

ORDINANCE NO. _____

COMPREHENSIVE TOBACCO RETAILER LICENSING ORDINANCE

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT ADDING CHAPTER 7 TO TITLE VIII, DIVISION 1 OF THE COUNTY CODE “TOBACCO RETAILER LICENSING” REGULATING TOBACCO PRODUCT SALES AND REQUIRING THE LICENSURE OF TOBACCO RETAILERS.

The Board of Supervisors of the County of Humboldt does ordain as follows:

SECTION I. The Board of Supervisors of the County of Humboldt hereby finds and declares as follows:

WHEREAS, the Board of Supervisors finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the Board of Supervisors, to protect the health, safety, and welfare of our residents;

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation’s leading cause of preventable death (U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at:

https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf);

WHEREAS, tobacco use is the number one cause of preventable death in California (California Department of Public Health, California Tobacco Control Program. The #1 Preventable Cause of Death. <http://tobaccofreeca.com/other-tobacco-products/the-number-1-preventable-cause-of-death>. Accessed May 12, 2020) and continues to be an urgent public health issue;

WHEREAS, the State of California acknowledges that youth usage of flavored tobacco products continues to rise and that while the FDA recently announced a partial ban of certain flavored electronic cigarette products, the policy does not adequately address the health and safety of California children as it makes dangerous exemptions (*793 Flavored tobacco products – Senate Floor Analyses*. CA S. Sess. 2019 – 2020, August 25, 2020; <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml#> Accessed February 7, 2023.);

WHEREAS, the State of California, in response to the rising epidemic of youth usage of flavored tobacco products, the intentional targeted marketing of certain flavored tobacco products to communities of color, low-income individuals, and the LGBTQ community, and the aggressive marketing of menthol-flavored products to African American community members,

enacted SB 793, which came into effect on December 21, 2022 (*793 Flavored tobacco products – Senate Floor Analyses*. CA S. Sess. 2019 – 2020, August 25, 2020; <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml#> Accessed February 7, 2023.);

WHEREAS, SB 793 provides:

- Tobacco retailers, and their agents or employees, are prohibited from selling, offering for sale, or possessing with intent to sell or offer for sale a flavored tobacco product or tobacco product flavor enhancer;
- Shisha tobacco products are exempted from the prohibition in SB 793 if they meet all of the following conditions:
 - the retailer has a valid license to sell tobacco products;
 - the retailer does not permit any person under 21 to be present or enter the premises at any time;
 - the retailer operates in accordance with all relevant state and local laws relating to the sale of tobacco products;
 - and the retailer operates in accordance with all state and local laws relating to the consumption of tobacco products on the premises if consumption is allowed on the premises.
- Tobacco products are considered a flavored tobacco product if a manufacturer of any of the manufacturer’s agents or employees in the course of his or her agency or employment, has made a statement of claim directed to consumers or to the public that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the tobacco product has a characterizing flavor;
- It is an infraction if a tobacco retailer, or agent or employee of a tobacco retailer, violates the provisions of this bill, and imposed a fine of \$250 for each violation;
- That the provisions within SB 793 do not preempt or prohibit the adoption of local standards that imposed a greater restriction on the access of tobacco products than the provisions in this bill.
- The greater restriction on the access of tobacco products is to prevail in case of inconsistency between provision within SB 793 and local standards. (*793 Flavored tobacco products – Senate Floor Analyses*. CA S. Sess. 2019 – 2020, August 25, 2020; <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml#> Accessed February 7, 2023.);

WHEREAS, requiring tobacco retailers to obtain a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell tobacco products to adults but will, however, allow the Board of Supervisors to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco control and youth tobacco access laws;

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco and that these products help establish tobacco habits that can lead to long-term addiction;

WHEREAS, studies indicate that laws prohibiting the sale of flavored tobacco products lead to decreases in youth tobacco use;

WHEREAS, strong policy enforcement and monitoring of retailer compliance with tobacco control policies (e.g., requiring identification checks) is necessary to achieve reductions in youth tobacco sales (DiFranza JR. Best Practices for Enforcing State Laws Prohibiting the Sale of Tobacco to Minors. *J Public Health Manag Pract.* 2005;11(6):559-565. doi: 10.1097/00124784-200511000-00014; Macinko J, Silver D. Impact of New York City's 2014 Increased Minimum Legal Purchase Age on Youth Tobacco Use. *Am J Public Health.* 2018;108(5):669-675. doi: 10.2105/AJPH.2018.304340);

