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## Tobacco Retail License: What has Changed?

1. The document provided is a proposed repeal and replace of the current Mendocino County Tobacco Retail License.
2. Definitions: the following were updated or added to 1) align with State of California language, or 2) update to model language from Change Lab Solutions, a statewide coordinating center for tobacco law.
  - "Characterizing Flavor"
  - "Electronic Nicotine Delivery Systems (ENDS)"
  - "Tobacco Product"
  - "Smoking"
  - "Youth Decoy"
  - "Tobacco Paraphernalia"
  - "Hearing Officer"
  - "Compliance Check"
  - "Agency"
  - "Arm's Length Transaction"
3. The Sale of Flavored Tobacco Product Prohibited
4. Insertion of language to identify the fines imposed for selling tobacco to minors (County section 6.20.090). Previously, there was no section that specifically addressed a violation in this manner.
5. Addition of language to identify the retailer is responsible for knowing the laws regarding tobacco (County section 6.20.2e. "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."
6. Continuation of "Issuance of License" procedures to include language of why an application would be denied: "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." And "The Tobacco Retailer has violated this Chapter

or any other tobacco control law three (3) or more times within the previous sixty (60) months."

7. License fee further identifies what the cost of the fee shall be used for (County Section 6.20.60).
8. Section 2357 License Violation updated to include: "VIOLATION OF LAWS RELATED TO 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 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."

# **February 2020 Talking Points**

## March 2020

### Flavored Tobacco 1 Page Talking Points

According to the 2019 National Youth Tobacco Survey:

- 27.5% of High School students are current user of e-cigarette products
- More than 5 million youth are currently using e-cigarettes

California Healthy Kids Survey: Youth identifying as current electronic cigarette users:

- Nationally 7<sup>th</sup> through 12<sup>th</sup> Graders at 11.7% in 2017.
- Mendocino County in 2015/2016
  - Ukiah: 11<sup>th</sup> Graders at 10%
  - Willits: 9<sup>th</sup> Graders at 10%
  - Ft. Bragg 11<sup>th</sup> Graders at 15%
- Nationally 7<sup>th</sup> through 12<sup>th</sup> Graders at 27.5% in 2019.
- Mendocino County in 2018/2019
  - Ukiah: 9<sup>th</sup> Graders at 21%
  - Willits: 9<sup>th</sup> Graders at 21%
  - Ft. Bragg: 11<sup>th</sup> graders 37%(2017/2018)

Mendocino County Current Tobacco Retail Licenses Annual Fee:

- |                     |       |            |         |
|---------------------|-------|------------|---------|
| • Mendocino County: | \$350 | • Willits: | \$15    |
| • Fort Bragg:       | \$195 | • Ukiah:   | \$35.50 |

There are 112 Tobacco Retailer throughout Mendocino County:

- |                     |    |            |    |
|---------------------|----|------------|----|
| • Mendocino County: | 54 | • Willits: | 17 |
| • Fort Bragg:       | 14 | • Ukiah:   | 26 |

Flavored Tobacco Statistics:

- 91% of youth who have tried tobacco first used a flavored tobacco product
- 66% of youth believe these products only contain flavoring

Currently 69 municipalities in California have existing ordinances restricting the sale of flavored Tobacco Products. These policies started in 2010 with Santa Clara and currently no data has been shared in regards to the loss of revenue from local businesses.

The California Department of Public Health reported from 2017-2018 there was a 67% increases in retailers selling "Electronic Smoking Devices" to underage youth

In 2016, while 34.1% of in-store sales were from tobacco, only 18.2% of profits were from tobacco. In comparison, prepared foods were 22% of sales, but 35% of profits, and packaged beverages were 15% of sales but 19% of profits. In addition, while a common industry argument against sales restrictions on tobacco is fear of reduced revenue for retailers and that tobacco brings in people to purchase other goods, such as food and beverages. However, a 2012 study done in Philadelphia low-income corner stores found that only 87% of purchases included tobacco, and most tobacco purchases did not include other items. Total amount spent on other items were the same regardless of whether tobacco was also purchased.

# **Current Mendocino County TRL**

# Mendocino County TRL (Current)

## 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 (1) 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) **REVOCAION 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.)

# **Tobacco Retail License: What has Changed**

## Tobacco Retail License: What has Changed?

1. The document provided is a proposed repeal and replace of the current Mendocino County Tobacco Retail License.
2. Definitions: the following were updated or added to 1) align with State of California language, or 2) update to model language from Change Lab Solutions, a statewide coordinating center for tobacco law.
  - "Characterizing Flavor"
  - "Electronic Nicotine Delivery Systems (ENDS)"
  - "Tobacco Product"
  - "Smoking"
  - "Youth Decoy"
  - "Tobacco Paraphernalia"
  - "Hearing Officer"
  - "Compliance Check"
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  - "Arm's Length Transaction"
3. The Sale of Flavored Tobacco Product Prohibited
4. Insertion of language to identify the fines imposed for selling tobacco to minors (County section 6.20.090). Previously, there was no section that specifically addressed a violation in this manner.
5. Addition of language to identify the retailer is responsible for knowing the laws regarding tobacco (County section 6.20.2e. "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."
6. Continuation of "Issuance of License" procedures to include language of why an application would be denied: "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." And "The Tobacco Retailer has violated this Chapter

or any other tobacco control law three (3) or more times within the previous sixty (60) months."

7. License fee further identifies what the cost of the fee shall be used for (County Section 6.20.60).
8. Section 2357 License Violation updated to include: "VIOLATION OF LAWS RELATED TO 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 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."

# **Purposed Mendocino County TRL**

## 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) "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) "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.
- (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" means:
1. Any product containing, 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, little cigars, chewing tobacco, pipe tobacco, snuff; and
  2. 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.
- (m) "Youth Decoy" shall refer to a participant in a compliance check who is under the minimum age required for purchase pursuant to state and federal laws, reasonably appears under the same minimum age and who has participated in the Public Health Branch training for youth involved with the tobacco control program compliance surveys.

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.
- (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) 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, 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.
- (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.

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(h) 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 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.
- (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. 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 evidence demonstrates one or more of the following bases for denial exists:

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

#### 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 prorated 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.

#### Sec. 6.20.070 - Licenses Nontransferable.

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.

**VIOLATION OF LAWS RELATED TO 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 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. 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") 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 any part by the County or, funded or supervised in any part by the California Department of Health Services.

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

- (a) **TOBACCO RETAILING WITHOUT A VALID LICENSE.** In addition to any other penalty authorized by law, 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 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 section if the Agency 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 fines. All administrative 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 youth.

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 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 submit to the Department, within 30 days, 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 of 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 two thousand dollars (\$2,000.00) and the Person's license shall be suspended for 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 of five thousand (\$5,000.00) and the Person's license shall be suspended for sixty (60) days.
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 ten thousand dollars (\$10,000.00) and the Person's license shall be suspended for 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 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 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.
- (f) **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) **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 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.
- (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.

