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September 24, 2019

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The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

**Re: The Los Angeles County Tobacco Ordinance**

Dear Supervisors:

On November 7, 2018, your Board directed County Counsel, in consultation with the Treasurer and Tax Collector ("TTC") and the Department of Public Health ("DPH"), to prepare an ordinance regulating tobacco shops by establishing business licensing requirements and further strengthening existing public health laws to include best practices for regulating retailers of electronic tobacco products and flavored tobacco products. Enclosed, please find the proposed Los Angeles County Tobacco Ordinance ("Ordinance") which provides a multi-pronged approach to address underage nicotine use and regulate businesses to prevent youth access to nicotine and tobacco products.<sup>1</sup>

As summarized below, the Ordinance, if adopted, will require a business license for tobacco shops. It also provides strengthened tobacco retailer public health requirements in an effort to prevent youth exposure to tobacco, including electronic smoking devices and flavored tobacco products.

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<sup>1</sup> Your Board's motion also directed Regional Planning to draft an ordinance creating distance requirements for tobacco shops and retailers where the primary location is adjacent to children such as schools, parks and youth centers. Because distancing requirements would impact new, but not existing, tobacco retailers due to grandfathering provisions in existing law, County Counsel recommends adopting the Ordinance in order to immediately address health and safety concerns with youth access to electronic cigarettes and flavored products.

### Business License

The Ordinance establishes Chapter 7.83 in Title 7 of the County Code to require a business license for any tobacco shop operating in the unincorporated areas of the County. A tobacco shop is defined as any retail business devoted exclusively or predominantly to the sale of tobacco, tobacco products, and tobacco paraphernalia, including but not limited to cigars, pipe tobacco, electronic cigarettes, vaping devices, and components, parts, and accessories.

Prior to this Ordinance, tobacco shops did not require a County business license. A business license will allow TTC to address the actions of individual store owners, and provides a regulatory framework for enforcing the Ordinance. A business license requirement also accomplishes the Board's goal of tracking and monitoring the presence of tobacco shops in unincorporated areas of the County.

The Ordinance establishes specific operating and licensing requirements with limited exceptions, including:

- Prohibiting the sale of tobacco, tobacco products, and tobacco paraphernalia to persons under age 21;
- Prohibiting loitering, as well as the consumption of alcohol, tobacco, and food on the premises;
- Regulating exterior advertising, lighting, and record keeping; and
- Requiring a valid County Tobacco Retail License ("TRL") and California Department of Tax and Fee Administration license in addition to the business license.

### Tobacco Retail License

DPH administers and enforces the County's TRL program, which was adopted in 2007 to discourage the purchase and use of tobacco products by minors. The current TRL does not regulate the sale of electronic smoking devices, such as e-cigarettes and vaping products, or the stores that exclusively sell such products.

The Ordinance amends Chapter 11.35 in Title 11 of the County Code which currently requires any tobacco retailer to obtain a TRL from DPH. The proposed amendments, summarized below, align the County's TRL with best practices, and address the increased use of electronic smoking devices by youth.

The Ordinance amends the County Code to add the following specific requirements:

- Updating the definition of tobacco products to include vaping and electronic smoking devices;
- Requiring a TRL for all stores selling electronic smoking devices and vaping products;
- Prohibiting the sale of flavored tobacco products including menthol;
- Prohibiting pharmacies from renewing or obtaining a TRL;
- Requiring a retailer suspended for a violation of the Ordinance to post a notice of suspension and remove all tobacco products and paraphernalia from public view, as well as from displays and behind counters; and
- For tobacco shops, requiring a valid County business license and California Department of Tax and Fee Administration license in addition to the TRL.

#### Fees

The Ordinance adds business license fees for the reasonable regulatory costs of issuing a business license. The proposed initial business license fee, approved by the Auditor-Controller, is \$778 with a subsequent fee of \$142 every two years. The Auditor-Controller reviewed and approved the proposed fees, which are expected to offset program costs. The TRL fee of \$235 per year is not changing at this time.

#### Stakeholder Engagement

Over the past several months, DPH and TTC conducted extensive stakeholder engagement to present the proposed Ordinance requirements to the community. In February and March 2019, DPH, TTC, and the Department of Consumer and Business Affairs, organized six informational sessions, which were held throughout unincorporated areas of the County. Retailers were notified about the informational sessions through mailings and website postings.

To further engage with stakeholders, in June 2019, DPH conducted a mail survey of tobacco retailers in the unincorporated areas of the County and an accompanying letter served to provide an additional notice of the proposed changes and opportunities to provide feedback to the County. Webinars were also

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held on July 11, 2019 and September 5, 2019, during which DPH and TTC presented the proposed changes to the County's regulations of tobacco retailers in the unincorporated areas.