WHEREAS, 219 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop youth from using tobacco (California Tobacco Control Program. *California Tobacco Facts and Figures 2019.* Sacramento, CA: California Department of Public Health. 2019. Available at: <https://www.cdph.ca.gov/Programs/CCDC/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CATobaccoFactsandFigures2019.pdf>);

WHEREAS, in Humboldt County, “smoking rate and lung cancer rates exceed those of the state. The high density of tobacco retailers is linked to high availability, increased smoking, and tobacco related disease and death.” (Humboldt County Department of Health & Human Services, Public Health. *2018 Humboldt County Community Health Assessment, Data for Planning and Policy Making.* 2018. Available at: <https://humboldt.gov/DocumentCenter/View/71701/2018-Community-Health-Assessment-PDF>);

WHEREAS, the Board of Supervisors has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

WHEREAS, the Board of Supervisors finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the Humboldt County in order to protect the health, safety, and welfare of our residents.

NOW THEREFORE, it is the intent of the Board of Supervisors, in enacting this ordinance, to ensure compliance with the business standards and practices of the county and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco products to youth, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

TITLE VII, DIVISION 1, CHAPTER 7, “TOBACCO RETAILER LICENSING,” is hereby added to the Humboldt County Code to read as follows:

817-1. DEFINITIONS. The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section:

- (a) “Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value 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 the primary purpose of avoiding the effect of the violations of this chapter that occurred at the location, is presumed not to be and “arm’s length transaction.”
- (b) “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- (c) “Cannabis Product” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- (d) “Cannabis Retailer” means any retail establishment in which cannabis or cannabis products are sold or offered for sale to persons that do not hold a license to engage in commercial cannabis activity issued by the State of California in accordance with the Business and Professions Code Section 26000 et seq., as that section may be amended from time to time.
- (e) “Child-Resistant Packaging” means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- (f) “Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than 4.5 pounds per thousand.
- (g) “Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.
- (h) “Compliance checks” means systems the department uses to investigate and ensure that tobacco retailers are following and complying with the requirements of this chapter.

Compliance checks may involve the use of persons between the ages of 18 and 20 who purchase or attempt to purchase tobacco products. Compliance checks may also be conducted by the department or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to tobacco products.

- (i) “Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.
- (j) “Delivery sale” means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a tobacco retail establishment. Delivery sale includes the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.
- (k) “Department” means Humboldt County Department of Health and Human Services and any agency or person designated by the Department to enforce or administer the provisions of this chapter.
- (l) “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- (m) “Flavored Tobacco Product” means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.
- (n) “Full Retail Price” means the price listed for a tobacco product on its packaging or on any related shelving, advertising, or display where the tobacco product is sold or offered for sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

- (o) "Good Standing" means a Tobacco Retailer without any active violations of this Chapter.
- (p) "Hearing Officer" means either the Director of Environmental Health 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.
- (q) "Little Cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than 4.5 pounds per thousand. "Little Cigar" includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.
- (r) "Manufacturer" means any person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.
- (s) "Moveable place of business" means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.
- (t) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (u) "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.
- (v) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has or shares ultimate control over the day-to-day operations of a business.
- (w) "Sale" or "Sell" means any transfer, exchange, barter, gift, offer for sale, or distribution for a commercial purpose, in any manner or by any means whatsoever.
- (x) "Self-Service Display" means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self- service display.

(y) “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, cannabis, or other plant, whether natural or synthetic, that is intended for inhalation. “Smoking” includes using an electronic smoking device.

(z) “Tobacco Product” means any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, an electronic smoking device, a cigar, pipe tobacco, shisha tobacco, chewing tobacco, snuff, or snus;

“Tobacco product” does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

(Z) “Tobacco Retailer” means any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco products to include shisha tobacco retailers. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.

(AA) “Tobacco Retailing” means engaging in the activities of a tobacco retailer.