- (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 a preponderance of the evidence, that any unlicensed person, including a person named on a revoked or suspended license, has engaged in Tobacco Retailing without a valid license, including the failure to remove Tobacco Products from public view and failure to remove advertising promoting the sale of Tobacco Products, the Agency shall fine that Person:
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 a 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 state the basis of the Agency's determinations as identified below and include an advisement of the right to appeal. Any appeal must be made in accordance with the procedure identified in 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's determinations;
  3. A statement explaining how, where, to whom, and within what number of days 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 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 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.

- (d) **IMPOSITION OF FINE.** If no 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.
- (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 the provisions of this Chapter.

#### Sec. 6.20.105. Appeal Procedure.

Whenever this Chapter provides for a right to appeal, the recipient must give notice to the Agency within 10 calendar days 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 for appeal.

- (f) At the prescribed time and place, 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.
- (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 may continue the hearing and request additional information from the parties prior to issuing a written decision.
- (j) The Agency has the burden of proving by a preponderance of the evidence that the alleged violation occurred.
- (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.

#### 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 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.
- (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. 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.

# **Current Ft. Bragg TRL**

## CHAPTER 6.14 LICENSING OF TOBACCO SELLERS

### Section

- 6.14.010 Definitions.
- 6.14.020 Requirement for Tobacco Seller's license.
- 6.14.022 Performance standards – Deemed approved activities.
- 6.14.030 Application procedures.
- 6.14.040 Issuance of license.
- 6.14.050 Display of license.
- 6.14.060 License fee.
- 6.14.070 License nontransferable.
- 6.14.080 License violation.
- 6.14.090 Suspension, termination or revocation of license.
- 6.14.100 Administrative fine.
- 6.14.110 Enforcement.

### 6.14.010 DEFINITIONS.

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

**PERSON.** Natural person, joint venture, joint stock company, organization, partnership, association, club, company, corporation, business, trust, or the manager, lessee, agent, servant, officer, or employee of any of them.

**TOBACCO PRODUCT.** Means any of the following:

1. Any product containing, 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, little cigars, chewing tobacco, pipe tobacco, or snuff.
2. Any electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.

3. Any component, part, or accessory of a Tobacco Product, whether or not sold separately.
4. "Tobacco Product" does not include a 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 the product is marketed and sold solely for an approved purpose.

**TOBACCO SELLER.** Any Person who sells, offers for sale, or offers to exchange, Tobacco Products, as defined in this section, for any form of consideration. "Tobacco Selling" 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.

**YOUTH DECOY.** A participant in a compliance check who is under the age of 18, reasonably appears under the age of 18 and who has participated in the Mendocino County Health and Human Services Agency, Public Health Branch training for youth involved with the tobacco control program compliance surveys.

(Ord. 905, §2, passed 12-10-2012; Am. Ord. 926, § 2, passed 11-14-2016)

#### **6.14.020 REQUIREMENT FOR TOBACCO SELLER'S LICENSE.**

- A. It shall be unlawful for any Person to act as a Tobacco Seller without first obtaining and maintaining a valid Tobacco Seller's license pursuant to this Chapter for each location at which that activity is to occur. No license may be issued to authorize Tobacco Selling at other than a fixed location. For example, Tobacco Selling by Persons on foot or from vehicles is prohibited.
- B. The term of a license is one year from the date of issuance, unless earlier suspended, terminated or revoked pursuant to § 6.14.090. Each licensed Tobacco Seller shall apply for the renewal of his or her Tobacco Seller's license no later than thirty (30) days prior to its expiration.
- C. Nothing in this Chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Seller's license any status or right other than the right to act as a Tobacco Seller at the location in the City identified on the face of the license. For example, nothing in this Chapter shall be construed to render inapplicable, 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 Cal. Labor Code

**§ 6404.5.**

D. It is the responsibility of each licensed Tobacco Seller to be informed regarding all laws applicable to Tobacco Selling, including those laws affecting the issuance of a tobacco and E-cigarette seller's license. No licensed Tobacco Seller may rely on the issuance of a license as a determination by the City that the Tobacco Seller has complied with all laws applicable to Tobacco Selling.

(Ord. 905, §2, passed 12-10-2012; Am. Ord. 926, § 2, passed 11-14-2016)

**6.14.022 PERFORMANCE STANDARDS – DEEMED APPROVED ACTIVITIES.**

An activity shall retain its "deemed approved" status only if it conforms to all of the following deemed approved performance standards:

- A. The Tobacco Seller does not offer illegal paraphernalia for sale. The offering of sale of such items shall result in immediate suspension of a Tobacco Seller's license;
- B. The Tobacco Seller does not sell Tobacco Products to a Person under the minimum age for purchase pursuant to state and federal laws;
- C. The Tobacco Seller does not adversely affect the peace or safety of Persons residing or working in the surrounding area;
- D. The Tobacco Seller's activities do not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, harassment of passersby, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, curfew violations, or police detentions and arrests;
- E. The Tobacco Seller's activities do not result in violations to any applicable provision of any other City, state, or federal regulation, ordinance or statute;
- F. The Tobacco Seller's upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of the surrounding neighborhood.

(Ord. 926, § 2, passed 11-14-2016)

**6.14.030 APPLICATION PROCEDURES.**

Application for a Tobacco Seller's license shall be submitted for the location sought in the name of each Person proposing to hold the license 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 Seller'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 6.14.090. All applications shall be submitted on a form supplied by the City and shall contain the following information:

- A. The name, address, and telephone number of each Person intending to hold the license.
- B. The business name, address, and telephone number of each location for which a Tobacco Seller's License is sought.
- C. 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 B above.
- D. 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.
- E. Such other information as the City deems necessary for the administration or enforcement of this Chapter.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.040 ISSUANCE OF LICENSE.**

Upon the receipt of an application for a Tobacco Seller's license and the license fee, the City shall issue a license for the location sought unless substantial evidence in the record demonstrates one of the following bases for denial:

- A. The application is incomplete or inaccurate; or
- B. The application seeks authorization for Tobacco Selling by a Person for whom a suspension is in effect or whose license has been revoked pursuant to Section 6.14.090 of this Chapter.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.050 DISPLAY OF LICENSE.**

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

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.060 LICENSE FEE.**

The fee to issue or to renew a Tobacco Seller's license shall be established by resolution of the City Council.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.070 LICENSE NONTRANSFERABLE.**

A Tobacco Seller's license is nontransferable. If the information required in the license application pursuant to Section 6.14.030, items A, B, or C changes, the licensed Tobacco Seller must notify the City within 14 days, and update all information on the license application form in order to continue to act as a licensed Tobacco Seller. For example, if a Tobacco Seller to whom a license has been issued changes business location, the Tobacco Seller must supply updated license information within 14 days of Tobacco Selling at the new location. If a business is sold, the new owner must apply for a license for that location before Tobacco Selling. The current licensee shall notify the City of the sale of the Tobacco Selling business.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.080 LICENSE VIOLATION.**

A. *Violation of Tobacco-Related Laws.* It shall be a violation of a Tobacco Seller's license for a licensed Tobacco Seller or his or her agent or employee to violate any local, state, or federal tobacco-related law.