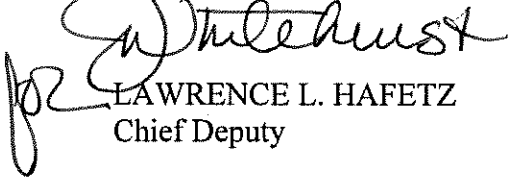
Very truly yours,

MARY C. WICKHAM  
County Counsel



By  
JUDY W. WHITEHURST  
Senior Assistant County Counsel  
Executive Office

APPROVED AND RELEASED:

  
LAWRENCE L. HAFETZ  
Chief Deputy

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Enclosures

c: Sachi Hamai, Chief Executive Officer  
Chief Executive Office

Barbara Ferrer, Ph.D., M.P.H., M.Ed., Director  
Department of Public Health

Keith Knox, Acting Treasurer and Tax Collector  
Department of Treasurer and Tax Collector

## ANALYSIS

This Ordinance constitutes the Los Angeles County Tobacco Ordinance which establishes the implementation, administration, and enforcement of business licensing requirements for Tobacco Shops in Title 7 – Business Licenses, and amends Title 11 – Health and Safety – to update terminology and Tobacco Retail License requirements, including prohibiting the sale of flavored tobacco products. This Ordinance also adds fees for the reasonable regulatory costs for issuing the business license and enforcing the Ordinance.

MARY C. WICKHAM  
County Counsel

By   
JUDY W. WHITEHURST  
Senior Assistant County Counsel  
Executive Office

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Requested: 02/04/2019

Revised: 9/17/2019

**ORDINANCE NO. \_\_\_\_\_**

An Ordinance amending and adding various sections to Title 7 – Business Licenses, and Title 11 – Health and Safety, of the Los Angeles County Code, relating to the regulation of tobacco shops and tobacco retailers.

The Board of Supervisors of the County of Los Angeles ordains as follows:

**SECTION 1.** Section 7.04.325 is hereby added to read as follows:

**7.04.325 Violation – Fines.**

Subject to the requirements of Chapter 1.25 of this County Code, the Tax Collector may impose administrative fines on persons violating any provision of this Title or any federal, State, or local law or regulation incorporated into this Title, in an amount determined by the Tax Collector. The imposition of any such fine shall in no way limit the Tax Collector's ability or authority to impose other requirements of this Chapter or seek other remedies against violators.

**SECTION 2.** Section 7.14.010 is hereby amended to read as follows:

**7.14.010 Fee sSchedule.**

The license fees required to be paid to perform, carry on, conduct, or engage in any businesses, occupations or activities set forth in this Title 7, the license eOrdinance codified in this ~~§~~Title, are as stated in this eChapter.

	FEES	
	First Year	Annual Renewal
...		
THEATER (motion picture and live, other than adult)	1,829.00	246.00
<u>TOBACCO SHOP</u>	<u>778.00</u>	<u>142.00</u>
TOW TRUCK	168.00	131.00
...		

**SECTION 3.** Chapter 7.83 is hereby added to read as follows:

**Chapter 7.83 Tobacco Shops.**

**7.83.010 Purpose and Intent.**

**7.83.020 Definitions.**

**7.83.030 Tobacco Shop – Business License Required.**

**7.83.040 Operating Requirements.**

**7.83.050 Consumption of Food or Beverages Prohibited.**

**7.83.060 Use of Tobacco Products Prohibited.**

**7.83.070 Smokers' Lounges.**

**7.83.080 Loitering Prohibited.**

**7.83.090 Compliance with Other Requirements.**

**7.83.100 Conflict with Other Law, Severability, Saving Clause.**

**7.83.010 Purpose and Intent.**

In promoting the health, safety, and general welfare of its residents, the County of Los Angeles has a substantial interest in encouraging compliance with federal, State, and local laws regulating tobacco sales and use; discouraging the purchase and use of tobacco products by anyone under the age of 21; increasing compliance with laws prohibiting the sale of tobacco products to anyone under the age of 21; and protecting children from being lured into nicotine and tobacco use through the illegal sale of products, including vaping products. It is the intent of the Ordinance codified in this Title, together with the additions and amendments to Title 11, to enforce responsible Tobacco Shop business and public health-related practices which prevent the sale or distribution of tobacco products to anyone under the age of 21. This Ordinance does not expand or reduce the degree to which the acts regulated by federal or State law are criminally proscribed or otherwise regulated.

**7.83.020 Definitions.**

For the purpose of this Chapter, the words and terms listed below shall have the following meanings:

A. "Cigarette" is any roll of tobacco wrapped in paper or in any substance not containing tobacco, or any roll of tobacco wrapped in any substance containing tobacco,



which is likely to be offered, or purchased as a cigarette, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling.