(AB) “Youth-Oriented Facility” means a parcel in the county that is occupied by:

(1) a private or public preschool, kindergarten, elementary, middle, junior high, or high school;

(2) a licensed child-care facility or preschool [other than a small-family day care home or a large-family day care home [as defined in California Health & Safety Code § 1596.78]];

(3) a library;

(4) a playground open to the public;

(5) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;

(6) a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes;

(7) a park open to the public or to all the residents of a private community.

817-2 GENERAL REQUIREMENTS AND PROHIBITIONS.

- (a) **TOBACCO RETAILER'S LICENSE REQUIRED.** It shall be unlawful for any person to engage in tobacco retailing in Humboldt County without first obtaining and maintaining a valid tobacco retailer's license for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law.
- (1) Any Person who is or intends to become a Tobacco Retailer shall obtain pursuant to this Chapter a License for each fixed location at which Tobacco Retailing is to occur.
 - (2) Any Person who is a Tobacco Retailer as of the effective date of the ordinance enacting this Chapter shall obtain a License within ninety (90) days of the effective date of the ordinance that enacted this Chapter.
 - (3) Any Person who intends to act as a Tobacco Retailer shall obtain a License prior to acting as a Tobacco Retailer.
- (b) **LAWFUL BUSINESS OPERATION.** In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to the sale of tobacco products.
- (c) **SMOKING PROHIBITED.** Except as provided in Humboldt County Code section 313-55.4.10.3, Temporary Special Events for Cannabis, smoking, including smoking for the purpose of sampling any tobacco product, is prohibited within the indoor area of any retail establishment licensed under this chapter. Smoking also prohibited outdoors within 25 feet of any retail establishment licensed under this chapter.
- (d) **MINIMUM LEGAL SALES AGE.** No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.
- (e) **DISPLAY OF LICENSE.** Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- (f) **POSITIVE IDENTIFICATION REQUIRED.** No person engaged in tobacco retailing shall sell a tobacco product to another person without first verifying by means of government- issued photographic identification that the recipient is at least 21 years of age.
- (g) **SELF-SERVICE DISPLAYS PROHIBITED.** Tobacco retailing by means of a self-service display is prohibited.

- (h) **ON-SITE SALES.** All sales of tobacco products shall be conducted in-person in the licensed location. It shall be a violation of this chapter for any licensed tobacco retailer in Humboldt County or any of the tobacco retailer's agents or employees to engage in the delivery sale of tobacco products or to knowingly or recklessly sell or provide tobacco products to any person that intends to engage in the delivery sale of the tobacco product in Humboldt County.

817-3. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

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

817-4. TOBACCO PRODUCT PRICING, PLACEMENT, AND PACKAGING.

- (a) **PACKAGING AND LABELING.** No tobacco retailer shall sell any tobacco product to any consumer unless the tobacco product: (1) is sold in the manufacturer's packaging intended for sale to consumers; (2) conforms to all applicable federal labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.
- (b) **DISPLAY OF PRICE.** The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.
- (c) **DISTRIBUTION OF TOBACCO SAMPLES OR PROMOTIONAL ITEMS.** It is unlawful for any person to distribute free or nominally priced tobacco products.
- (d) **PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS.** No tobacco retailer shall:
- (1) honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;
 - (2) sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item; or
 - (3) provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.

- (e) **PLACEMENT OF TOBACCO PRODUCTS.** Tobacco products or advertisements relating to tobacco shall not be placed or displayed within five (5) feet of candy, snacks, nor non-alcoholic beverages.