B. *License Compliance Monitoring.* The City of Fort Bragg anticipates that compliance checks of each licensed Tobacco Seller will be conducted at least two (2) times during each twelve-month period by the Mendocino County Health and Human Services Agency, Public Health Branch. The City 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 the County of Mendocino or, funded or supervised in any part by the California Department of Health Services.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.090 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 City that a licensed Tobacco Seller has engaged in any conduct that violates the provisions of this Chapter, the City may impose the following administrative penalties.

1. Upon a finding by the City of a first license violation within any thirty-six (36)-month period, the licensed Tobacco Seller shall receive a Letter of Reprimand from the City which shall advise the licensed Tobacco Seller that if the licensed Tobacco Seller 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. The licensed Tobacco Seller must file with the City, within thirty (30) days of receipt of the Letter of Reprimand, an affidavit signed by the licensed Tobacco Seller and each of its sales employees, affirming that said training has been completed. If licensed Tobacco Seller fails to timely submit the affidavit, the City shall impose a fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for a first violation in any thirty-six (36)-month period.
2. Upon a finding by the City of a second license violation within any thirty-six (36)-month period, the licensed Tobacco Seller shall pay a fine of not less than fifteen hundred dollars (\$1,500) and not exceeding two thousand dollars (\$2,000) or the 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 City of a third license violation within any thirty-six (36)-month period, the licensed Tobacco Seller shall pay a fine not less than three thousand dollars (\$3,000) and not exceeding five thousand dollars (\$5,000) or the 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 City of a fourth license violation within any thirty-six (36)-month period, the licensed Tobacco Seller shall pay a fine of not less than ten thousand dollars (\$10,000) and not exceeding twenty thousand dollars (\$20,000) or the license shall be suspended for not less than ninety (90) nor more than one hundred eighty (180) days.

5. Upon a finding by the City of a fifth or subsequent license violation within any thirty-six (36)-month period licensed Tobacco Seller's license shall be revoked for not less than one (1) year.

B. *Notification of Violation and Administrative Penalties.* The City shall verbally notify a licensed Tobacco Seller found violating this Chapter within forty-eight (48) hours or by written Notice of Violation within five (5) days.

C. *Settlement of Administrative Penalties.* The City may engage in settlement discussions with the licensed Tobacco Seller regarding violations if a written request by the Tobacco Seller is received by the City 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 City, and no appeal shall be taken. Settlements will not be confidential and will be conferred without approval from the City Council. 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.

D. *Appeal of Suspension, Penalties or Revocation.* A decision of the City to impose penalties or to revoke or suspend a license under this Section 6.14.090 is appealable in accordance with the procedures described in Chapter 1.08.

E. *License Suspension Requires the Removal of all Tobacco Products from Public View.* A Tobacco Seller whose license is suspended must remove from public view all Tobacco Products and tobacco advertising for the duration of the suspension. Failure to remove such items from view will be regarded as a violation of this ordinance equivalent to that of selling to minors.

F. *Revocation of License Obtained Under False Pretenses.* A Tobacco Seller whose license is obtained under false pretenses shall have that license revoked. This revocation shall be with prejudice. A licensee whose license is revoked pursuant to this subsection may not apply for a new license for a period of one (1) year from the date the license is revoked.

G. *Revocation of License Issued in Error.* A Tobacco Seller's license shall be revoked if the City finds, after notice and opportunity to be heard, that one or more of the bases for denial of a

license under Section 6.14.040 existed at the time application was made or at any time before the license was issued. The revocation shall be without prejudice to the filing of a new application for a license.

H. *Termination of License for Failure to Pay Renewal Fees.* A Tobacco Seller's license which is not timely renewed pursuant to Section 6.14.020(B) shall automatically be deemed terminated by operation of law. No Person shall engage in Tobacco Selling at such location until a new license has been issued for that location.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.100 ADMINISTRATIVE FINE.**

A. *Grounds for Fine.* If the City determines, based on substantial record evidence, that a Tobacco Seller, or any employee, contractor or agent of a Tobacco Seller, has engaged in Tobacco Selling without a license, or during a period when the Tobacco Seller's license is suspended, the City shall fine the Tobacco Seller a fine not exceeding five hundred dollars (\$500) per violation. Each day that the Tobacco Seller engages in Tobacco Selling in violation of this Section 6.14.100 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 Tobacco Seller subject to the fine. The notice shall state the basis of the City's determinations and include an advisement of the right to request a hearing to contest the fine. A decision of the City to impose a fine under this Section 6.14.100 is appealable in accordance with the procedures described in Chapter 1.08.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.110 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 Section 6.14.090, violations of this ordinance may, at the discretion of the District Attorney, be prosecuted as misdemeanors.

C. Violations of this Chapter are hereby declared to be public nuisances.

D. Violations of this Chapter 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 Chapter may be remedied by a civil action brought by the City Attorney or the District Attorney, including, for example, administrative or judicial nuisance abatement proceedings, other legally authorized 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. 905, §2, passed 12-10-2012)

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The Fort Bragg Municipal Code is current through Ordinance 957, passed January 13, 2020.

Disclaimer: The city clerk's office has the official version of the Fort Bragg Municipal Code. Users should contact the city clerk's office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://city.fortbragg.com/>

City Telephone: (707) 961-2823

Code Publishing Company

# **Current Willits TRL**

# Willits TRL

## Chapter 8.24 - REQUIRED LICENSURE OF TOBACCO RETAILERS

### Sections:

#### 8.24.010 - Definitions.

The following words and phrases, whenever used in this chapter, shall have the meaning provided in this section unless the context clearly requires otherwise:

"Appellant" means a person who appeals a department decision to the grievance committee.

"Department" means the city manager and/or the duly authorized designee of the city manager.

"Grievance committee" means a committee of two persons, one city council member, selected by the city council, and one city employee selected by the city manager. No member of the committee shall have participated in a decision appealed to the committee.

"Person" means any natural 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.

"Tobacco product" means any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

"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" means 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.

(Ord. 07-01 § 2(part)).

#### 8.24.020 - Requirement for tobacco retailer license.

- A. It is 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 issue 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 term of a license is one year from the date of issuance, unless earlier suspended, terminated or revoked pursuant to Section 8.24.060. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license no later than thirty days prior to its expiration.
- 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 city of Willits identified on the face of the license. 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 Section 6404.5.

