

## 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~~
- (b) **"Arm's Length Transaction"** means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two 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 the violations of this Chapter is not an Arm's Length Transaction.
- (c) **"Characterizing Flavor"** means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverages, herb, or spice; provided, however that a Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of the ingredient information.
- (d) **"Compliance Check"** means the process in which the Agency sends a Youth Decoy into a Tobacco Retailer's establishment to attempt to purchase a Tobacco Product.
- (e) **"Electronic Nicotine Delivery Systems (ENDS)"** means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately and includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
- (f) **"Flavored Tobacco Product"** means any tobacco product (other than cigarettes as defined by federal law) that contains a constituent that imparts a characterizing flavor
- (g) **"Hearing Officer"** means either the **"County Hearing Officer"** identified by Chapter 2.76 of the Mendocino County Code or a 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.

~~(h)(e)~~—"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)~~—"
- (i) **"Smoking"** means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. **"Smoking"** includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.
- (j) **"Tobacco paraphernalia"** means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the 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.
- (k) **"Tobacco Product"** ~~shall refer to, and is limited to, substances~~ means:
1. Any product containing ~~tobacco leaf~~, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, ~~pipe tobacco, snuff~~ little cigars, chewing tobacco, ~~dipping pipe tobacco, bidis, or any other preparation of tobacco.~~ snuff; and
  2. ~~(e)~~—"Any Electronic Nicotine Device System (ENDS) that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. Including any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
  3. Notwithstanding any provision of subsections 1. and 2. to the contrary, **"Tobacco Product"** includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. **"Tobacco Product"** does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marked and sold solely for such an approved purpose.
- (l) **"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)~~—"
- (m) **"Youth Decoy"** shall refer to a participant in a compliance check who is under the ~~age of eighteen (18),~~ minimum age required for purchase pursuant to state and federal laws,

reasonably appears under the **same minimum** 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. 6.20.015 – Sales of Tobacco Product Prohibited**

- (a) It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to Sell or offer for Sale, or to possess with intent to Sell or offer for Sale, any Flavored Tobacco Product.**
- (b) There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including, but not limited to, individual Flavored Tobacco Products, Packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to Sell or offer for Sale.**
- (c) There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:**
  - 1. made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;**
  - 2. used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or**
  - 3. taken action directed to Consumers that would be reasonably expected to cause Consumers to believe the Tobacco Product imparts a Characterizing Flavor.**

#### **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)~~

(c) A Person selling tobacco products without a valid tobacco retailer license, including a Person whose privilege to sell tobacco products has been suspended or revoked:

1. Shall keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this provision shall constitute Tobacco Retailing without a license under Section 6.20.090 and will incur administrative fines in accordance with 6.20.100.
2. Shall not display any advertising relating to Tobacco Products that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

(d) 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~~supersede, 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)~~

(e) 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.

(a) Application for a Tobacco Retailer's license shall be submitted to **Health and Human Services Agency, Public Health Community Health Education and Engagement** in the name of each Person proposing to conduct retail tobacco sales and shall be signed by each Person or an authorized agent thereof. **on an annual basis.** 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(~~eh~~) 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~~**the single fixed** 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~~

**(b) All licensed Tobacco Retailers shall inform the Agency in writing of any change in the information submitted on the application for a Tobacco Retailer's license within 14 days of a change.**

~~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 **or more** of the following bases for denial **exists**:

(a)— **The information presented in the application is incomplete-~~or~~, inaccurate, or false. Intentionally supplying inaccurate or false information shall be a violation of this Chapter.**

(b)—~~the~~ **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.)~~

**(c) The Tobacco Retailer at the time of the application is indebted to the County for any delinquent license fees or fines pursuant to this Chapter, unless such licensee, with the consent of the Agency enters into a written agreement with the County to pay such delinquent fees in at least monthly installments extending over a period not to exceed one year and is current with said installment payments.**

**(d) The Tobacco Retailer has violated this Chapter or any other tobacco control law three (3) or more times within the previous sixty (60) months.**

