

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT AMENDING SECTIONS 817-4 AND 817-19 OF CHAPTER 7 OF TITLE VIII, DIVISION 1 OF THE HUMBOLDT COUNTY CODE “TOBACCO RETAILER LICENSING” REGULATING TOBACCO PRODUCT SALES AND REQUIRING THE LICENSURE OF TOBACCO RETAILERS.

Certified copy of portion of proceedings, Meeting of May 21, 2024.

ORDINANCE NO. _____

The Board of Supervisors of the County of Humboldt ordains as follows:

WHEREAS Chapter 7 of Division 1 of Title VII of the Humboldt County Code is hereby amended as shown on Attachment 1 hereto.

NOW, THEREFORE, BE IT RESOLVED that the Chair be authorized on behalf of the Humboldt County Board of Supervisors to approve this revision to Chapter 7 of Division 1 of Title VIII of the Humboldt County Code.

BE IT FURTHER RESOLVED This ordinance shall take effect and be in force thirty (30) days from the date of its passage. 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.

Dated:

Rex Bohn, Chair
County of Humboldt Board of Supervisors

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2024.

AYES: Supervisors--

NOES: Supervisors--

ABSENT: Supervisors—

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

(SEAL)

ATTEST:

Tracy Damico, Clerk of the Board of Supervisors

County of Humboldt

ATTACHMENT 1

CHAPTER 7 TOBACCO RETAILER LICENSING

Sections:

- § 817-1. Definitions.
- § 817-2. General Requirements and Prohibitions.
- § 817-3. Sale of Flavored Tobacco Products Prohibited.
- § 817-4. Tobacco Product Pricing, Placement, and Packaging.
- § 817-5. Limits on Eligibility for a Tobacco Retailer License.
- § 817-6. Application Procedure.
- § 817-7. License Issuance or Denial.
- § 817-8. License Renewal and Expiration.
- § 817-9. Licenses Not Transferable.
- § 817-10. License Conveys a Limited, Conditional Privilege.
- § 817-11. Fee for License.
- § 817-12. Compliance Monitoring.
- § 817-13. Suspension or Revocation of License.
- § 817-14. Notice of Intended Decision.
- § 817-15. Appeal Procedures.
- § 817-16. Penalties for Tobacco Retailing Without a License.
- § 817-17. Stipulated Fine in Lieu of Hearing.
- § 817-18. Additional Remedies.
- § 817-19. Exceptions.
- § 817-20. Construction and Severability.
- § 817-21. Public Records.

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 (2) 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 an “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 California 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 four and one-half (4.5) pounds per thousand (1,000).
- (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 eighteen (18) and twenty (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 four and one-half (4.5) pounds per thousand (1,000). "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 ten percent (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.

(aa) “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.

(bb) “Tobacco retailing” means engaging in the activities of a tobacco retailer.

(cc) “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 and Safety Code Section [1596.78](#)));

- (3) A library;
- (4) A playground open to the public;
- (5) A youth center, defined as a facility where children, ages six (6) to seventeen (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. (Ord. 2718, 7/11/2023)

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 codified in this chapter shall obtain a license within ninety (90) days of the effective date of the ordinance codified in 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 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 twenty-five (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 twenty-one (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 twenty-one (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. (Ord. 2718, 7/11/2023)

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. (Ord. 2718, 7/11/2023)

817-4.

Tobacco Product Pricing, Placement, and Packaging- (Subject to the Exceptions in Section 817-19 Below).

(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 nonalcoholic beverages. (Ord. 2748, 7/11/2023)~~ Tobacco products shall be placed behind or under a counter and/or kept in a locked case. Tobacco products shall not be accessible to customers without assistance of a salesperson.

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 five hundred (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 five hundred (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 two thousand five hundred (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 [\(f\)\(1\)](#) of this section.

(g) *Existing Retailers.* Notwithstanding subsections [\(a\)](#) through [\(f\)](#) of this section, a tobacco retailer selling tobacco product operating lawfully on the date the ordinance codified in this section 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. (Ord. 2718, 7/11/2023)

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](#). 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 California Business and Professions Code Section [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 (5) 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 thirty (30) business days of a change. (Ord. 2718, 7/11/2023)

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. (Ord. 2718, 7/11/2023)

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 thirty (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. (Ord. 2718, 7/11/2023)

817-9.

Licenses Not Transferable.

A tobacco retailer's license may not be transferred from one (1) person to another or from one (1) 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. (Ord. 2718, 7/11/2023)

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. (Ord. 2718, 7/11/2023)

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. (Ord. 2718, 7/11/2023)

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 premises 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 eighteen (18) and twenty (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. (Ord. 2718, 7/11/2023)

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 sixty (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 one hundred twenty (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 one hundred eighty (180) consecutive days;

(4) Upon a finding by the Department of a fourth license violation within any sixty (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 (1) 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 (1) 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. (Ord. 2718, 7/11/2023)

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 fourteen (14) calendar days of the date of service of the notice of intended decision. (Ord. 2718, 7/11/2023)

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 fourteen (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 conferencing 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 ten (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 (1) 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 California Government Code Section [11513](#) 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 has 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 eighteen (18) years, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this 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 ten (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 attorneys' fees. (Ord. 2718, 7/11/2023)

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 sixty (60) days have passed from the date of the violation.

(2) After a second violation of this section at a location within any sixty (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 one hundred eighty (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 sixty (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 (5) 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 fourteen (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](#). (Ord. 2718, 7/11/2023)

817-17.

Stipulated Fine in Lieu of Hearing.

For a first or second alleged violation of this chapter within any sixty (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 (5) consecutive days;
 - (2) An administrative penalty of two thousand dollars (\$2,000.00); 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 sixty (60) month period:
 - (1) An agreement to stop acting as a tobacco retailer for ten (10) consecutive days;
 - (2) An administrative penalty of five thousand dollars (\$5,000.00); 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. (Ord. 2718, 7/11/2023)

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. (Ord. 2718, 7/11/2023)

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.

(b) Section 817-4 Subdivision (d) does not apply to sales of premium cigars sold in cigar lounges where products are purchased and consumed only on the premises.

(c) Section 817-4 Subdivision (d) does not apply to loose leaf tobacco or premium cigars.

(d) Section 817-4 Subdivision (d) does not apply to the sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met:

i. The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code.

ii. The hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the premises at any time.

iii. The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products.

iv. If consumption of tobacco products is allowed on the premises of the hookah tobacco retailer, the hookah tobacco retailer shall operate in accordance with all state and local laws relating to the consumption of tobacco products on the premises of a tobacco retailer, including, but not limited to, Section 6404.5 of the Labor Code.

(e) Section 817-4 Subdivision (e) does not apply to retail establishments where access to the premises by persons under 21 years of age is prohibited by law.

(Ord. 2718, 7/11/2023)

817-20.

Construction and 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 the ordinance codified in this chapter 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. (Ord. 2718, 7/11/2023)

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. (Ord. 2718, 7/11/2023)