(Ord. 07-01 § 2(part)).

#### 8.24.030 - 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 8.24.090. All applications shall be submitted on a form supplied by the department and shall contain the following information:

- A. The name, address, and telephone number of each person;
- B. The business name, address, and telephone number of each location for which a tobacco retailer's license is sought;
- C. 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 subsection B of this section;
- D. 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;
- E. Such other information as the department deems necessary for the administration or enforcement of this chapter.

(Ord. 07-01 § 2(part)).

#### 8.24.040 - Issuance of license.

Upon the receipt of an application for a tobacco retailer's license and the license fee, the department shall issue a license, unless:

- 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, or by a person which or who has had a license revoked pursuant.

(Ord. 07-01 § 2(part)).

#### 8.24.050 - Display of license.

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

(Ord. 07-01 § 2(part)).

#### 8.24.060 - License fee.

The fee to issue or to renew a tobacco retailer's license shall be established by resolution of city council.

(Ord. 07-01 § 2(part)).

#### 8.24.070 - Licenses not transferable.

A tobacco retailer's license is not transferable. If the information required in the license application pursuant to Section 8.24.030(A), (B) or (C) changes, the tobacco retailer must notify the department within fourteen 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 fourteen 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 department of the sale of the tobacco retailing business.

(Ord. 07-01 § 2(part)).

8.24.080 - 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 city of Willits anticipates that compliance checks of each tobacco retailer will be conducted at least two times during each twelve-month period by the Mendocino County Public Health Department. The city 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 the county of Mendocino or, funded or supervised in any part by the California Department of Health Services.

(Ord. 07-01 § 2(part)).

8.24.090 - Suspension, termination or revocation of license.

- A. Suspension, Termination or Revocation of License for Violation. In addition to any other penalty authorized by law, a tobacco retailer's license may be suspended or revoked, if the department determines that the person or his or her agents or employees have violated the requirements of this chapter or other conditions of the license imposed pursuant to Section 8.24.080. A person who loses his license for one location does not lose it for all locations, if those locations are in compliance with this chapter, and may renew licenses for other conforming locations. A person cannot obtain a new license for a new location so long as there is a suspension in effect for any location.
  1. Notice Required. The licensee shall be served with written notice of all determinations or decisions under this section affecting his or her license. Notice shall be served by personal service, overnight courier, certified mail return receipt requested, or U.S. mail with first class postage affixed. The notice shall be sent to the authorized address. All notices shall be deemed served, when received, except for notices sent by first class mail which shall be deemed served two days after deposit in the U.S. mail if addressed to a location within Mendocino County and five days if addressed to a location outside Mendocino County. The notice shall describe the legal and factual basis for the decision. A decision imposing a fine shall specify the amount of the fine. A decision to suspend or revoke a license shall specify the beginning and ending dates of the suspension or the effective date of the revocation. No decision shall become effective in less than ten days from the date of service.
  2. Duration of Suspensions.
    - a. Upon a finding by the department of a first license violation within any thirty-six-month period, the license shall be suspended for fourteen days. However, prior to imposing the suspension, the department shall by letter (an "advice letter") advise the person that if the 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, the suspension will not go into effect. Within thirty days of the issuance of the advice letter, the person must file with the department an affidavit signed by the person and the sales employees that said training has been completed. If the person fails to timely submit

the affidavit, the department shall notify the person that the permit is suspended for fourteen days.

- b. Upon a finding by the department of a second license violation within any thirty-six-month period, the license shall be suspended for twenty-one days.
  - c. Upon a finding by the department of a third license violation within any thirty-six-month period, the license shall be suspended for thirty days.
  - d. Upon a finding by the department of a fourth license violation within any thirty-six-month period, the license shall be revoked and the person or persons who had been issued the license shall not be issued a tobacco retailer's license pursuant to this chapter for a period of three years from the date of revocation.
- B. Failure to Pay Renewal Fees. A tobacco retailer's license which is not timely renewed pursuant to Section 8.24.020(B) is an expired license. The tobacco retailer shall not engage in tobacco retailing at the licensed location until a new license has been issued for that location.
- C. Revocation of License Issued in Error. A tobacco retailer's license shall be revoked if the department determines that one or more of the bases for denial of a license under Section 8.24.040 existed at the time application was made or at any time before the license was issued. The revocation shall be without prejudice to the filing of a new application for a license.
- D. License Suspension Requires the Removal of All Tobacco Products from Public View. A tobacco retailer whose license is suspended must remove from public view all tobacco products and tobacco advertising for the duration of the suspension. Failure to remove such items from view will be regarded as a violation of this chapter equivalent to that of selling to minors.
- E. Revocation of License Obtained Under False Pretenses. Tobacco retailers whose license is obtained under false pretenses shall have that license revoked. A licensee whose license is revoked pursuant to this subsection may not apply for a new license for a period of one year from the date the license is revoked.

(Ord. 07-01 § 2(part)).

#### 8.24.100 - Administrative fine.

- A. Grounds for Fine. If the department determines 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 department shall fine that person as follows:
- 1. A fine not exceeding one hundred dollars for a first violation in any thirty-six-month period;
  - 2. A fine not exceeding two hundred dollars for a second violation in any thirty-six-month period; or
  - 3. A fine not exceeding five hundred dollars for a third or subsequent violation in any thirty-six-month period.
- Each day that such a person engages in tobacco retailing shall constitute a separate violation.
- B. Imposition of Fine. If no request for a hearing is timely received in accordance with Section 8.24.110, the department's determination on the violation and the imposition of a fine shall be final and payment shall be made within thirty days after notice of the fine was served in accordance with Section 8.24.090(A)(1). 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 city in collecting the fine.

(Ord. 07-01 § 2(part)).

8.24.110 - Grievance committee appeals.