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 **paid annually and shall be established by resolution of Board of Supervisors of the County of Mendocino. The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and enforcement, but shall not exceed the cost of the regulatory program authorized by this Chapter. Annual fees shall not be pro-rated or refunded during the course of the year. The Agency may charge a re-inspection fee to offset the additional staff time required to handle non-compliant businesses. Additional inspections thereafter will be billed based on actual costs incurred.**

~~(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.)~~

**A Tobacco Retailer's license is nontransferable from one Person to another or from one location to another. Whenever a Tobacco Retailing location has a change in ownership, a new Tobacco Retailer's license is required.**

#### Sec. 6.20.080 - License Violation.

~~(a)~~

**VIOLATION OF ~~TOBACCO-LAWS~~ RELATED ~~LAW~~STO TOBACCO PRODUCTS.** 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~~**laws regarding the sales, advertising or display of Tobacco Products, including, but not limited to, the Stop Tobacco Access to Kids Enforcement Act ("STAKE Act"), California Businesses and Professions Code Section 22958, and California Penal Code Section 308.**

Sec. (b)—~~LICENSE COMPLIANCE MONITORING.~~ **6.20.085 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, ~~or its designee(s).~~ **The Mendocino County Sheriff's Office shall also have authority to assist in enforcement. Retailers may be subject to additional inspections based on random selection, past violation(s) or complaints. Nothing in this paragraph shall create a right of action in any licensee or other Person against the County or its agents. Compliance checks shall be carried out in an effort to enforce any local, state, or federal law related to tobacco sales and/or tobacco related sales, especially those related to a minimum age for tobacco purchases or possession. The 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~~ Youth Decoy") if the violation occurs when:**

- 1.— the ~~youth-decoy~~ **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~~ **Youth Decoy** is participating in a compliance check funded or supervised in **any** part by **the** 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~~ **TOBACCO RETAILING WITHOUT A VALID LICENSE. In addition to any other remedies available at penalty authorized by law or in equity. Upon a determination by, including the application of Administrative Fines under Section 6.20.100, if the Agency finds based on a preponderance of the evidence, after notice and an opportunity to be heard pursuant to section 6.20.090(d) that any Person has engaged in any conduct that violates the provisions of 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 at a location within any sixty (60) month period, no new license may be issued for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until one (1) year has passed from the date of the violation.
2. After a second violation at a location within any sixty (60) month period, no new license may be issued for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until three (3) years have passed from the date of the violation.



3. After a third violation at a location within any sixty (60) month period, no new license may be issued for the Person or the location unless ownership of the business at the location has been transferred in an Arm's Length Transaction.

(b) **VIOLATION OF MINIMUM AGE LAWS RELATED TO TOBACCO PRODUCTS: SUSPENSION, REVOCATION.** In addition to any other remedy authorized by law after notice and opportunity to be heard pursuant to section 6.20.090(d), a Tobacco Retailer's license may be suspended or revoked as provided in this Chapter, section if the Agency ~~may impose~~ finds, based on a preponderance of the evidence, that the licensee, or any of the licensee's agents or employees, has violated tobacco-related laws as indicated in Section 6.20.80. A Tobacco Retailer shall also be **charged** the following **fin**es. All 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~~ **Tobacco Products** to ~~minors. youth.~~

~~(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. ~~(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~~ **Tobacco Products** to ~~minors~~ **persons under the minimum age allowed by state law to purchase Tobacco Products**, and techniques to ensure future compliance with said laws, no penalty will be imposed. Person must ~~file with~~ **submit to** 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~~ **of** one thousand dollars (\$1,000.00) for a first violation in any thirty-six (36) month period.
2. ~~(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~~ **and** the Person's license shall be suspended for ~~not less than fourteen (14) days and not more than~~ twenty-one (21) days.
3. ~~(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~~ **of** five thousand (\$5,000.00) ~~or~~ **and** the Person's license shall be suspended for ~~not less than thirty (30) nor more than sixty (60) days for a third violation.~~



