into evidence as prima facie evidence of the facts stated therein.
- (h) FAILURE TO PAY FINE. If no timely notice of appeal to the Superior Court is filed, or the Agency is not timely served with a copy of a notice of appeal, the Hearing Officer's decision and findings shall be deemed confirmed and the fine shall be collected pursuant to subsection (c) of this Section.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

#### Sec. 6.20.110 - Enforcement.

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

- (a) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall constitute a violation.
- (b) In addition to the administrative enforcement procedures provided by §6.20.090 of these Chapter violations of this ordinance may, at the discretion of the District Attorney, be prosecuted as misdemeanors.
- (c) Violations of this ordinance are hereby declared to be public nuisances.
- (d) Violations of this ordinance are hereby declared to be unfair business practices and are presumed to at least nominally damage each and every resident of the community in which the business operates.
- (e) In addition to other remedies provided by this Chapter or by other law, any violation of this ordinance may be remedied by a civil action brought by the County Counsel or the District Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- (f) Any Person acting for the interests of itself, its members, or the general public may bring an action for injunctive relief to prevent future such violations or to recover such actual damages as he or she may prove.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)

#### Sec. 6.20.120 - Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, 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 Ordinance, or its application to any other person or circumstance. The Board of Supervisors of the County of Mendocino 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.

(Ord. No. 4135, adopted 2004; Ord. No. 4203 Sec. II (part), adopted 2008.)