817-5. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

- (a) **MOBILE VENDING.** No license may issue to authorize tobacco retailing at other than a fixed location. No tobacco retail license will be issued to a moveable place of business.
- (b) **LICENSED CANNABIS BUSINESSES.** No license may issue, and no existing license may be renewed, to authorize tobacco retailing at a location licensed for commercial cannabis activity by the State of California under Business and Professions Code Division 10.
- (c) **PHARMACIES.** No license may be issued, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.
- (d) **PROXIMITY TO YOUTH-ORIENTED FACILITIES.** No license may issue, and no existing license may be renewed, to authorize tobacco retailing within 500 feet of a youth- oriented facility as measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented facility is located to the nearest point of the property line of the parcel on which the applicant’s business is located.
- (e) **PROXIMITY TO OTHER TOBACCO RETAILERS.** No license may issue, and no existing license may be renewed, to authorize tobacco retailing within 500 feet of a tobacco retailer location already licensed pursuant to this chapter as measured by a straight line from the nearest point of the property line of the parcel on which the applicant’s business is located to the nearest point of the property line of the parcel on which an existing licensee’s business is located.
- (f) **POPULATION AND DENSITY.** The issuing of tobacco retailer licenses is limited as follows:
 - (1) The total number of tobacco retailer licenses within the county shall be limited to one for each 2,500 inhabitants of the county.
 - (2) For the purposes of this subsection, the total population of the county shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed.
 - (3) No new license may issue to authorize tobacco retailing if the number of tobacco retailer licenses already issued equals or exceeds the total number authorized pursuant to subsection (1).

- (g) EXISTING RETAILERS. Notwithstanding (a) through (f) above, a Tobacco Retailer selling tobacco product operating lawfully on the date this ordinance is adopted may receive a license so long as all of the following conditions are met:
- (1) The license is timely obtained and is renewed without lapse or revocation;
 - (2) The Tobacco Retailer is not closed for business or otherwise suspends Tobacco Retailing for more than sixty (60) consecutive days not associated with a violation of this Chapter;
 - (3) The Tobacco Retailer does not substantially change the business premises or business operation. A substantial change to the business operation includes, but is not limited to, the transferring of a location to a new Proprietor(s) in an arm's length transaction. A transfer of a license from an existing Tobacco Retailer in good standing to a parent, child, spouse, or domestic partner for tobacco retailing at the same retail location who is eligible to hold a tobacco retailer license is not a substantial change to the business operation; and
 - (4) The Tobacco Retailer retains the right to operate under other applicable laws.
 - (5) This provision regarding existing tobacco retailers shall also apply to existing shisha tobacco retailers. Notwithstanding Section 817-3(a) existing shisha tobacco retailer shall not be prohibited from the sale of flavored shisha tobacco products.
- (h) CHANGE OF BUSINESS DISPUTE: If the County determines that a Tobacco Retailer has substantially changed their business premises or operation and the Tobacco Retailer disputes this determination, the Tobacco Retailer bears the burden of proving by a preponderance of evidence that such change(s) do not constitute a substantial change.

817-6. APPLICATION PROCEDURE.

- (a) An application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. All applications shall be submitted on a form supplied by the Department.
- (b) A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to Section 817-13 of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.
- (c) Applicant submissions shall contain the following information:
 - (1) The name, address, and telephone number of each proprietor of the business seeking a license.

(2) The business name, address, and telephone number of the location for which a license is sought.

(3) The name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this chapter.

(4) Proof that the location for which a tobacco retailer's license is sought has been issued all necessary state licenses for the sale of tobacco products including but not limited to a California State Cigarette and Tobacco Retail License pursuant to Cal Bus & Prof Code § 22790, et seq.

(5) Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this chapter or any other local, state, or federal law governing the sale of tobacco products and, if so, the dates and locations of all such violations within the previous five years.

(6) A signed affidavit affirming that the proprietor will not sell any tobacco product without a license required by this chapter.

(7) Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.

(d) A licensed tobacco retailer shall inform the Department in writing of any change in the information submitted on an application for a tobacco retailer's license within 30 business days of a change.

817-7. LICENSE ISSUANCE OR DENIAL.

(a) **ISSUANCE OF LICENSE.** Upon the receipt of a complete application and payment of a nonrefundable application fee and the license fee required by this chapter, the Department may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.

(b) **DENIAL OF APPLICATION.** The department may deny an application for a tobacco retailer's license based on any of the following:

(1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter;

(2) The application seeks authorization for tobacco retailing at a location for which this chapter prohibits a license to be issued;

(3) The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued; or

(4) The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this chapter, that is unlawful pursuant to any other chapter of this Code, or that is unlawful pursuant to any other law.

(5) Any other suitable reason the granting of a license to the applicant is not consistent with the public health and welfare, including the applicant's history of noncompliance with this chapter and other laws relating to the sale of tobacco products.