4. ~~(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. ~~(5)~~—Upon a finding by the Agency of a fifth or subsequent license violation within any thirty-six (36) month period, **the Tobacco Retailer shall pay a fine of twenty thousand dollars (\$20,000.00) and** the Person's license shall be revoked for not less than one year.
- (c) **NO DISPLAY OR ADVERTISING.** During any period of suspension or revocation the licensee:
1. Shall remove all Tobacco Products from public view. Failure to do so shall result in an administrative fine pursuant to Section 6.20.100, with each day constituting a separate violation.
  2. Shall not display any advertising relating to Tobacco Products that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location. Failure to do so shall result in an administrative fine pursuant to Section 6.20.100, with each day constituting a separate violation.
- (d) **NOTICE OF INTENDED DECISION.** Upon the existence of any of the grounds for ineligibility, denial, suspension, or revocation of a license pursuant to this chapter, the Agency shall issue to the license applicant or holder a notice of intended decision. The notice of intended decision shall state the grounds upon which the denial, revocation, or suspension is based. The notice of intended decision shall specify the effective date of the action. The notice of intended decision shall advise the license applicant or holder that the suspension or revocation shall become final unless the person files a written request for administrative review within 10 calendar days of the date of service of the notice of intended decision.
- (e) **SERVICE PROCEDURES.** The Agency's decision to impose a suspension or revocation may be served by personal service or by certified mail, postage prepaid with a return receipt requested. Simultaneously, the decision may be sent by first class mail, postage prepaid with certificate of mailing requested. If the decision is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first claim mail, provided the decision sent by first class mail is not returned by the United States Postal Service undelivered. In the case of service by certified mail for which a signed receipt is returned, the date of service shall be the date of signing of the receipt. In the case of service by regular first class mail, the date of service shall be the date upon which such mail was deposited in the United States Mail with postage prepaid, plus five days.

~~(f)(e)~~ — **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.

~~(g)(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~~**any time** before the license issued. **The decision by the Agency shall be the final decision of the County.** 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.)~~

- (i) **APPEAL OF SUSPENSION, PENALTIES OR REVOCATION.** Requests for appeal must be filed with the Agency within ten (10) calendar days from the date of a properly served decision under 6.20.090(e). With respect to suspensions or revocations, if such an appeal is timely made it shall stay enforcement of the appealed action. An appeal is not available for a revocation made pursuant to 6.20.090(f) above. The Agency may engage in settlement negotiations and may enter into a settlement agreement with a Tobacco Retailer alleged to have violated this Chapter; provided a timely appeal has been filed. Settlements shall not be confidential.

Sec. 6.20.100 - Administrative Fine.

- (a)— **GROUND FOR FINE.** If the Agency finds, based on ~~substantial—record~~ **preponderance of the** evidence, that any unlicensed person, including a person named on a revoked or suspended license, has engaged in Tobacco Retailing ~~in violation~~ **without a valid license, including the failure to remove Tobacco Products from public view and failure to remove advertising promoting the sale of this Chapter Tobacco Products,** 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 **and every** day ~~that such a Person engages in Tobacco Retailing~~ **violation of this provision exists** 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 **as identified below** and include an advisement of the right to ~~request a hearing to contest the fine.~~ **appeal.** Any ~~request for a hearing~~ **appeal** must be **made in accordance with the procedure identified in writing and must be received by** Section 6.20.105 below. The notice of violation shall contain the following:

1. The name and address of the responsible Tobacco Retailer;
2. The basis of the ~~Agency~~ **Agency's** determinations;
3. A statement explaining how, where, to whom, and within ~~ten (10) calendar~~ **what** number of days ~~of the~~ **the** penalty shall be paid;
4. A statement explaining that the fine is effective immediately with the understanding that any subsequent Notice of Violation would be considered a repeat violation subject to a higher penalty;
5. Identification of appeal rights, including the time within which the Notice of Violation may be contested.