B. "Electronic smoking device" is an electronic device which can be used to deliver an inhaled dose of nicotine or other substances, including any component, part, or accessory of such a device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar or cigarillo, electronic pipe, electronic hookah, vaping device, or any other product name or descriptor.

C. "Little cigar" is 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 three pounds per thousand units. "Little cigar" includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar or cigarillo.

D. "Loitering" means delaying or lingering without an apparently proper purpose for being on the property.

E. "Smokers' lounge" has the same meaning as defined by the California Labor Code Section 6404.5 (e) (2) (A) and (B).

F. "Tobacco paraphernalia" is any cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, characterizing flavors in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device, including electronic smoking devices, and any other item designed or used for the smoking or ingestion of tobacco products.

G. "Tobacco product" means the following:

1. Any product containing, made, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff; or

2. Any electronic smoking device that delivers nicotine or other substances, whether natural or synthetic, to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, electronic hookah, or vaping device.

3. Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately.

4. "Tobacco product" does not include drugs, devices or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Drug and Cosmetic Act.

H. "Tobacco Shop" is any retail business devoted exclusively or predominantly to the sale of tobacco, tobacco products, and tobacco paraphernalia, including but not limited to cigarettes, cigars, pipe tobacco, electronic cigarettes, vaping devices, and any components, parts, or accessories.

**7.83.030 Tobacco Shop – Business License Required.**

A. A business license is required for a Tobacco Shop, or a Tobacco Shop and Smokers' Lounge, pursuant to Title 7 Division 1 Chapter 7.04 of this Code.

B. Notwithstanding Section 7.04.020 of this Code, any currently operating Tobacco Shop in the unincorporated areas of the County must, within 90 days of the effective date of the Ordinance codified in this Chapter, apply for a business license for each location pursuant to Division 1 of this Chapter.

C. As of the effective date of this Ordinance, any retailer establishing a new Tobacco Shop must apply for and obtain a business license, in accordance with Section 7.04.020 of this Code.

D. The Tobacco Shop business license may be issued to authorize sales of tobacco products from a fixed location only. Tobacco retailing on foot or from vehicles, carts, or any other non-fixed location, is prohibited.

E. To operate as a Tobacco Shop in the unincorporated areas of the County, the business must possess a valid business license, and a valid Tobacco Retail License issued pursuant to Title 11 of this Code, in addition to any other required or applicable licenses, permits, or certifications. Revocation or suspension of the Tobacco Retail License, for any period, automatically revokes or suspends the Business License for the same period.

F. Each day that a person or proprietor of a Tobacco Shop sells or offers for sale, tobacco, tobacco products, or tobacco paraphernalia in the unincorporated areas of Los Angeles County without a valid County of Los Angeles business license constitutes a separate violation of this Ordinance.

**7.83.040 Operating Requirements.**

The operation and maintenance of a Tobacco Shop must conform to every provision of this Chapter.

A. A recognizable and readable sign clearly identifying the Tobacco Shop shall be posted at the building entrance of the Tobacco Shop. Signage must meet the requirements of this Code.

B. Exterior facing advertisements of tobacco products may not occupy an area larger than 14 square feet. Such advertisements may not be placed next to any other outward facing advertisement so as to create a single mosaic type advertisement larger than 14 square feet. It is a violation of this Chapter to violate any local, State, or federal law regulating exterior storefront window or door advertising.

C. No one under the age of 21, unless United States Military with valid identification of active service, is allowed in or on the premises of a Tobacco Shop. A sign stating, "No one under the age of 21 unless United States Military with valid identification of active service is allowed on these premises" shall be posted at the entrance of the Tobacco Shop.

D. Any sale of tobacco, tobacco products or tobacco paraphernalia to any person under the age of 21 is prohibited. Active United States Military with valid

identification may purchase tobacco, tobacco products, or tobacco paraphernalia at age 18, in accordance with State law.

E. All areas of the entire exterior grounds of the Tobacco Shop, including the parking lot, require sufficient exterior lighting, so that all such areas are clearly visible during business hours.

F. All cash registers and credit/debit card point of sale equipment must produce a receipt with a receipt number generated automatically and recorded with each transaction. After the collection of funds, the cashier shall offer a copy of the receipt to the customer. Prior to leaving the cash register or work area for any reason, the cashier will lock the cash drawer and remove the key, keeping it in their possession. All cash registers and point of sale equipment must produce end of day report totals for verification of the cash and cash equivalents collected and deposited into a bank account.

**7.83.050 Consumption of Food or Beverages Prohibited.**

A. Consuming food or beverages, including alcohol, by patrons, or providing food or beverages, including alcohol, to patrons for consumption on the premises of a Tobacco Shop is prohibited.