- A. **Appeal of Fine, Suspension or Revocation.** A decision of the department to impose a fine or to revoke or suspend a license may be appealed to the grievance committee. The appellant must file a written notice of appeal with the department within ten days after service of the notice of the decision. Failure to file a timely notice of appeal waives any right to further challenge the department's decision. "File" means delivered to the city manager's office in the Willits City Hall at 111 Commercial Street, Willits, CA. The filing of a notice of appeal automatically stays the department's decision, until the grievance committee has served its final decision on the appeal. The committee may reverse, modify or uphold the department's decision.
- B. **Notice of Hearing.** If a notice of appeal is timely filed, the department shall provide written notice to the appellant of the date, time, and place of the hearing in the manner specified in Section 8.24.090(A)(1). A hearing may not be conducted less than twenty days after notice is given to the appellant.
- C. **Hearing.** The grievance committee may adopt rules governing the conduct of its hearings. Those rules shall include, at least, the following:
  - 1. The department shall submit evidence at the hearing substantiating its decision. Such evidence may include testimony, police or other reports of the incident, witness statements and other documents. Not less than ten days prior to the scheduled hearing, the department must notify the appellant of the name, address and phone number of any witness to the violation, and furnish the appellant with a copy of any document it intends to submit at the hearing. Not less than seven days prior to the hearing, the appellant may request the department to produce at the hearing any witness the department intends to rely upon to substantiate the violation. The written request must name the witness or witnesses who are requested to attend the hearing. The department may not rely on the testimony of any witness (including such testimony contained in reports or written witness statements) whose appearance at the hearing is required by this subsection, if that witness fails to appear.
  - 2. Not less than ten days prior to the hearing, the appellant must notify the department in writing of the name, address and phone number of any witness the appellant intends to call as a witness at the hearing, provide a brief description of the proposed testimony, and furnish the department with a copy of any document the appellant intends to offer as evidence at the hearing. The appellant may not call any witness to testify at the hearing who was not identified as required by this subsection or offer any document as evidence at the hearing that was not provided to the department as required by this subsection.
  - 3. At the hearing, the appellant may be represented by an attorney, at appellant's expense. Both the department and the appellant shall have the right to examine and cross-examine any witness produced at the hearing. The rules of evidence that normally apply in court shall not apply in a hearing before the committee, but the grievance committee shall only consider evidence which would be relied upon by reasonable people making an important decision, and shall disregard evidence which by its nature is unreliable or not credible.
  - 4. The entire hearing shall be electronically or stenographically recorded. The grievance committee shall base its decision exclusively on the evidence presented at the hearing and shall issue a written decision, which includes a statement of the relevant facts which the committee finds to be true and explains how the facts support its decision. For example, if the department finds that the appellant sold cigarettes to a minor, but this was the first violation committed by the appellant within thirty-six months, the decision would explain that Section 8.24.090(A)(2)(a) requires a fourteen-day suspension of the appellant's license to sell tobacco products at the licensed location, and on that basis, the facts support a fourteen-day suspension of the license for that location. The record of the hearing shall be preserved for not less than six months after the decision is served on the appellant.

- D. Hearing Decision. The chairperson of the grievance committee shall issue the written decision required by subsection (C)(4) of this section. Copies of the decision shall be served in accordance with Section 8.24.090(A)(1). The hearing decision shall include notice of the appellant's right to seek review of the decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6.
- E. Finality of the Grievance Committee's Decision. The decision of the grievance committee shall be the final decision for the city of Willits.
- F. Appeal to Superior Court. Judicial review of the grievance committee's decision shall be governed by the Code of Civil Procedure Sections 1094.5 and 1094.6.
- G. Enforcement of Decision. Unless stayed by a court, any final decision of the grievance committee is effective immediately and may be implemented and enforced by the department.

(Ord. 07-01 § 2(part)).

#### 8.24.120 - 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 chapter shall constitute a violation.
- B. Violations of this chapter are declared to be public nuisances.
- C. Violations of this chapter are 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.
- D. A violation of this chapter constitutes a misdemeanor punishable by a fine of one thousand dollars or by imprisonment in the county jail for six months, or both.
- E. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney or the district attorney, including, for example, administrative or judicial nuisance abatement proceedings, other legally authorized enforcement proceedings, and suits for injunctive relief.

(Ord. 07-01 § 2(part)).

# **Current Ukiah TRL**

## ARTICLE 7. TOBACCO RETAILERS

### SECTION:

- §2350: Definitions
- §2351: License Requirements
- §2352: Application Procedure
- §2353: Issuance Of License
- §2354: Display Of License
- §2355: License Fee
- §2356: Licenses Not Transferable
- §2357: License Violation
- §2358: Suspension, Termination Or Revocation Of License
- §2359: Administrative Fine
- §2360: Grievance Committee
- §2361: Enforcement

### §2350. DEFINITIONS

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

**APPELLANT:** A person who appeals a department decision to the grievance committee.

**DEPARTMENT:** The city manager and/or the duly authorized designee of the city manager.

**GRIEVANCE COMMITTEE:** A committee of two (2) persons, one city council member, selected by the city council, and one city employee selected by the city manager. No member of the committee shall have participated in a decision appealed to the committee.

**PERSON:** Any natural 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.

**TOBACCO PRODUCT:** Any substance containing tobacco leaf, including, but not

limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco.

**TOBACCO RETAILER:** 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. (Ord. 1072, §2, adopted 2005)

## **§2351 LICENSE REQUIREMENTS**

- 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 article for each location at which that activity is to occur. No license may issue 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 term of a license is one year from January 1 through December 31 unless earlier suspended, terminated or revoked pursuant to section 2358 of this article. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license no later than thirty (30) days prior to its expiration.
- C. Nothing in this article 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 city of Ukiah identified on the face of the license. For example, nothing in this article shall be construed to render inapplicable, 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 section 6404.5. (Ord. 1072, §2, adopted 2005)

## **§2352 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 2358 of this article. All applications shall be submitted on a form supplied by the department and shall contain the following information:

- A. The name, address, and telephone number of each person.
- B. The business name, address, and telephone number of each location for which a tobacco retailer's license is sought.
- C. 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 subsection B of this section.
- D. Whether or not any person has previously been issued a license pursuant to this article that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.
- E. Such other information as the department deems necessary for the administration or enforcement of this article. (Ord. 1072, §2, adopted 2005)

## **§2353 ISSUANCE OF LICENSE**

Upon the receipt of an application for a tobacco retailer's license and the license fee, the department shall issue a license, unless:

- 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 2358 of this article, or by a person which or who has had a license revoked pursuant to section 2358 of this article. (Ord. 1072, §2, adopted 2005)

## **§2354 DISPLAY OF LICENSE**

Each license shall be prominently displayed in a publicly visible location at the licensed premises. (Ord. 1072, §2, adopted 2005)

## **§2355 LICENSE FEE**

The fee to issue or to renew a tobacco retailer's license shall be established by resolution of city council. (Ord. 1072, §2, adopted 2005)

## **§2356 LICENSES NOT TRANSFERABLE**

A tobacco retailer's license is not transferable. If the information required in the license application pursuant to subsection 2352A, B or C of this article changes, the tobacco retailer must notify the department within fourteen (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 fourteen (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 department of the sale of the tobacco retailing business. (Ord. 1072, §2, adopted 2005)

## **§2357 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 city of Ukiah anticipates that compliance checks of each tobacco retailer will be conducted at least two (2) times during each twelve (12) month period by the Mendocino County public health department. The city 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 the county of Mendocino or, funded or supervised in

any part by the California department of health services. (Ord. 1072, §2, adopted 2005)

## **§2358 SUSPENSION, TERMINATION OR REVOCATION OF LICENSE**

A. Violation: In addition to any other penalty authorized by law, a tobacco retailer's license may be suspended or revoked if the department determines that the person or his or her agents or employees have violated the requirements of this article or other conditions of the license imposed pursuant to section 2357 of this article. A person who loses his license for one location does not lose it for all locations, if those locations are in compliance with this article, and may renew licenses for other conforming locations. A person cannot obtain a new license for a new location so long as there is a suspension in effect for any location.