(c) **SERVICE OF NOTICE OF VIOLATION.** The notice of violation and of intent to impose a fine may be served by 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 or by~~ certified mail, postage prepaid with a ~~fine are served by~~ return receipt requested. Simultaneously, the decision may be sent by first class mail~~-,~~ postage prepaid with certificate of mailing requested. If the decision is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the decision sent by first class mail is not returned by the United States Postal Service undelivered. In the case of service by certified mail for which a signed receipt is returned, the date of service shall be the date of signing of the receipt. In the case of service by regular first class mail, the date of service shall be the date upon which such mail was deposited in the United States Mail with postage prepaid, plus five days.

~~(e)~~

(d) **IMPOSITION OF FINE.** If no ~~request for a hearing~~ **appeal** 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~~

(e) **FAILURE TO PAY FINE.** The Agency or County may impose any remedy authorized by law to collect the administrative fine if not paid timely pursuant to ~~subsection (b)~~ the provisions of this Chapter.

Sec. ~~section, the Agency shall provide written~~ **6.20.105. Appeal Procedure.**

Whenever this Chapter provides for a right to appeal, the recipient must give notice~~-,~~ to the Agency within ~~forty-five (45)~~ **10** calendar days ~~of its receipt of~~ from the date of service by providing a document in writing, bearing the title, "Appeal of Tobacco Retail Decision", containing the name, address, and phone number of the appellant and the grounds on which the decision is being contested.

(a) The notice of appeal shall be accompanied by an advance deposit in the amount of the total administrative penalty. If the Board of Supervisors has established a hearing fee, the hearing fee shall also be provided.

(b) Any notice of appeal filed without providing the advance deposit and hearing fee (if applicable) shall be deemed incomplete.

(c) The Agency receiving a timely and properly filed appeal, shall then cause the matter to be set for hearing before a Hearing Officer by notifying the Hearing Officer directly or by requesting County Counsel to coordinate the Hearing Officer.

- (d) A hearing before a Hearing Officer shall be set for a date that is not less than ten (10) and not more than (30) days from the date that the notice of appeal is filed.
- (e) Either the Hearing Officer or County Counsel in cooperation with the Hearing Officer, shall notify the parties in writing, at least ten (10) days prior to the hearing date, of the date and location of the hearing. It shall be sufficient to provide notice to the appellant by using the address listed in the request, ~~to the Person or Persons subject to a fine of the date,~~ for appeal.
- (f) At the prescribed time, and place ~~of the hearing in the manner specified above for a notice of,~~ the Hearing Officer shall consider relevant evidence from all parties as to whether the violation ~~of tobacco-related laws occurred.~~ The Agency's notice of violation, intended decision and any additional documents submitted by the Agency shall constitute prima facie evidence of the respective facts contained in those documents.
- ~~(e) HEARING DECISION.~~
- (g) Parties may choose to be represented by an attorney. However, 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.
- (h) The failure of any appellant to appear at the scheduled hearing shall constitute an abandonment of the appeal.
- (i) The Hearing Officer ~~shall render~~ may continue the hearing and request additional information from the parties prior to issuing 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.~~
- (j) The Agency has the burden of proving by a ~~fine in the manner specified above for a notice of~~ preponderance of the evidence that the alleged violation ~~occurred.~~
- ~~(f) FINALITY OF THE HEARING OFFICER'S DECISION. The decision of the Hearing Officer shall be the final decision of the County.~~
- (k) Following conclusion of the hearing and based on the evidence before it, 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.
- (l) If the Hearing Officer determines that the Tobacco Retail Decision shall be upheld, then the fine amount identified, or as otherwise adjusted by the Hearing Officer, shall be immediately collectable by the Agency. If the Hearing Officer determines the Tobacco Retail Decision should not be upheld, the Hearing Officer shall order the Citation dismissed, and the Agency shall return the advance deposit.

**(m) Any determination of the Hearing Officer shall be subject to judicial review pursuant to Code of Civil Procedure Section 1094.5.**

~~(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~~ **this** 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~~

- (g) Any person who is found to have violated this Chapter shall be liable for such costs, expenses and disbursements paid or incurred by the County or any of its contractors in the correction, abatement, prosecution of, or administrative hearing, on the violation. Re-inspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the establishment and may be set by the Board of Supervisors in the Master Fee Schedule.

Sec. ~~H (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.)~~