

**Ordinance No. 6149**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, ADDING CHAPTER 32A TO THE SONOMA COUNTY CODE TO REQUIRE THE LICENSURE OF TOBACCO RETAILERS.**

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The Board of Supervisors of the County of Sonoma, State of California, does ordain as follows:

**SECTION I. Chapter 32A of the Sonoma County Code is added to read:**

**Chapter 32A: Licensure of Tobacco Retailers**

**Sec. 32A-1. Findings and Purpose.**

- (a) Findings. The Board of Supervisors of the County of Sonoma hereby finds and declares as follows:
- (1) Based in part on the information contained in this Section, the Board of Supervisors finds that if tobacco retailers fail to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, this presents a threat to the public health, safety, and welfare of the residents of the County of Sonoma; and
  - (2) The Board of Supervisors finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the County, to protect the health, safety, and welfare of our residents; and
  - (3) Approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death; and
  - (4) Over 590 residents of the County of Sonoma die each year from tobacco related causes; and
  - (5) State law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and
  - (6) State law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and
  - (7) California courts have affirmed the power of the County to regulate business activity to discourage violations of law. See, e.g., *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010); and

- (8) Despite the state's and County's efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that:
  - (i) In California, 36.8 percent of high school students have smoked a whole cigarette by 14 years of age; and
  - (ii) In California, 64 percent of adult smokers started by the age of 18; and
  - (iii) In Sonoma County, 26 percent of 11th graders have smoked a whole cigarette and 13 percent report any use of cigarettes in the past 30 days; and
  - (iv) In Sonoma County, 70 percent of 11th graders and 52 percent of 9th graders report that it is "fairly" or "very" easy to obtain cigarettes; and
- (9) California retailers continue to sell tobacco to underage consumers, as evidenced by the following:
  - (i) Nearly 9 percent of all tobacco retailers were witnessed unlawfully selling to minors in 2014 according to the State Youth Tobacco Purchase Survey;
  - (ii) Among the 14.2 percent of minors nationwide who smoked cigarettes in 2011, 98.5% percent of the 14.2% had usually obtained their own cigarettes by buying them in a store or gas station; and
- (10) Research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes. For example:
  - (i) A review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the ordinances were enacted, with an average decrease of 26 percent in the youth sales rate;
  - (ii) A requirement for a tobacco retailer license will allow the County to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws, but it will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults; and
- (11) The County has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and
- (12) The Tobacco Education and Research Oversight Committee for California, as well as the American Pharmacists Association, the California Pharmacists Association, and the California Medical Association have called for the adoption of state and local prohibitions of tobacco sales in drug stores and pharmacies; and

- (13) A study of California high school students found that the prevalence of smoking was higher at schools in neighborhoods with five or more tobacco outlets than at schools in neighborhoods without tobacco outlets; and
- (14) A California study found that the density of tobacco retailers near schools was positively associated with the prevalence of students reporting experimental smoking; and
- (15) High density of tobacco retailers has been associated with increased smoking rates, particularly among youth; and
- (16) A study of California neighborhoods found that the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day; and
- (17) Studies show that the number and density of tobacco retailers serving areas of economic disadvantage are disproportionately high; and
- (18) Over 9 percent of all tobacco retailers statewide sold unlawfully to minors in 2014. Significant Tobacco Retailers (defined as businesses in which at least 80 percent of merchandise was tobacco products) sold to minors at an even higher rate than the statewide average, as high as 18.6 percent in 2014; and
- (19) Many retailers sell cigars, little cigars, and cigarillos individually, making them more affordable and appealing to youth; and
- (20) Cigarillos are often sold individually for less than 70 cents each; and
- (21) In California the cheapest available cigarettes sell for an average of only \$4.30 per package; and
- (22) The availability of inexpensive tobacco products leads to increased tobacco use as evidenced by the over 100 academic studies which conclusively show that when tobacco products are made more expensive fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use; and
- (23) For every one percent increase in the cost of tobacco products there is a decrease in consumption and a 20% price increase on the price of a package of cigarettes would reduce:
  - (i) Demand for cigarettes by approximately 10.4%;
  - (ii) The prevalence of adult tobacco use by 3.6%;
  - (iii) Initiation of tobacco use by young people by 8.6%; and
- (24) Youth under age 18 are particularly responsive to changes in price. For example:
  - (i) When cigarettes cost more, fewer adolescents start smoking;
  - (ii) Price reductions can offset the effects of price increases on youth smoking initiation, especially among youth ages 14 to 17 years old;