817-8. LICENSE RENEWAL AND EXPIRATION.

- (a) RENEWAL OF LICENSE. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is one (1) year. Each tobacco retailer shall apply for the renewal of their tobacco retailer's license and submit the license fee no later than 30 days prior to expiration of the current license. A retailer that fails to timely submit a renewal application and fee may be ineligible for license renewal and must submit a new application pursuant to Section 817-6 at the discretion of the Department.
- (b) Each tobacco retailer shall pay the annual license fee no later than the expiration date of the current license. If payment is not made by the expiration date, late fees will be applied in accordance with the permitting agency's policy.

817-9. LICENSES NOT TRANSFERABLE.

- (a) LICENSES NOT TRANSFERRABLE. A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietors. A tobacco retailer in good standing may transfer their license to their parent, child, spouse, or domestic partner for tobacco retailing at the same retail location, except when the purpose for doing so is to avoid enforcement of applicable sections of this Chapter. The transferee must be eligible to hold a tobacco retailer license.

817-10. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

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 limited conditional privilege to act as a tobacco retailer at the location in the County identified on the face of the permit. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

817-11. FEE FOR LICENSE.

The fee to issue or to renew a tobacco retailer's license shall be reviewed annually and approved by resolution of the Board of Supervisors. The fee shall be calculated so as to recover the total cost of administration of this chapter, including, but not limited to, issuing a license,

administering the license program, retailer education, retailer inspection and compliance checks, and documentation of violations, but shall not exceed the cost of the regulatory program authorized by this chapter. Staff time spent in excess of the license to ascertain compliance with previously noticed violations and enforcement, shall be charged to the owner of the establishment as per Section 817-15. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

817-12. COMPLIANCE MONITORING.

- (a) Compliance with this chapter shall be monitored by the Department or any law enforcement officer. In addition, the County may designate additional persons to monitor compliance with this chapter. All licensed premises must be open to inspection by Humboldt County staff or designated persons during regular business hours. At the conclusion of any premise inspection, the license holder shall be provided an Official Inspection Report, which, among other things, shall note any documented violations and provide the license holder no greater than fourteen (14) days to cure such violations. Any corrections shall be verified via documentation submitted by the license holder and/or in a subsequent inspection after the period to cure has lapsed.
- (b) The Department shall inspect each proposed location for which a complete application for a tobacco retail license is submitted and a nonrefundable application fee has been paid.
- (c) The Department may conduct compliance checks based on allegations of violations received from the public, as resources allow. In collaboration with law enforcement, compliance checks may involve the participation of persons between the ages of 18 and 20 to enter licensed premises to attempt to purchase tobacco products.
- (d) Nothing in this section shall create a right of action in any licensee or other person against the county or its agents.

817-13. SUSPENSION OR REVOCATION OF LICENSE.

- (a) In addition to any other remedy authorized by law after notice and opportunity to be heard pursuant to Sections 817-14 and 817-15, a tobacco retailer's license may be suspended or revoked as provided in this section if the Department finds that:
 - (1) The licensee or any of the licensee's agents or employees have violated any of the requirements, conditions or prohibitions of this chapter;
 - (2) The original or renewal application contained incorrect, false, or misleading information; or

- (3) A licensee is convicted of a misdemeanor or felony violation of any Federal, State, or local tobacco retailing law or regulation including any provision of this chapter.
- (b) During any period of suspension or revocation, the licensee:
- (1) Shall remove all tobacco products from public view. Failure to do so may be considered a subsequent violation.
 - (2) Shall not display any advertisement 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 comply may be considered a subsequent violation.
- (c) When the Department finds a violation as set forth in subsection (a) of this section, the license shall be suspended or revoked as follows:
- (1) Upon finding by the Department of a first license violation within any sixty (60) month period, the license shall be suspended for 60 consecutive days;
 - (2) Upon finding by the Department of a second license violation within any sixty (60) month period, the license shall be suspended for 120 consecutive days;
 - (3) Upon finding by the Department of a third license violation within any sixty (60) month period, the license shall be suspended for 180 consecutive days;
 - (4) Upon a finding by the Department of a fourth license violation within any 60-month period, the license shall be revoked and no new license shall issue for the location until five (5) years have passed from the date of revocation.
- (d) Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
- (1) The location has been fully transferred to an entirely new proprietor(s); and
 - (2) The new proprietor(s) provides the Department with clear and convincing evidence that the new proprietor(s) has acquired or is acquiring the location in an arm's length 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.
- (e) Violation by a licensee at one location shall not be construed as a violation at another location of the same licensee.

- (f) A tobacco retailer's license shall be revoked if the Department finds that one or more of the bases for denial of a license under Section 817-7 existed at the time the application was made or at any time before the license was issued.

817-14. NOTICE OF INTENDED DECISION.

- (a) Upon determining the existence of any of the grounds for the denial, suspension or revocation of a license pursuant to this chapter, the Department shall issue to the license applicant or holder a notice of intended decision. The notice shall be provided by personal service or by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing.
 - (1) The notice of intended decision shall state all the grounds upon which the denial, revocation, or suspension is based.
 - (2) The notice of intended decision shall specify the effective date of the action.
 - (3) 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 14 calendar days of the date of service of the notice of intended decision.

817-15. APPEAL PROCEDURES.

- (a) A person served with a Notice of Decision issued pursuant to this chapter may appeal that decision by filing a request in writing with the Department within 14 calendar days of service of the notice. An appeal fee as set by resolution of the Board of Supervisors shall be paid when the appeal is filed. Failure to timely file an appeal shall be deemed a waiver of the right to challenge the decision and a failure to exhaust administrative remedies. The County shall provide independent contractor hearing officers to hear the appeals, issue subpoenas, receive evidence, administer oaths, rule on questions of law and the admissibility of evidence, prepare a record of the proceedings, and issue orders with regard to violations.
- (b) After receiving a timely written request for an appeal hearing, the hearing officer shall schedule the hearing.
 - (1) Notice of Hearing.
 - i. Written notice of the time, date and location of a hearing before the hearing officer shall be given by personal service or by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the appellant. The hearing officer shall be permitted to hold virtual video-capable hearings to include holding hearings on a video teleconferencing platform.

- ii. The notice of hearing shall also identify the hearing officer designated to conduct the hearing and advise the appellant of his or her right to submit within 10 business days of the date of the notice of hearing a written objection to the designated hearing officer. In the event of such a disqualification, a new hearing officer shall be provided. Each party shall only have the right to disqualify one hearing officer for a particular matter.

(c) Failure to Appear. The failure to appear at the administrative hearing shall constitute an abandonment of the appeal and a failure to exhaust administrative remedies.

(d) Hearing Procedures.

- (1) Rules of Evidence. The rules of evidence and manner of producing evidence shall be those rules set forth in Section 11513 of the California Government Code for the conduct of hearings under the Administrative Procedure Act. These rules may be relaxed at the discretion of the Hearing Officer in the interests of justice.
- (2) Requirements for Taking Testimony. In any proceeding before a hearing officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the hearing officer or other designee have the power to administer oaths and affirmations and to certify to official acts. Oaths of witnesses may be given individually or to a group. Witnesses shall be asked to raise their right hands and to swear or affirm that the testimony they shall give will be the truth, the whole truth, and nothing but the truth.
 - i. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of 18 years, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (3) Continuances. The hearing officer may continue the hearing as determined appropriate by the hearing officer.
- (4) Burden of Proof. At the administrative hearing, the Department has the burden of proving by a preponderance of the evidence that the alleged violation occurred.
- (5) Administrative Interpretations. In conducting the hearing, the hearing officer shall consider the previously established interpretation of an ordinance provision by the Department charged with its enforcement unless that interpretation is shown to be clearly erroneous or unauthorized.

(6) Written Decision. Within 10 calendar days after the close of the hearing, the hearing officer shall issue a written decision on the appeal, including a statement of the basis for the decision. The hearing officer's written decision shall constitute the final administrative decision of the County.

(e) Civil Action. In the event a civil action is initiated to obtain enforcement of the decision of the hearing officer, and judgment is entered to enforce the decision, the person against whom the order of enforcement has been entered shall be liable to pay the County's total costs of enforcement, including reasonable attorney's fees.