B. A permanent sign or signs in a place clearly visible to patrons of the Tobacco Shop stating, "No consumption of food, beverages, or alcohol is allowed on these premises" is required pursuant to requirements of this Code.

**7.83.060 Use of Tobacco Products Prohibited.**

A. Tobacco, tobacco products, and tobacco paraphernalia may not be used inside the Tobacco Shop premises, except as permitted in a Smokers' Lounge pursuant to Section 7.83.070 of this Chapter.

B. A permanent sign or signs posted at the building entrance and in a place clearly visible to patrons inside the Tobacco Shop stating, "No use of tobacco, tobacco products, or tobacco paraphernalia is allowed on these premises" is required, except for in a Smokers' Lounge. The permanent signs must meet any additional requirements of this Code.

**7.83.070 Smokers' Lounges.**

A. A separate business license is not required for operation of a Smokers' Lounge.

B. Smoking, use of tobacco, tobacco products, or tobacco paraphernalia is permitted only in a Smokers' Lounge.

C. Consuming food or beverages, including alcohol, by patrons, or providing food or beverages, including alcohol, to patrons for consumption on the premises of a Smokers' Lounge is prohibited.

D. A permanent sign or signs posted in a place clearly visible to patrons of the Smokers' Lounge stating, "Consuming food or beverages, including alcohol, by patrons, or providing food or beverages, including alcohol, to patrons, is prohibited in the Smokers' Lounge" is required. The permanent signs must meet any additional requirements of this Code.

E. No one under the age of 21, unless the patron has an active United States Military identification card and is at least 18 years old, is allowed in or on the premises of a Smokers' Lounge.

F. Smokers' Lounges shall post a permanent sign or signs at the entrance to the building or structure and in a place clearly visible to patrons inside the Tobacco Shop stating, "Smoking is prohibited except in designated areas." The permanent signs must meet any additional requirements of this Code.

**7.83.080 Loitering Prohibited.**

A. Loitering in or around the Tobacco Shop is prohibited. Tobacco Shops must ensure the absence of loitering.

B. A permanent sign or signs posted at the entrance to the building or structure and in a place clearly visible to patrons on the exterior areas the Tobacco Shop stating, "No loitering is allowed" is required. The permanent signs must meet any additional requirements of this Code.

**7.83.090 Compliance with Other Requirements.**

The Tobacco Shop must comply with all applicable federal and State law, and all requirements of this Code. Failure to comply with any provision of this Code constitutes a violation of the Code and may serve as grounds for denial of an Application, issuance of a fine, revocation or suspension of a business license, or modification of a business license, pursuant to Title 7 Division 1, or legal action.

**7.83.100 Conflict with Other Law, Severability, Saving Clause.**

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of the Chapter, or the application of such provision to other persons or circumstances shall not be affected thereby.

**SECTION 4.** Section 11.35.010 is hereby amended to read as follows:

**11.35.010 Purpose and aApplication.**

In promoting the health, safety, and general welfare of its residents, the County of Los Angeles has a substantial interest in encouraging compliance with federal, ~~s~~State, and local laws regulating tobacco sales and use; ~~in~~ discouraging the purchase and use of tobacco products by ~~minors~~anyone under the age of 21; ~~in~~ increasing compliance with laws prohibiting the sale of tobacco products to ~~minors~~anyone under the age of 21; and ~~in~~ protecting children from being lured into nicotine and tobacco use through the illegal activity through the misconduct of adults~~sale of products, including vaping products~~. It is the intent of the ~~e~~Ordinance codified in this Title, together with the additions to Title 7, to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit the sale or distribution of tobacco products to ~~minors~~anyone under the age of 21, ~~but~~ This Ordinance does not to expand or reduce the degree to which the acts regulated by federal or ~~s~~State law are criminally proscribed or otherwise regulated.



**SECTION 5.** Section 11.35.020 is hereby amended to read as follows:

**11.35.020 Definitions.**

For the purpose of this eChapter, the following words and terms listed below shall have the following meanings:

A. "Accessory" means equipment, products, or materials that are used, intended for use, or designed for use in smoking, vaping, ingesting, inhaling, or otherwise introducing tobacco or tobacco products into the human body and can be an object or device that is not essential in itself but adds to the beauty, convenience, or effectiveness of something else.

AB. "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, when neither 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 eChapter that occurred at the location, is presumed not to be an arm's length transaction.

C. "Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice. Characterizing flavor includes flavor in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device, including electronic smoking devices.

D. "Cigarette" is any roll of tobacco wrapped in paper or in any substance not containing tobacco, or any roll of tobacco wrapped in any substance containing tobacco which is likely to be offered to, or purchased as a cigarette, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling.