1. Notice Required: The licensee shall be served with written notice of all determinations or decisions under this section affecting his or her license. Notice shall be served by personal service, overnight courier, certified mail, return receipt requested, or U.S. mail with first class postage affixed. The notice shall be sent to the authorized address. All notices shall be deemed served, when received, except for notices sent by first class mail which shall be deemed served two (2) days after deposit in the U.S. mail if addressed to a location within Mendocino County and five (5) days if addressed to a location outside Mendocino County. The notice shall describe the legal and factual basis for the decision. A decision imposing a fine shall specify the amount of the fine. A decision to suspend or revoke a license shall specify the beginning and ending dates of the suspension or the effective date of the revocation. No decision shall become effective in less than ten (10) days from the date of service.

### **2. Duration Of Suspensions:**

a. Upon a finding by the department of a first license violation within any thirty six (36) month period, the license shall be suspended for fourteen (14) days. However, prior to imposing the suspension, the department shall by letter (an "advice letter") 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, the suspension will not go into effect. Within thirty (30) days of the issuance of the advice letter, the person must file with the department an affidavit signed by the person and the sales employees that said training has been completed. If the person fails to timely submit the affidavit, the department shall notify the person that the permit is suspended for fourteen (14) days.

b. Upon a finding by the department of a second license violation within any thirty six (36) month period, the license shall be suspended for twenty one (21) days.

c. Upon a finding by the department of a third license violation within any thirty six month (36) period, the license shall be suspended for thirty (30) days.

d. Upon a finding by the department of a fourth license violation within any thirty six (36) month period, the license shall be revoked and the person or persons who had been issued the license shall not be issued a tobacco retailer's license pursuant to this article for a period of three (3) years from the date of revocation.

B. ~~Failure To Pay Renewal Fees: A tobacco retailer's license which is not timely~~  
renewed pursuant to subsection 2352B of this article is an expired license. The tobacco retailer shall not engage in tobacco retailing at the licensed location until a new license has been issued for that location.

C. License Issued In Error: A tobacco retailer's license shall be revoked if the department determines that one or more of the bases for denial of a license under section 2353 of this article existed at the time application was made or at any time before the license issued. The revocation shall be without prejudice to the filing of a new application for a license.

D. Removal Of All Tobacco Products From Public View: A tobacco retailer whose license is suspended must remove from public view all tobacco products and tobacco advertising for the duration of the suspension. Failure to remove such items from view will be regarded as a violation of this article equivalent to that of selling to minors.

E. License Obtained Under False Pretenses: Tobacco retailers whose license is obtained under false pretenses shall have that license revoked. A licensee whose

license is revoked pursuant to this subsection may not apply for a new license for a period of one year from the date the license is revoked. (Ord. 1072, §2, adopted 2005)

## **§2359 ADMINISTRATIVE FINE**

A. **Grounds For Fine:** If the department determines that any unlicensed person, including a person named on a revoked or suspended license, has engaged in tobacco retailing in violation of this article, the department shall fine that person as follows:

1. A fine not exceeding one hundred dollars (\$100.00) for a first violation in any thirty six (36) month period; or
2. A fine not exceeding two hundred dollars (\$200.00) for a second violation in any thirty six (36) month period; or
3. A fine not exceeding five hundred dollars (\$500.00) 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. **Imposition Of Fine:** If no request for a hearing is timely received in accordance with section 2360 of this article, the department's determination on the violation and the imposition of a fine shall be final and payment shall be made within thirty (30) days after notice of the fine was served in accordance with subsection 2358A1 of this article. 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 fees incurred by the city in collecting the fine. (Ord. 1072, §2, adopted 2005)

## **§2360 GRIEVANCE COMMITTEE**

A. **Appeal Of Fine, Suspension Or Revocation:** A decision of the department to impose a fine or to revoke or suspend a license may be appealed to the grievance

committee. The appellant must file a written notice of appeal with the department within ten (10) days after service of the notice of the decision. Failure to file a timely notice of appeal waives any right to further challenge the department's decision. "File" means delivered to the city manager's office in the Ukiah Civic Center at 300 Seminary Ave., Ukiah, California. The filing of a notice of appeal automatically stays the department's decision, until the grievance committee has served its final decision on the appeal. The committee may reverse, modify or uphold the department's decision.

B. Notice Of Hearing: If a notice of appeal is timely filed, the department shall provide written notice to the appellant of the date, time, and place of the hearing in the manner specified in subsection 2358A1 of this article. A hearing may not be conducted less than twenty (20) days after notice is given to the appellant.

C. Hearing: The grievance committee may adopt rules governing the conduct of its hearings. Those rules shall include, at least, the following:

1. The department shall submit evidence at the hearing substantiating its decision. Such evidence may include testimony, police or other reports of the incident, witness statements and other documents. Not less than ten (10) days prior to the scheduled hearing, the department must notify the appellant of the name, address and phone number of any witness to the violation, and furnish appellant with a copy of any document it intends to submit at the hearing. Not less than seven (7) days prior to the hearing, the appellant may request the department to produce at the hearing any witness the department intends to rely upon to substantiate the violation. The written request must name the witness or witnesses who are requested to attend the hearing. The department may not rely on the testimony of any witness (including such testimony contained in reports or written witness statements) whose appearance at the hearing is required by this subsection, if that witness fails to appear.

2. Not less than ten (10) days prior to the hearing, the appellant must notify the department in writing of the name, address and phone number of any witness the appellant intends to call as a witness at the hearing, provide a brief description of the proposed testimony, and furnish the department with a copy of any document the appellant intends to offer as evidence at the hearing. The appellant may not call any witness to testify at the hearing who was not identified as required by this subsection or offer any document as

evidence at the hearing that was not provided to the department as required by this subsection.

3. At the hearing, the appellant may be represented by an attorney, at appellant's expense. Both the department and the appellant shall have the right to examine and cross examine any witness produced at the hearing. The rules of evidence that normally apply in court shall not apply in a hearing before the committee, but the grievance committee shall only consider evidence which would be relied upon by reasonable people making an important decision, and shall disregard evidence which by its nature is unreliable or not credible.