- (iii) The evidence is suggestive that tobacco companies deliberately target youth with price reductions; and
  - (25) In the State of California, the average pack price is \$5.76. Setting a \$7 minimum price would represent a 21.5% increase in average price. Based on price elasticity data for the State of California, which has been estimated at between 0.4 and 0.5, an increase to a \$7 minimum price would be expected to decrease consumption by between 8.6% and 10.7%. Similarly it would be expected to reduce the prevalence of adult tobacco use by approximately 3.7%, and initiation of tobacco use by young people by 8.8%; and
  - (26) Price reduction strategies are used by the tobacco industry to counter state and local tobacco control efforts and appeal to price-sensitive consumers; and
  - (27) Tobacco companies spend significant amounts of money to decrease the price of their products in order to increase demand for cigarettes. For example:
    - (i) Tobacco companies spend the majority of their marketing budget on price discounts, accounting for nearly \$7 billion of their \$8.4 billion advertising and promotional expenditures in 2011;
    - (ii) Tobacco companies spend hundreds of millions – nearly \$758 million in 2011 – on promotional allowances requiring tobacco retailers and wholesalers to reduce the costs of cigarettes and other tobacco products at the point of sale;
    - (iii) Tobacco companies use a variety of promotional strategies including off-invoice discounts, buy downs, and voluntary price reductions; and
  - (28) A 10% increase in cigar prices leads to a significant reduction in cigar use among youth; and
  - (29) A simple flat rate minimum price would, if high enough, “eliminate low-cost cigarettes from the retail market regardless of cigarette manufacturer action”; and
  - (30) State law prohibits sales of “drug paraphernalia”; and
  - (31) Many cigarette, tobacco, and head shops sell items that are commonly known to be drug paraphernalia, including bongs and pipes used to smoke methamphetamine and other illicit drugs, and claim that such items are intended for tobacco use; and
  - (32) The United States Drug Enforcement Agency reports that synthetic drugs, such as “spice”, have been commonly purchased by young people at smoke shops and head shops.
- (b) Purpose. It is the intent of the Board of Supervisors, in enacting this ordinance, to ensure compliance with the business standards and practices of the County and to assure more responsible tobacco retailing and to discourage violations of tobacco-

related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

**Sec. 32A-2. Definitions.**

The following words and phrases, whenever used in this Chapter shall have the meanings defined in this Section unless the context clearly requires otherwise:

- (a) "Arm's Length Transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this Chapter is not an Arm's Length Transaction.
- (b) "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 three pounds per thousand.
- (c) "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.
- (d) "Consumer" means a person who purchases a Tobacco Product for consumption and not for Sale to another.
- (e) "County" means the unincorporated territory of the County of Sonoma.
- (f) "Department" means the County of Sonoma Department of Health Services and any agency or Person designated by the Department to enforce or administer the provisions of this Chapter.
- (g) "Drug Paraphernalia" has the meaning set forth in California Health & Safety Code Section 11014.5, as that section may be amended from time to time.
- (h) "Health Officer" means the Sonoma County public health officer or his/her designee.
- (i) "Hearing Officer" means the Health Officer or designated alternate who shall represent the Department as the Hearing Officer.
- (j) "Healthy Retail Certification" refers to the status of a Tobacco Retailer that has implemented the minimum set of retail standards established by the Department.
- (k) "Healthy Retailer" means a Tobacco Retailer that maintains the Healthy Retail Certification for a minimum of 24 consecutive months.
- (l) "Immediate Family Member" means a parent, sibling, or child.

- (m) "Labeling" means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.
- (n) "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. "Little Cigar" includes, but is not limited to, tobacco products known or labeled as "small cigar" or "little cigar."
- (o) "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.
- (p) "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 to a Consumer.
- (q) "Person" means any natural person, corporation, partnership, firm, organization or other legal entity.
- (r) "Pharmacy" means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the State of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals.
- (s) "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 can or does have or share ultimate control over the day-to-day operations of a business.
- (t) "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.
- (u) "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.
- (v) "Significant Tobacco Retailer" means any Tobacco Retailer for which the principal or core business is selling Tobacco Products, Tobacco Paraphernalia, or both, as evidenced by any of the following: twenty percent (20%) or more of floor or display area is devoted to Tobacco Products, Tobacco Paraphernalia, or both; or 60 percent (60%) or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, Tobacco Paraphernalia, or both; or fifty (50%) percent or more of completed sales transactions include Tobacco Products or Tobacco Paraphernalia.