E. "Cigarillo" 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 three pounds per thousand units. "Cigarillo" includes, but is not limited to, tobacco products known or labeled as small cigar or little cigar.

F. "Component" means any item intended or reasonably expected to be used with or for the human consumption of a tobacco product.

BG. "Department" means the Los Angeles County Department of Public Health.

CH. "Director" means the Director of the Los Angeles County Department of Public Health or his/her-designee.

I. "Electronic Smoking Device" means an electronic device, including but not limited to an electronic cigarette, electronic cigar or cigarillo, electronic pipe, electronic hookah, vaping device, or any other product name or descriptor, which can be used to deliver an inhaled dose of nicotine or other substances, including any component, part, or accessory of such a device, whether manufactured, distributed, marketed, or sold as such.

J. "Flavored Tobacco Product" means any tobacco product, as defined in this Chapter, which imparts a characterizing flavor.

~~D. "Itinerant tobacco retailing" means engaging in tobacco sale or distribution at other than a fixed location.~~

~~E.K. "License" means a Tobacco Retailer License issued by the County pursuant to this Section.~~

~~F.L. "Licensee" means any proprietor holding a license issued by the County pursuant to this Chapter.~~

M. "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 three pounds per thousand units. "Little Cigar" includes, but is not limited to, tobacco products known or labeled as small cigar or cigarillo.

N. "Package" or "Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale.

O. "Part" means a piece or segment of something, which combined with other pieces makes up the whole.

GP. "Person" means any individual, entity, firm, partnership, joint venture, limited liability company, association, social or professional club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or other group or combination of the above acting as a single unit.

Q. "Pharmacy" means any retail establishment, including any location with an on-site pharmacy, 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.

HR. "Proprietor" means a person with an ownership interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt.

S. "Self-service Display" means the open display or storage of tobacco products or tobacco paraphernalia 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 person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

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

"Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, characterizing flavors in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device, including electronic smoking devices, and any other item designed or used for the smoking or ingestion of tobacco products.

~~JU. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item~~

~~designed or used for the smoking or ingestion of tobacco products. "Tobacco Product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation which includes any tobacco product.~~ the following:

1. Any product containing, made, or derived from tobacco or nicotine whether natural or synthetic, that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, and snuff; or

2. Any electronic smoking device that delivers nicotine or other substances, whether natural or synthetic, to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, electronic hookah, or vaping device.

3. Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately.

4. "Tobacco Product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

KV. "Tobacco ~~R~~etailer" means any person who sells, offers for sale or distribution, exchanges, or offers to exchange for any form of consideration, tobacco,

tobacco products, or tobacco paraphernalia without regard to the quantity sold, distributed, exchanged, or offered for exchange.

~~EW.~~ "Tobacco ~~r~~Retailing" means selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

**SECTION 6.** Section 11.35.030 is hereby amended to read as follows:

**11.35.030 Mandatory ~~t~~Tobacco ~~r~~Retail ~~l~~License.**

A. Any person intending to act as a tobacco retailer, who does not currently hold a Tobacco Retail License, shall, within ~~ninety~~90 days of the effective date of the ~~e~~Ordinance codified in this ~~e~~Chapter, obtain a ~~t~~Tobacco ~~r~~Retailing ~~l~~License for each location at which tobacco retailing is to occur. ~~No license may be issued to authorize tobacco retailing at other than a fixed location. Itinerant tobacco retailing is prohibited.~~

B. Nothing in this ~~e~~Chapter shall be construed to grant any licensee any status or right other than to act as a tobacco retailer at the location identified on the face of the Tobacco Retail ~~l~~License, subject to compliance with all other applicable laws, regulations, or ordinances. Nothing in this ~~e~~Chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law.

**SECTION 7.** Section 11.35.040 is hereby amended to read as follows:

**11.35.040 Application ~~p~~Procedure for ~~t~~Tobacco ~~r~~Retail ~~l~~License.**

All applications for a Tobacco Retail ~~l~~License shall be submitted in the name of each proprietor proposing to conduct tobacco retailing and signed by each prospective

proprietor or an authorized agent. Each Tobacco Retail License application must be accompanied by the required Tobacco Retail License fee pursuant to ~~s~~Section 8.04.720 of this ~~e~~Code. A proprietor proposing to conduct tobacco retailing at more than one location shall submit a separate application for each location. Every application shall contain the following information:

- A. The name, address, and telephone number of each proprietor.
- B. The business name, address, and telephone number of the fixed location for which the Tobacco Retail License is sought.
- C. Whether ~~or not~~ any proprietor has previously been issued a Tobacco Retail License pursuant to this ~~e~~Chapter that is, or was at any time, suspended or revoked and, if so, the date of the suspension or revocation.
- D. Proof that the location for which a ~~t~~Tobacco Retailing License is sought has been issued a valid ~~s~~State tobacco retailer's license by the California ~~Board of Equalization~~Department of Tax and Fee Administration, in addition to any other required or applicable licenses, permits, or certifications.
- E. A signed affirmation by each proprietor ~~that each proprietor is of being~~ informed of, and agreeing to abide by, the laws affecting tobacco retailing licenses.
- F. Such other information as the ~~e~~County deems necessary for the administration of this ~~e~~Chapter.

Any application that is denied is subject to an administrative review, at the request of the applicant, which shall be held pursuant to the provisions of Section 11.35.110 of this Chapter.

**SECTION 8.** Section 11.35.050 is hereby amended to read as follows:

**11.35.050 Issuance and ~~r~~Renewal of Tobacco Retail lLicense.**

A. Upon receipt of an application for a new Tobacco Retail License and applicable fee, as set forth in ~~s~~Section 8.04.720, the applicant(s) shall be issued a Tobacco Retail lLicense unless:

1. The application is incomplete, ~~or~~ inaccurate, false, or misleading;
2. The ~~d~~Department has information that the applicant, or ~~his/her~~ the applicant's agent(s) or employee(s), has violated any local, sState, or federal tobacco control law at the ~~location for which the license or renewal license is sought~~ within the preceding ~~sixty (60)~~ 180 days; or
3. The application seeks authorization for tobacco retailing at an address where a previous Tobacco Retail lLicense has been suspended, revoked, or is subject to suspension or revocation proceedings for any violation of any of the provisions of this ~~e~~Chapter. However, this shall not constitute a basis for denial of a Tobacco Retail lLicense if either or both of the following apply:
  - a. The applicant provides documentation which clearly demonstrates that the applicant has acquired or is in the process of acquiring the premises or business in an arm's length transaction; or
  - b. It has been more than five years since the most recent Tobacco Retail lLicense for that location was revoked.

B. Renewal of ~~t~~Tobacco r~~Retailing l~~License. A Tobacco Retail lLicense shall be valid for one year and must be renewed between ~~thirty~~ 30 and ~~sixty~~ 60 days prior to



the expiration of the Tobacco Retail License. A Tobacco Retail License may be renewed for additional one year periods by submission of a renewal application and the applicable fee. Any Tobacco Retail License that is suspended, has been revoked within the previous five years, or is subject to suspension or revocation proceedings shall not be renewed until suspension or revocation proceedings are complete and the suspension or revocation period, if any, is over.

**SECTION 9.** Section 11.35.055 is hereby added to read as follows:

**11.35.055 Business License Required.**

A. In addition to the Tobacco Retail License, any Tobacco Shop in an unincorporated area of the County, devoted exclusively or predominantly to the sale of tobacco, tobacco products, and tobacco paraphernalia, must have a valid business license as required by Title 7 of this Code.

B. Tobacco Shops currently holding a valid Tobacco Retail License as of the effective date of the Ordinance codified in this Chapter must apply for a business license as required by Title 7 of this Code and may legally operate while such application is in active process.

C. Any retailer establishing a new Tobacco Shop after the effective date of this Ordinance must apply for and obtain a business license as required by Title 7 of this Code and a Tobacco Retail License, as required by this Chapter, before it may legally operate.

D. If the business license is revoked or suspended for any period of time, the Tobacco Retail License shall be automatically revoked or suspended for the same period.

**SECTION 10.** Section 11.35.060 is hereby amended to read as follows:

**11.35.060 Tobacco Retail License nNontransferable.**

A ~~€Tobacco €Retailing~~ License is nontransferable. If a licensee changes business location, that licensee must obtain a new Tobacco Retail License prior to acting as a tobacco retailer at the new location. If a business licensed to ~~conduct tobacco retailing~~ as a tobacco retailer is sold or transferred, the new proprietor must obtain a Tobacco Retail License for that location before acting as a tobacco retailer.

**SECTION 11.** Section 11.35.070 is hereby amended to read as follows:

**11.35.070 License vViolations.**

A. It shall be a violation of this ~~€Chapter~~ for a tobacco retailer/licensee, or his/~~her~~its agent(s) or employee(s), to violate any federal, ~~€State~~, or local tobacco law or regulation, including any provision of this ~~€Chapter~~.

B. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ~~€Chapter~~ shall constitute a violation.

C. Failure to prominently display the ~~€Tobacco €Retailing~~ License in a publicly visible location at the licensed premises shall constitute a violation.

D. The failure of the tobacco retailer/licensee, or the applicant's agent(s) or employee(s) to allow any peace officer, the ~~€Director~~, or any authorized ~~€County~~ official to conduct unscheduled inspections of the premises of the business for the purpose of

ensuring compliance with any federal, sState, or local tobacco law or regulation, including any provision of this eChapter, at any time the business is open for business shall constitute a violation.

E. It shall be a violation of this Chapter for a tobacco retailer/licensee or its agent(s) or employee(s) to sell or offer for sale, or to possess with the intent to sell or offer for sale, any flavored tobacco product or any component, part, or accessory intended to impart, or imparting a characterizing flavor in any form, to any tobacco product or nicotine delivery device, including electronic smoking devices.

F. No tobacco retailer/licensee or its agent(s) or employee(s) may sell or offer for sale any little cigar or cigarillo unless it is sold in a package of at least 20 little cigars or cigarillos. Little cigars or cigarillos may not be sold individually or in packages of less than 20 units.

G. Tobacco retailing by means of a self-service display is prohibited, pursuant to State law.

H. A Tobacco Retail License may be issued to authorize tobacco retailing at a fixed location only. Tobacco retailing on foot or from vehicles, carts, or any other non-fixed location, is prohibited and shall be considered a violation of this Chapter.

I. No Tobacco Retail License may issue and no existing Tobacco Retail License may be renewed, to authorize tobacco retailing in a pharmacy, including any location with an on-site pharmacy.

J. Each tobacco retailer/licensee and its agent(s) or employee(s) must be over the age of 21 in order to sell tobacco and/or tobacco products.

**SECTION 12.** Section 11.35.080 is hereby amended to read as follows:

**11.35.080 Compliance eChecks.**

A. Compliance with this eChapter shall be monitored by the eDepartment of Public Health ("Department") or any law enforcement officer. Any law enforcement officer may conduct compliance checks, including but not limited to youth decoy operations, and enforce the penal provisions of this eChapter.

B. The eDepartment shall check the compliance of each tobacco retailer a minimum of one time per ~~twelve~~12 month period. Compliance checks may be unannounced.

**SECTION 13.** Section 11.35.090 is hereby amended to read as follows:

**11.35.090 Administrative fFines.**

Subject to the requirements of Chapter 1.25 of this eCounty eCode, the eDirector may impose administrative fines on persons violating any provision of this eChapter or any federal, eState, or local law or regulation incorporated into this eChapter. The eDirector may impose a fine upon such violators in an amount determined by the eDirector. The imposition of any such fine shall in no way limit the eDirector's ability or authority to impose other requirements of this eChapter or seek other remedies against violators.

**SECTION 14.** Section 11.35.100 is hereby amended to read as follows:

**11.35.100 Suspension or rRevocation of Tobacco Retail lLicense.**

A. In addition to any other remedy authorized by law, a Tobacco Retail lLicense may be suspended or revoked as provided in this sSection if it is discovered

that any of the following occurred:

1. The licensee, or the licensee's agent(s) or employee(s), has violated any provision of this ~~e~~Chapter. Violation by a licensee at one location shall not be construed as a violation at another location of the same licensee, nor shall violations by a prior licensee at the same location be accumulated against a subsequent licensee at the same location;

2. The original or renewal application contained ~~incorrect~~incomplete, inaccurate, false, or misleading information;

3. One or more of the bases for denial listed in ~~s~~Section 11.35.050 existed before the Tobacco Retail ~~!~~License was issued; or

4. A licensee is convicted of a misdemeanor or felony violation of any federal, ~~s~~State, or local tobacco law or regulation, including any provision of this ~~chapter~~Code.

B. During any period of suspension or revocation, the licensee shall remove all tobacco products and tobacco paraphernalia from ~~public-view, including from displays and behind counter storage areas, whether or not visible to the public. All tobacco products and tobacco paraphernalia must be placed in a room that is separate from the area where point of sale transactions occur, or removed from the tobacco retail location entirely.~~ Failure to do so may be considered a subsequent violation.

C. During any period of suspension or revocation, the tobacco retailer/licensee shall conspicuously post, at each point of sale register and near the entrance door of the tobacco retail location, a notice of a Tobacco Retail License

suspension provided by the Department of Public Health. The notice shall include the suspension or revocation period, reason for suspension or revocation, tobacco retailer/licensee and location information, and Department of Public Health contact information to report violations.

CD. When the Director finds a violation as set forth in section ~~11.35.100(A)~~this Chapter, the Tobacco Retail License may be suspended or revoked as follows:

1. Upon finding by the Director of a first Tobacco Retail License violation within any five-year period, the Tobacco Retail License may be suspended for up to ~~thirty~~30 days;
2. Upon a finding by the Director of a second Tobacco Retail License violation within any five-year period, the Tobacco Retail License may be suspended for up to ~~ninety~~90 days;
3. Upon a finding by the Director of a third Tobacco Retail License violation in any five-year period, the Tobacco Retail License may be suspended for up to ~~one hundred and twenty~~120 days; and
4. Upon a finding by the Director of a fourth Tobacco Retail License violation within a five year period, the Tobacco Retail License shall be revoked.

**SECTION 15.** Section 11.35.110 is hereby amended to read as follows:

**11.35.110 Suspension or Revocation Procedure.**

A. Before a Tobacco Retail License is suspended or revoked, the Director shall provide written notice to the licensee. Said notice shall include the following:

1. A statement that the proprietor's ~~†Tobacco †Retailing †License~~ License is being suspended or revoked pursuant to this ~~€Chapter~~ Chapter;
2. The ~~€Code †Section~~ Code Section violated by licensee or licensee's agents or employees;
3. A description of the violation that occurred;
4. The address of the business where the violation occurred; and
5. The procedure for requesting an administrative review.

B. A licensee served with a notice of suspension or revocation may request an administrative review to contest the suspension or revocation. The request must be made in writing and filed with the ~~€Director~~ Director within ~~ten~~10 calendar days of service of the notice of suspension or revocation. Failure to timely request an administrative review shall be deemed a waiver of the right to request such a review and a failure to exhaust administrative remedies.

C. After receiving a timely administrative review request, the ~~€Director~~ Director shall schedule an administrative review within ~~twenty~~20 calendar days of receipt of the written request and designate a reviewing officer. The ~~€Director~~ Director may, ~~in their discretion,~~ appoint as a reviewing officer, any ~~€Department~~ Department or other ~~€County~~ County employee with expertise in public health who is not directly involved in inspection or enforcement of tobacco retailing establishments.

D. The proprietor shall be given written notice of the date, time, and location of the administrative review and the name of the reviewing officer who will conduct the administrative review at least ~~ten~~10 calendar days in advance of the review.

E. The reviewing officer, in their discretion, may grant a reasonable continuance upon the written request and showing of good cause. ~~In no event shall the continuance be longer than thirty calendar days from the originally scheduled review date.~~

F. At the administrative review, the ~~e~~Department has the burden of providing by a preponderance of the evidence that the alleged violation occurred.

G. The failure to appear at the administrative review shall constitute an abandonment of the review request and a failure to exhaust administrative remedies.

H. Within ~~ten~~10 calendar days after the close of the administrative review, the reviewing officer shall issue a written decision on the suspension or revocation of the Tobacco Retail License, including a statement of the basis for the decision. The reviewing officer's written decision shall constitute the final administrative decision of the ~~e~~County.

I. If the ~~e~~Director revokes a ~~€~~Tobacco Retailing License, no new Tobacco Retail License may be issued for five years after that revocation.

**SECTION 16.** Section 11.35.120 is hereby amended to read as follows:

**11.35.120 Violation—Other pPenalties.**

A. In addition to any other penalties and remedies provided by law, including the provisions of this ~~e~~Chapter, any violation of the provisions of this ~~e~~Chapter may be charged as a misdemeanor pursuant to ~~e~~Chapter 1.24 of this ~~e~~Code, or, in the discretion of the prosecutor, as an infraction. Any person who violates any provision of



this eChapter is subject to a suit for civil action, including but not limited to, an injunction, as well as prosecution for any criminal violation.

B. In addition to any other penalty under this eChapter, a person found to have engaged in tobacco retailing without a valid €Tobacco €Retailing !License shall be ineligible to apply for or be issued a €Tobacco €Retailing !License as follows:

1. After a first person is caught in violation ~~for a person within any five year period of this Section,~~ no new Tobacco Retail !License may be issued for the person as a proprietor until ~~thirty~~30 days have passed from the date of ~~last~~the violation; and

~~2. After a second violation for a person within any five year period, no new Tobacco Retail License may be issued for the person as a proprietor until ninety (90) days have passed from the date of last violation;~~

~~3. After three (3) or more violations for a person within any five year period, no new Tobacco Retail License may be issued for the person as a proprietor until five (5) years have passed from the date of last violation;~~

24.—Each day that a person engages in tobacco retailing without a valid €Tobacco €Retailing !License shall constitute a separate violation; and,

5C. Any person found by the dDirector to be ineligible to be issued a Tobacco Retail !License pursuant to this sSection may request an administrative review within ten10 days of notice of the violation. The request must be made to the dDirector in writing. Any administrative review shall be held pursuant to the provisions of sSection 11.35.110 of this eChapter.

CD. Violations of this eChapter are hereby declared to be public nuisances pursuant to this Code.

**SECTION 17.** Section 11.35.130 is hereby amended to read as follows:

**11.35.130** **Conflict with Other Law, Severability, Saving Clause.**

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law. If any provision of this eChapter or the application thereof to any person or circumstance is held invalid, the remainder of this eChapter or the application of such provision to other persons or circumstances shall not be affected thereby.

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