4. The entire hearing shall be electronically or stenographically recorded. The grievance committee shall base its decision exclusively on the evidence presented at the hearing and shall issue a written decision, which includes a statement of the relevant facts which the committee finds to be true and explains how the facts support its decision. For example, if the department finds that the appellant sold cigarettes to a minor, but this was the first violation committed by the appellant within thirty six (36) months, the decision would explain that subsection 2358A2a of this article requires a fourteen (14) day suspension of the appellant's license to sell tobacco products at the licensed location, and on that basis the facts support a fourteen (14) day suspension of the license for that location. The record of the hearing shall be preserved for not less than six (6) months after the decision is served on the appellant.

D. Hearing Decision: The chairperson of the grievance committee shall issue the written decision required by subsection C4 of this section. Copies of the decision shall be served in accordance with subsection 2358A1 of this article. The hearing decision shall include notice of the appellant's right to seek review of the decision pursuant to California Code of Civil Procedure sections 1094.5 and 1094.6, including the statute of limitations for seeking review pursuant to section 1094.6.

E. Finality Of The Grievance Committee's Decision: The decision of the grievance committee shall be the final decision for the city of Ukiah.

F. Appeal To Superior Court: Judicial review of the grievance committee's decision shall be governed by the Code of Civil Procedure sections 1094.5 and 1094.6.

G. Enforcement Of Decision: Unless stayed by a court, any final decision of the grievance committee is effective immediately and may be implemented and enforced by the department. (Ord. 1072, §2, adopted 2005)

## **§2361 ENFORCEMENT**

The remedies provided by this article 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 article shall constitute a violation.
- B. Violations of this article are hereby declared to be public nuisances.
- C. Violations of this article 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.
- D. A violation of this article constitutes a misdemeanor punishable by a fine of one thousand dollars (\$1,000.00) or by imprisonment in the county jail for six (6) months, or both.
- E. In addition to other remedies provided by this article or by other law, any violation of this article may be remedied by a civil action brought by the city attorney or the district attorney, including, for example, administrative or judicial nuisance abatement proceedings, other legally authorized enforcement proceedings, and suits for injunctive relief. (Ord. 1072, §2, adopted 2005)

# Infographics

# 2019 NATIONAL YOUTH TOBACCO SURVEY

SHOWS

YOUTH **e-cigarette**  
use at  
**ALARMING**  
**LEVELS**

**OVER 5 Million**  
youth are currently using e-cigarettes



NEARLY **1 Million**  
used the product daily

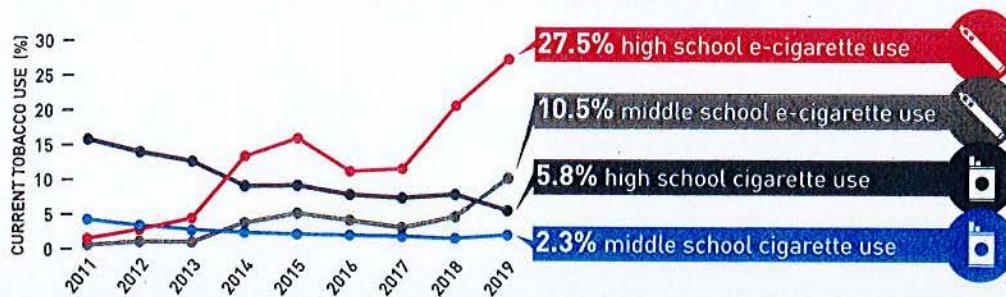


**ABOUT**  
**1.6 MILLION**  
youth used the  
product frequently  
(on 20 or more  
days per month)

MAJORITY of the current  
e-cigarette users reported

**JUUL**   
as their usual brand

Current e-cigarette use has **INCREASED DRAMATICALLY**, while current cigarette use has dropped, **UNDERMINING PROGRESS** toward reducing overall tobacco use



## Why is this concerning?

The use of e-cigarettes, particularly those with high levels of nicotine, places youth at risk for developing nicotine addiction. Nicotine exposure during adolescence could harm brain development. Additionally, youth who use e-cigarettes are more likely to start smoking cigarettes. Further, e-cigarette aerosol may expose users to other harmful substances such as heavy metals, volatile organic compounds, and ultrafine particles that could harm the lungs.

## CENTER FOR TOBACCO PRODUCTS

Source: 1) Cullen KA, Gentzke AS, Sandrey MD, et al. E-cigarette Use Among Youth in the United States, 2019. JAMA. 2019; 2) Gentzke AS, Creance M, Cullen KA, et al. Vital Signs: Tobacco Product Use Among Middle and High School Students — United States, 2011–2018. MMWR Morb Mortal Wkly Rep 2019.

Note: All numbers presented here are estimates.

CTP-136

[www.fda.gov/tobacco](http://www.fda.gov/tobacco)



@FDATobacco



facebook.com/fda



# FLAVORS

**Flavors play a significant role in drawing youth and young adults to tobacco products.**

2013

**New York City prohibited the sale of flavored tobacco products.**

**Flavored tobacco product sales decreased by 87%.**

**87%**

**Fruit and candy flavors are designed to appeal to youth tobacco users and are found in many tobacco products.**



**81% of youth who ever tried tobacco chose flavored tobacco as their first tobacco product.**

**81%**

**MA**

97 municipalities, including Boston, restricted flavored tobacco products (other than menthol) to adult-only retail tobacco stores and smoking bars.

**IL**

Chicago has prohibited the sale of flavored tobacco products, including menthol, within 500 feet of city high schools.

**RI**

Providence became the first city to prohibit the sale of flavored tobacco products.

**CA**

Numerous cities and counties in the state have restricted or prohibited flavored tobacco.