- (w) "Tobacco Paraphernalia" means any item designed for the consumption, use, or preparation of Tobacco Products.
- (x) "Tobacco Product" means:
  - (1) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
  - (2) Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, cigar, pipe, or hookah.
  - (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.
- (y) "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

**Sec. 32A-3. Requirements and Prohibitions.**

- (a) Tobacco retailer's license required. It shall be unlawful for any Person to act as a Tobacco Retailer in the County without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this Chapter for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer's license is a nuisance as a matter of law.
- (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 is 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 Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.
- (c) Display of license. Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- (d) Positive identification required for sale. No Person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another Person who appears to be under the age of twenty-seven (27) years without first examining the

identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

- (e) Minimum age for persons selling tobacco. No Person who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.
- (f) Self-service displays prohibited. Tobacco Retailing by means of a Self-Service Display is prohibited.
- (g) False and misleading advertising prohibited. A Tobacco Retailer or a Proprietor without a valid Tobacco Retailer license, including, for example, a Person whose license has been suspended or revoked:
  - (1) Shall keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this provision shall constitute Tobacco Retailing without a license under Section 32A-3(a); and
  - (2) Shall not display any advertisement relating to Tobacco Products or Tobacco Paraphernalia 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.
- (h) Packaging and labeling. No Tobacco Retailer shall Sell any Tobacco Product to any Consumer unless such product: (1) is sold in the original manufacturer's Packaging intended for Sale to the Consumer; and (2) conforms to all applicable federal labeling requirements.
- (i) Drug paraphernalia. It shall be a violation of this Chapter for any licensee or any of the licensee's agents or employees to violate any local, state, or federal law regulating controlled substances or Drug Paraphernalia, such as, California Health and Safety Code Section 11364.7.
- (j) Display of price. The price of each Tobacco Product offered for Sale shall be clearly and conspicuously displayed to clearly indicate the price of the product.
- (k) Minimum price for cigarettes, little cigars, and cigars. No Tobacco Retailer shall Sell to a Consumer:
  - (1) A Package of Cigarettes at a price that is less than \$7.00 per Package of 20 cigarettes, including all applicable taxes and fees.
  - (2) Individual or Package of Little Cigars at a price that is less than \$7.00, including all applicable taxes and fees.
  - (3) Individual or Package of Cigars at a price that is less than \$7.00, including all applicable taxes and fees.

- (4) The minimum prices established in this section shall be adjusted annually (percent change in the annual average, not seasonally adjusted) by the Department in proportion with the Consumer Price Index: All Urban Consumers for All Items for the San Francisco-Oakland-San Jose, CA Statistical Area as reported by the United States Bureau of Labor Statistics or any successor to that index.
- (l) Positive identification required for entry: Significant Tobacco Retailers. No Significant Tobacco Retailer shall allow the following individuals to enter its premises: (1) any individual who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products; (2) any individual who appears to be under the age of twenty-seven (27) years, unless an examination of the individual's identification confirms that the individual is at least the minimum age under state law to purchase and possess Tobacco Products.
- (m) Subsection (k) shall not become effective until January 1, 2018.

**Sec. 32A-4. Limits on Eligibility for a Tobacco Retailer License.**

- (a) Mobile vending. No license may be issued to authorize Tobacco Retailing at other than a fixed location. For example, Tobacco Retailing by Persons on foot or from vehicles is prohibited.
- (b) Medical marijuana dispensary. No license may be issued to authorize Tobacco Retailing in a medical marijuana dispensary established pursuant to Chapter 26 of the County Code regardless of whether the retail establishment sells other retail goods in addition to medical marijuana.
- (c) Pharmacies. No license may be issued to authorize Tobacco Retailing in a Pharmacy.
- (d) Excessive density. The issuing of Tobacco Retailer licenses is limited as follows:
  - (1) No license may be issued to authorize Tobacco Retailing if the number of Tobacco Retailer licenses issued exceeds one (1) retailer per 2,000 inhabitants countywide.
  - (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.
- (e) Schools. No license may be issued to authorize Tobacco Retailing within one thousand (1,000) feet of a School as measured by a straight line from the nearest point of the property line of the parcel on which the School is located to the nearest point of the property line of the parcel on which the applicant's business is located. For the purposes of this subsection, a "School" means a parcel of the County that is occupied by a private or public kindergarten, elementary, middle, junior high, or high school.
- (f) Significant tobacco retailers. No license may be issued to authorize Tobacco Retailing by a Significant Tobacco Retailer.

(g) Exceptions.

- (1) A Tobacco Retailer that meets all of the following requirements shall be exempt from the limitations specified in subsections (d) – (f) and may receive or renew a license so long as it is otherwise eligible.
  - (i) On the effective date of this ordinance, the Tobacco Retailer is open for business and is operating as a Tobacco Retailer;
  - (ii) On the effective date of this ordinance, the Tobacco Retailer maintains a valid tobacco retailer's license issued by the State of California's Board of Equalization, if the Tobacco Retailer sells products that require such license;
  - (iii) The Tobacco Retailer license issued by the County of Sonoma is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
  - (iv) The Tobacco Retailer has not violated this Chapter or any other tobacco control law three (3) or more times within the previous five (5) year period;
  - (v) The Tobacco Retailer is not closed for business or otherwise suspends Tobacco Retailing for more than sixty (60) consecutive days;
  - (vi) The Tobacco Retailer does not substantially change the business premises or business operation;
  - (vii) The Tobacco Retailer continuously retains the right to operate under other applicable laws including without limitation Chapter 7 and Chapter 26 of the County Code.

**Sec. 32A-5. Application Procedure.**

- (a) 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 on an annual basis.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Proprietor may rely on the issuance of a license as a determination by the County that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this Chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section 32A-11 of this Chapter. Nothing in this Chapter shall be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the Department and 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 single fixed location for which a license is sought and whether the fixed location is within one thousand (1,000) feet of a School as measured in Section 32A-4(e) or if the applicant's business is a Significant Tobacco Retailer as defined by Section 32A-2(x).
  - (3) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of this Chapter. If an Authorized Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.
  - (4) Proof that the location for which a Tobacco Retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization.
  - (5) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this Chapter and, if so, the dates and locations of all such violations within the previous five years.
  - (6) A statement signed by each Proprietor that no Drug Paraphernalia is or will be sold at the location for which the license is sought.
  - (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.
- (b) 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 ten (10) business days of a change.
- (c) All information specified in an application pursuant to this Section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 *et seq.*) or any other applicable law.

**Sec. 32A-6. Issuance of License.**

Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this Chapter on an annual basis, the Department shall issue a license for one year, unless sufficient evidence demonstrates that one or more of the following bases for denial exists and that none of the exceptions set out in Section 32A-4(g) are applicable:

- (a) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this Chapter.
- (b) The application seeks authorization for Tobacco Retailing at a location for which this Chapter prohibits issuance of Tobacco Retailer licenses.

- (c) The application seeks authorization for Tobacco Retailing for a Proprietor to whom this Chapter prohibits a license to be issued.
- (d) The Tobacco Retailer has not violated this Chapter or any other tobacco control law three (3) or more times within the previous five (5) year period.
- (e) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this Chapter, that is unlawful pursuant to this Code including without limitation Chapter 7 and Chapter 26 of the County Code, or that is unlawful pursuant to any other law.
- (f) Any denial of a license under this Section may be appealed pursuant to Section 32A-12.

**Sec. 32A-7. Transferability of License.**

- (a) Except as otherwise provided in this Section, a Tobacco Retailer's license that is exempt from the restrictions of Section 32A-4(d) (excessive density) may be transferred from one Person to another Person or from one location to another location.
- (b) A Tobacco Retailer that is exempt from the restrictions of Section 32A-4(e) (schools) may not transfer a Tobacco Retailer's license except to either:
  - (1) An Immediate Family Member if the Tobacco Retailer does not change its business location; or
  - (2) A new location not within one thousand (1,000) feet of a school.
- (c) A Significant Tobacco Retailer may not transfer a Tobacco Retailer's license except to an Immediate Family Member if the Significant Tobacco Retailer does not change its business location.
- (d) Notwithstanding subsections (b) and (c), any Tobacco Retailer that is a Healthy Retailer may transfer a license from one Person to another Person or from one location to another location.
- (e) Notwithstanding any other provision of this section, a Tobacco Retailer may not transfer a Tobacco Retailer's license:
  - (1) to any new Proprietor and/or new location that does not meet all the requirements of this Chapter; or
  - (2) if the Tobacco Retailer has violated this Chapter or any other tobacco control law three (3) or more times within the previous five (5) year period. For purposes of calculating eligibility to transfer a license under this subsection, prior violations at a location shall continue to be counted against a location unless:
    - (i) The business at the location has been transferred to new Proprietor(s) in an Arm's Length Transaction; and
    - (ii) The new Proprietor(s) provide the County with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the business at the location in an Arm's Length Transaction.

**Sec. 32A-8. 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 license. For example, nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code including without limitation Chapter 7 and Chapter 26 of the County code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. For example, obtaining a Tobacco Retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code Section 6404.5.

**Sec. 32A-9. Fee for License.**

The fee to issue or to renew a Tobacco Retailer's license shall be paid annually. The fee shall be established and may be adjusted from time to time by resolution of the County. The fee shall be calculated so as to recover the reasonable regulatory cost of administration and enforcement of this Chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection including use of youth decoys at least once annually and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund administration and enforcement of this Chapter. Fees are nonrefundable except as may be required by law.

**Sec. 32A-10. Compliance Monitoring.**

- (a) Compliance with this Chapter shall be monitored by the Department. The County may designate any number of Persons to monitor compliance with this Chapter.
- (b) The Department, or other Person designated to enforce the provisions of this Chapter shall inspect each Tobacco Retailer at least once every twelve (12) months. The Sonoma County Sheriff's Office shall also have authority to assist in the enforcement of the provisions of this Chapter. Nothing in this paragraph shall create a right of action in any licensee or other Person against the County or its agents.
- (c) The County shall not enforce any law establishing a minimum age for Tobacco purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Youth Decoy") if the potential violation occurs when:
  - (1) The Youth Decoy is participating in an inspection supervised by a peace officer, code enforcement official, or the Person designated by the County to monitor compliance with this Chapter;
  - (2) The Youth Decoy is acting as an agent of a Person designated by the County to monitor compliance with this Chapter; or

- (3) The Youth Decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the County of Sonoma Department of Health Services or the California Department of Health Services.

**Sec. 32A-11. Suspension or Revocation of License.**

- (a) Suspension or revocation of license for violation. In addition to any other penalty authorized by law, a Tobacco Retailer's license shall be suspended or revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter.
  - (1) For a first violation of this Chapter at a location within any sixty-month (60) period, the license shall be suspended for thirty (30) days.
  - (2) For a second violation of this Chapter at a location within any sixty-month (60) period, the license shall be suspended for sixty (60) days.
  - (3) For a third violation of this Chapter at a location within any sixty-month (60) period, the license shall be suspended for ninety (90) days.
  - (4) For four or more violations of this Chapter at a location within any sixty-month (60) period, the license shall be revoked.
- (b) Revocation of license wrongly issued. A Tobacco Retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 6 existed at the time application was made or at any time before the license issued. Such a revocation shall be without prejudice to the filing of a new license application.
- (c) Any suspension or revocation of a license under this Section may be appealed pursuant to Section 32A-12.

**Sec. 32A-12. Appeals.**

- (a) Appeal of denial, suspension or revocation. A decision of the Department to deny a license or to suspend or revoke a license is appealable to the Hearing Officer and any appeal must be filed within ten days of the effective date of notice of suspension or revocation of a license. With respect to suspensions or revocations, if such an appeal is timely made, it shall stay enforcement of the appealed action.
- (b) Appeal hearing procedures. Whenever this Chapter provides for a hearing or an opportunity to be heard, any such hearing shall be conducted in accordance with this Section.
  - (1) No later than 15 calendar days after receipt of the request for a hearing, the Hearing Officer shall set a hearing at the earliest practicable time and shall give

notice of the hearing to the parties at least 10 calendar days before the date of the hearing.

- (2) Neither the provisions of the Administrative Procedure Act (Government Code Section 11500 *et seq.*) nor the formal rules of evidence in civil or criminal judicial hearings shall apply to such hearing. At the hearing, the Hearing Officer may admit any evidence, including witnesses, relevant to the determination of the matter, except as otherwise provided in this Chapter. A record of the hearing shall be made by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.
  - (3) The Hearing Officer may continue the hearing from time to time, in his or her sole discretion, to allow for orderly completion of the hearing.
  - (4) After the conclusion of the hearing, the Hearing Officer shall issue a written decision. Notice of the written decision, including findings of facts, conclusions of law, and notification of the time period in which judicial review may be sought pursuant to Code of Civil Procedure Section 1094.6 shall be served upon all parties. Any decision rendered by the Hearing Officer shall be a final administrative decision.
- (c) Judicial review. The decisions of the Hearing Officer on appeal shall be final, subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6. C.C.P. Section 1094.6 governs limitation of time for filing petitions under Section 1094.5, as set forth in Sonoma County Code Section 1-7.5.
- (d) Settlement in lieu of appeal. For a first or second alleged violation of this Chapter within any five year period, the Department or designee may engage in settlement negotiations and may enter into a settlement agreement with a Tobacco Retailer alleged to have violated this Chapter; provided that a timely appeal has been filed. Settlements shall not be confidential.
- (1) After a first alleged violation, any settlement must contain the following minimum terms:
    - (i) Suspension of the Tobacco Retailer License for at least five days;
    - (ii) A settlement payment to the Department of Health Services of at least one-thousand five hundred dollars; and
    - (iii) An admission by the licensee that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.
  - (2) After a second alleged violation, any settlement must contain the following minimum terms:
    - (i) Suspension of the Tobacco Retailer License for at least fifteen days;

- (ii) A settlement payment to the Department of Health Services of at least five-thousand five hundred dollars; and
- (iii) An admission by the licensee that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

**Sec. 32A-13. Tobacco Retailing Without a Valid License.**

- (a) In addition to any other penalty authorized by law, if the Department finds based on preponderance of evidence, after notice and an opportunity to be heard, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:
  - (1) After a first violation of this Section at a location within any sixty-month (60) 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 (1) year has passed from the date of the violation.
  - (2) After a second violation of this Section at a location within any sixty-month (60) 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 three (3) years have passed from the date of the violation.
  - (3) After a third or subsequent violation of this Section at a location within any sixty-month (60) 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).
- (b) This section shall take effect on July 1, 2016.

**Sec. 32A-14. 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) 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 old, 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 on sufficiency and persuasiveness of the evidence presented.
- (c) Violations of this Chapter are subject to a civil action brought by the County, including suits for injunctive relief. A violation of this Chapter shall be an infraction, and may be punishable by:
  - (1) A fine, not exceeding one hundred dollars (\$100.00), for the first violation;

- (2) A fine, not exceeding two hundred dollars (\$200.00), for a second violation of this Chapter within one (1) year;
- (3) A fine, not exceeding five hundred dollars (\$500.00), for each additional violation of this Chapter within one (1) year.

The County may elect to seek recovery of its own attorneys' fees as set forth in Sonoma County Code Section 1-7. Under Section 1-7, in any action or proceeding where the County seeks recovery of its attorneys' fees, an award of attorneys' fees may be made available to the prevailing party, provided that the award of attorneys' fees to the prevailing party shall not exceed the amount of reasonable attorneys' fees incurred by the County in the same action or proceeding.

- (d) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- (e) For the purposes of the civil remedies provided in this Chapter:
  - (1) Each day on which a Tobacco Product or Tobacco Paraphernalia is offered for sale in violation of this Chapter; or
  - (2) Each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for sale in violation of this Chapter; shall constitute a separate violation of this Chapter.

**Sec. 32A-15. Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The Board of Supervisors of the County of Sonoma 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.

**SECTION II.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

**SECTION III.** Adoption and implementation of this ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment. Adoption and implementation of the standards, license requirements, and other measures contained in the ordinance will not result

in any direct physical change to the environment on their own. In the alternative, the adoption and implementation of this ordinance is exempt from CEQA pursuant to Section 15308 of the State CEQA Guidelines as an action taken to assure the maintenance, restoration, enhancement, and protection of environment where the regulatory process involves procedures for protection of the environment. The basis for this determination is that this ordinance does not in itself approve any construction activities, but instead establishes standards, license requirements, and other measures that regulate the licensure of tobacco retailers more stringently than existing codes. These standards, license requirements, and other measures will assure the protection of human health, which is an aspect of the environment under Public Resources Code Section 21083(b)(3), by strengthening existing standards for preventing the sale of tobacco to youth and establishing new limitations on tobacco retailer licensure. The Director of the Department of Health Services is directed to file a notice of exemption in accordance with CEQA and the State CEQA Guidelines.

**SECTION IV.** This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. A summary of the Ordinance shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma introduced on the 29<sup>th</sup> day of March 2016, and finally passed and adopted this 19<sup>th</sup> day of April, 2016, on regular roll call of the members of said Board by the following vote:

**Supervisors:**

Gorin: Aye	Rabbitt: No	Zane: Aye	Gore: Aye	Carrillo: Aye
Ayes: 4	Noes: 1	Absent: 0	Abstain: 0	

**WHEREUPON**, the Chair declared the above and foregoing ordinance duly adopted and

**SO ORDERED.**

  
\_\_\_\_\_  
Chair, Board of Supervisors  
County of Sonoma

**ATTEST:** *Veronica A. Ferguson*  
*by Roxanne Epstein*  
\_\_\_\_\_  
Clerk of the Board of Supervisors