817-16. PENALTIES FOR TOBACCO RETAILING WITHOUT A LICENSE.

(a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, after notice and an opportunity to be heard pursuant to Sections 817-14 and 817-15, 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 retailing license as follows:

(1) After a first violation of this section at a location, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction) until 60 days have passed from the date of the violation.

(2) After a second violation of this section at a location within any 60-month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction) until 180 days have passed from the date of the violation.

(3) After a third or subsequent violation of this section at a location within any 60-month period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction) until five years have passed from the date of the violation.

(b) Any person subject to a penalty imposed under this section may appeal the decision within 14 calendar days of service of the Notice of the Decision. The request must be made to the Department in writing. An appeal hearing shall be held pursuant to the provisions of Section 817-15.

817-17. STIPULATED FINE IN LIEU OF HEARING.

For a first or second alleged violation of this chapter within any 60-month period, the Department may allow a tobacco retailer alleged to have violated this chapter to stipulate to the penalties provided in this section in lieu of the penalties that would otherwise apply under this chapter and to forgo a hearing on the allegations. Stipulations shall not be confidential, may be

used in hearings for any future violations, and shall contain the following terms plus any other noncriminal provisions established by the Department in the interests of justice:

- (a) After a first alleged violation of this chapter at a location:
 - (1) An agreement to stop acting as a tobacco retailer for five consecutive days;
 - (2) An administrative penalty of \$2,000; and
 - (3) An admission that the violation occurred and a stipulation that the violation will be considered in determining the penalty for any future violation.
- (b) After a second alleged violation of this chapter at a location within any 60-month period:
 - (1) An agreement to stop acting as a tobacco retailer for 10 consecutive days;
 - (2) An administrative penalty of \$5,000; and
 - (3) An admission that the violation occurred and a stipulation that the violation will be considered in determining the penalty for any future violations.

817-18. ADDITIONAL REMEDIES.

- (a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- (b) This chapter does not expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or alter the penalties provided by such laws. If the District Attorney or Attorney General brings a criminal prosecution against a license holder or license applicant for an action also considered a violation of this Chapter, such action shall only count as a violation as against the tobacco retail license when a guilty or nolo contendere verdict is entered.
- (c) For the purposes of the civil or administrative remedies provided in this chapter:
 - (1) Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this chapter shall constitute a separate violation of this chapter; and
 - (2) Each individual tobacco product that is distributed, sold, or offered for sale in violation of this chapter shall constitute a separate violation of this chapter.
- (d) Violations of this chapter are hereby declared to be public nuisances.
- (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 Department or its designee, including administrative or judicial nuisance abatement proceedings, administrative enforcement proceedings, civil code enforcement proceedings, and suits for injunctive relief and may include an immediate cease and desist order upon discovery of unlicensed tobacco sale operations as deemed needed by the department.

- (f) Tobacco products offered for sale in violation of this chapter are subject to seizure by the Department or its designee and shall be forfeited after the licensee or any other owner of the tobacco products seized is given reasonable notice and an opportunity to demonstrate that the tobacco products were not offered for sale in violation of this chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Section 817-15. Forfeited tobacco products shall be destroyed and properly disposed of at the cost of the seller after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

- (g) All tobacco retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer.

817-19. EXCEPTIONS.

- (a) Nothing in this chapter shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

817-20. CONSTRUCTION & SEVERABILITY.

It is the intent of the Board of Supervisors of Humboldt County to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this chapter, or its application to any other person or circumstance. The Board of Supervisors of Humboldt County 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.

817-21. PUBLIC RECORDS. All information provided to the Department by a licensee or license applicant pursuant to this chapter shall be subject to disclosure under the California Public Records Act (California Government Code section 7920 et seq.) or any other applicable law.

SECTION III. EFFECTIVE DATE. This ordinance shall take effect and be in force thirty (30) days from the date of its adoption. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be

published once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2023.

AYES: Supervisors--

NOES: Supervisors--

ABSENT: Supervisors—

Chair of the Board of Supervisors of the
County of Humboldt, State of California

(SEAL)

ATTEST:

Kathy Hayes, Clerk of the Board of Supervisors
County of Humboldt