**3.26M**

**U.S. middle and high school students used a flavored tobacco product in 2014.**



# **Tobacco Retail Maps**

Humboldt County

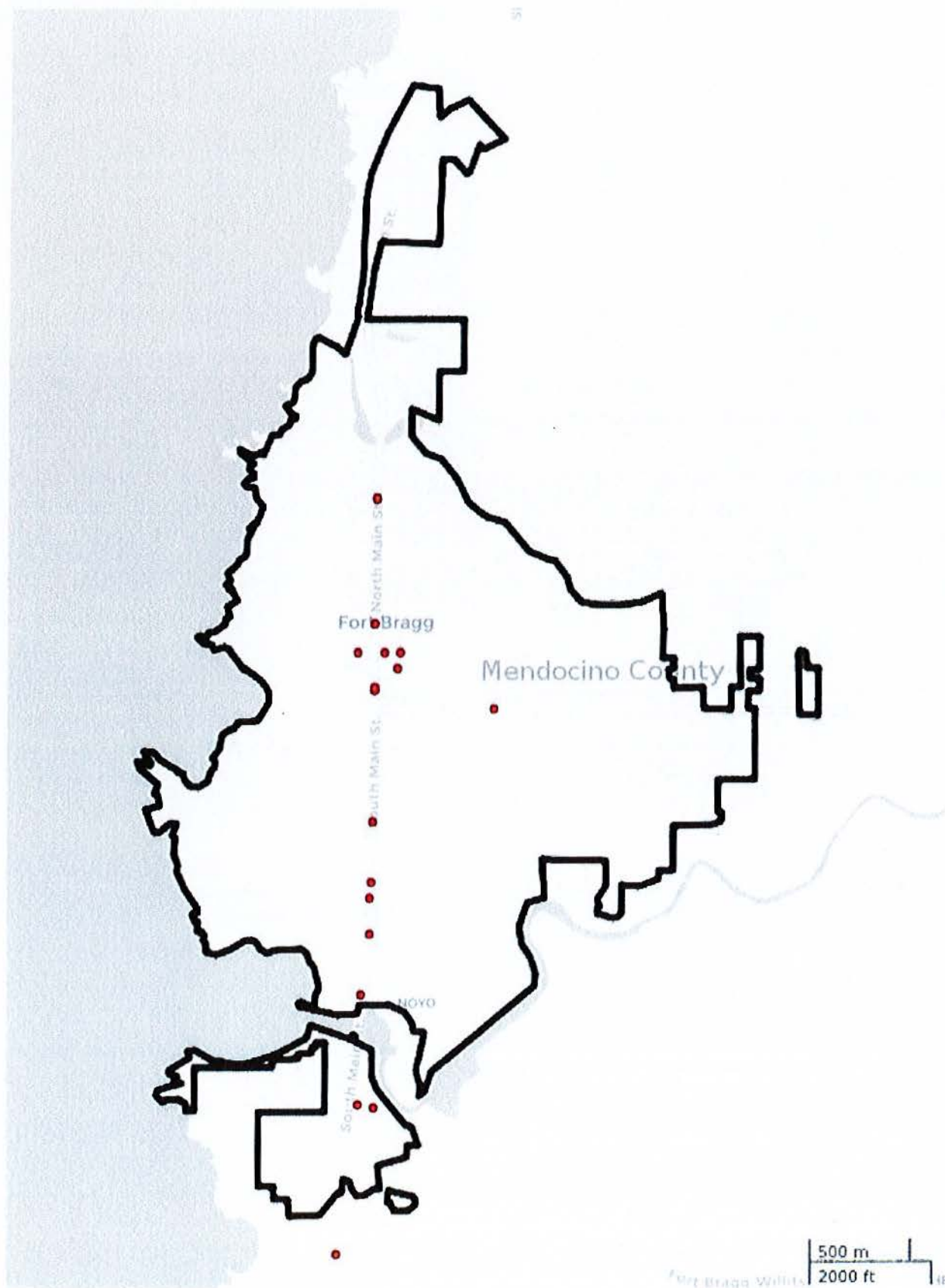
Tehama County

Mendocino County

Lake County

# Fort Bragg

• Tobacco



# Willits

• Tobacc

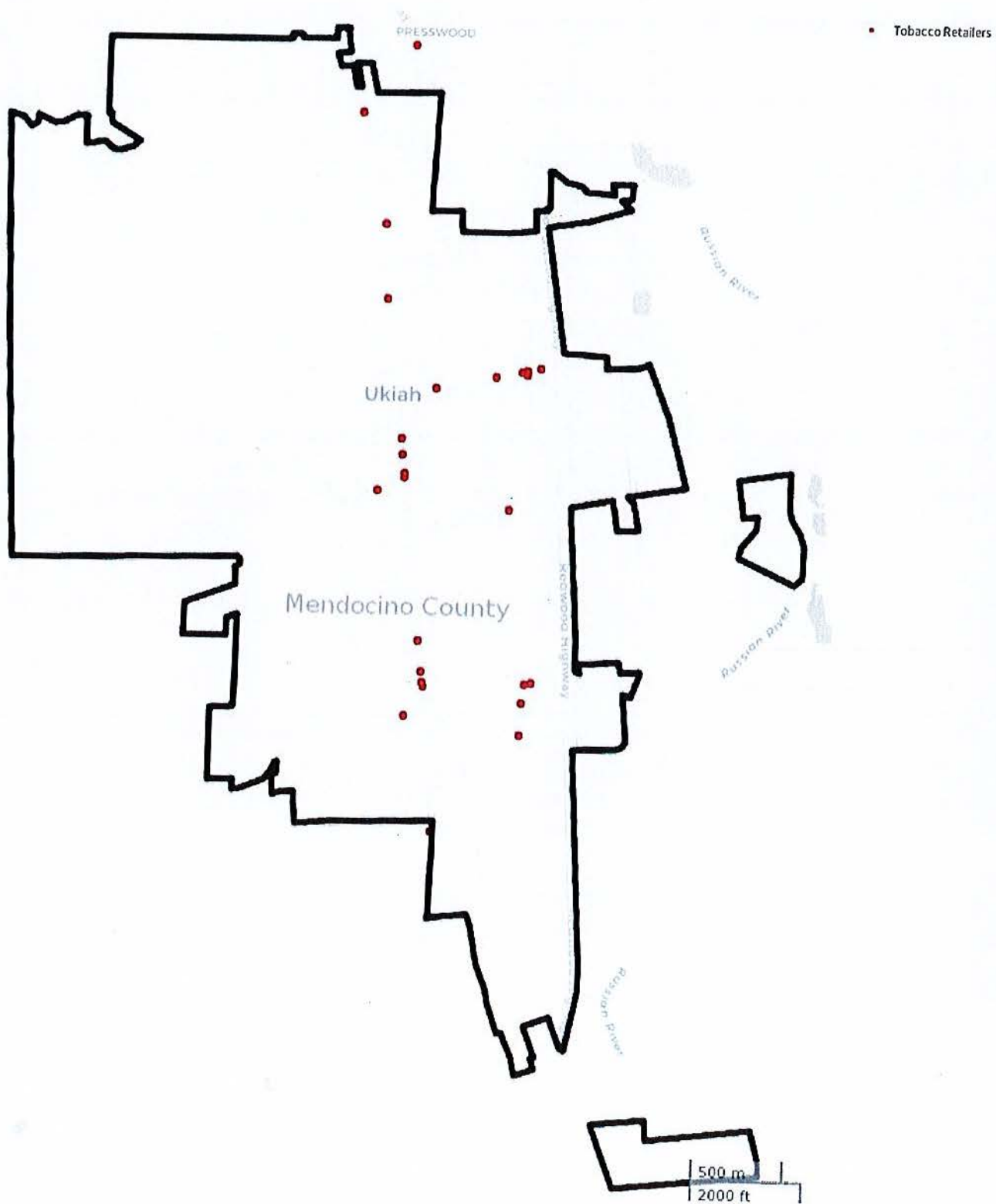


CA-20



1 km  
3000 ft

# Ukiah



## Retailers on Tribal Lands:

