

Reina Schwartz

From: Amaya Wooding <amaya@lgbtqminustobacco.org>
Sent: Friday, March 18, 2022 4:27 PM
To: Peter Cloven; Letecia "Holly" Tillman; Jim Diaz; Jeff Wan; Carl "CW" Wolfe
Cc: Reina Schwartz
Subject: 3/21/22 meeting - public comment 5a

Dear Clayton City Council:

Many jurisdictions in central and east county are taking action on cheap and flavored tobacco products. These include now-ubiquitous vaping devices, as well as cigarillos that are the second most common tobacco product among California youth. Cigarillos are sold in packs of up to 6 for as little as 99 cents. They are often used with marijuana.

In February 2021, Concord designated updates to its tobacco policies as a Tier 2 priority. Earlier this month, Antioch adopted a minimum price of \$10 for cigars, cigarillos, and cigarettes. Also, cigarillos must be sold in packs of at least 20 and cigars in packs of at least 6. Over 100 studies have found that the price of tobacco is the key factor in either encouraging or deterring youth use. The US Surgeon General recommends a \$10 minimum price for cigarettes to discourage underage purchase.

Adding to those already on the books in Lafayette and unincorporated county, Walnut Creek in late 2021 and Pleasant Hill in early 2022 have adopted policies to end the sale of vaping devices and flavored tobacco. Antioch's policy also includes those provisions. About 92% of high school tobacco users in California report using a flavored product. This includes 96% of e-cigarette users, 83% of hookah users, and 74% of cigarillo users.

These policies are often housed within a local tobacco retail license or TRL. Strong TRLs require a yearly fee that covers the cost of administration and compliance checks to ensure that retailers do not sell to youth. Youth in cities with strong TRLs are less likely to ever try tobacco.

Thanks and take care,

Amaya Wooding (she/her)

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Reina Schwartz

From: Brian Davis <brian@lgbtqminustobacco.org>
Sent: Saturday, March 19, 2022 5:12 PM
To: Peter Cloven; Letecia "Holly" Tillman; Jim Diaz; Jeff Wan; Carl "CW" Wolfe
Cc: Reina Schwartz
Subject: Neighboring jurisdictions are protecting youth from tobacco
Attachments: ABCs of Comp TRL.pdf; Comp-Tobacco-Retailer-License.pdf; MDUSD Board Resolution - Ban Sales of Vape Devices 2020.pdf

Dear Members of the City Council:

As you consider what policies to prioritize, bear in mind that Contra Costa County Supervisors have chosen to protect youth in their jurisdiction by adopting a comprehensive Tobacco Retail License which, among other things, stops the sale of vape products, and all flavored tobacco; limits tobacco retailer density; stops tobacco sales in pharmacies; requires minimum pack sizes for cigars; and requires meaningful penalties to tobacco retailers who violate the law.

Antioch, Pleasant Hill and Walnut Creek have recently adopted policies that will make it harder for underage youth in their communities to get flavored tobacco and vape products, while Concord has added this issue to their prioritization list, and Pittsburg is considering policy options.

Your neighboring communities have taken these actions because they are aware that teen youth, including MDUSD students, continue to use vape products and cheap flavored tobacco at high rates, leading to addiction, parental conflicts and struggles in school.

The MDUSD school board has adopted a resolution (see attached) that includes a number of specific policy components, similar to the County's policy. The other two documents I have shared provide information about various policy options, and our project is happy to provide further information if requested.

LGBTQ Minus Tobacco is a state-funded project focused upon community education about policies that can help reduce teen and adult tobacco use and protect everyone from secondhand smoke. LGBTQ+ youth and adults use tobacco products at higher rates due to discrimination.

Thank you for your time.

Sincerely,

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MDUSD BOARD OF EDUCATION

RESOLUTION NO. 19/20 - 32

Opposing the Use and Sale of E-cigarettes and Electronic Vaping Devices

WHEREAS e-cigarette use among youth in the United States has skyrocketed to what the U.S. Surgeon General and the U.S. Food & Drug Administration have called “epidemic” levels; and

WHEREAS federal data shows that e-cigarette use among middle and high school students more than doubled from 2017 to 2019, with five million youths reportedly having used e-cigarettes in 2019; and

WHEREAS state data shows that one in eight California high school students currently use tobacco products, with the most used product among all students being electronic smoking devices and flavored products; and

WHEREAS with more than 15,000 available flavors, including many kid-friendly flavors such as mango, fruit, and crème, flavored nicotine products commonly referred to as “vapes,” “vape juice,” “vape liquid,” “e-juice,” etc. have fueled e-cigarette use among youth; and

WHEREAS widespread advertising for these products, including via media for which advertising for conventional tobacco products is prohibited, such as television, has contributed to the increase in e-cigarette use among youth; and

WHEREAS the accessibility of these products in retailers such as vape shops, pharmacies, and convenience stores, and lower costs of some of the products relative to conventional cigarettes made possible by social media promotion from retailers and coupons, discounts, and other promotional materials make these products more easily available to youth; and

WHEREAS e-cigarette use is unsafe and has negative health effects on teens and young adults; and

WHEREAS more than 40 people, including four Californians, have died of lung illness after vaping in 2019; and

WHEREAS teen nicotine use can impair parts of the brain that control attention and learning, as well as mood and impulse control; and

WHEREAS teens who use e-cigarettes are nearly three times more likely to go on to

smoke combustible cigarettes than their peers who don't use any type of tobacco product; and

WHEREAS tobacco use remains the leading cause of preventable death in the U.S., killing more than 480,000 people each year; and

WHEREAS tobacco-use rates are affected by where tobacco retailers are located and how concentrated they are in a given area; and

WHEREAS increased availability of tobacco products is associated with increases in both youth and adult smoking rates; and

WHEREAS under California law, local jurisdictions have the authority to regulate the sale of tobacco products through local tobacco retailer license programs; and

WHEREAS such local tobacco license programs aim to decrease illegal sales of tobacco products, including flavored tobacco products, to minors by establishing maximum thresholds of tobacco retailer densities and establishing proximity requirements near schools and other youth-sensitive areas;

NOW, THEREFORE BE IT RESOLVED that the Mount Diablo Unified School District supports the City Councils, under their regulatory authority, to take urgent action to amend the City of Tobacco Retailer License program to address the following:

1. prohibit the sale, manufacture, and distribution of flavored tobacco products;
2. prohibit the sale, manufacture, and distribution of e-cigarettes and electronic vaping devices;
3. prohibit the sale of tobacco products in pharmacies;
4. set a minimum price and minimum pack size for sale;
5. restrict the marketing (including social media marketing), product placement, coupons and promotional materials, and self-service displays of tobacco products in and from retailers;
6. reduce the concentration and density of tobacco stores; and
7. prohibit a tobacco retailer license from being issued to or renewed for a business operating too close to a school or other area frequented by youth.

BE IT FURTHER RESOLVED that the Governing Board of the Mount Diablo Unified School District will adopt policy that specifically prohibits e-cigarettes anywhere in district-owned or leased buildings, on school or district property, and in district vehicles; and

BE IT FURTHER RESOLVED that the Governing Board of the Mount Diablo Unified School District will explore policies related to providing e-cigarette and electronic vaping device prevention and intervention services for district students.

Brian Lawrence, Board President

Debra Mason, Board Vice President

Cherise Khaund, Board Member

Joanne Durkee, Board Member

Linda Mayo, Board Member

01/13/2020
Date Signed

Adopted by the Governing Board on 01/13/2020.

Robert A. Martinez
Secretary to the Board

ABCs of TRLs: Basics of a Model Comprehensive Tobacco Retail License

Tobacco Retail License (TRL) Structure

- **What it does:** A local license is required to sell tobacco products. The license is renewed annually and is revenue neutral, limited to the amount necessary for administration and compliance check expenses.
- **Why it matters:** TRLs provide a framework for all retail-oriented tobacco policy. The fee provides a stable funding source to ensure consistent compliance with the policy, thus helping to keep tobacco products away from underage youth.

Product Restriction Compliance Checks

- **What it does:** The enforcing agency visits each licensee at least yearly to determine if products the TRL no longer allows to be sold have been removed, and that price and pack size restrictions are being followed.
- **Why it matters:** If store owners know that their adherence to the law is being verified, they will be more likely to respect sales restrictions of products that make it easier for youth to get addicted.

Youth Decoy Compliance Checks

- **What it does:** Undercover staff from the enforcing agency and underage youth decoys visit licensees yearly. Sales to youth result in license suspension, and therefore the ability to sell tobacco, for increasing periods of time depending upon the number of violations committed within a 5-year period. Multiple violations can result in license revocation.
- **Why it matters:** The potential of a temporary loss of license acts as a sufficient incentive to retailers to ensure that they require clerks to check I.D. every time. Fines don't have the same impact, and warnings, given the infrequency of youth decoy operations, allow retailers to continue selling to youth for an extended period.

Flavor Restriction

- **What it does:** No flavored tobacco products can be sold. In addition to menthol cigarettes, e-liquids and flavored little cigars, this also includes flavored hookah, cigars, and pipe tobacco.
- **Why it matters:** The state ban on the sale of most flavored tobacco products will be subjected to a tobacco industry sponsored referendum in 2022. As of 11/24/21, 82 cities and counties in CA have stopped the sale of all flavored tobacco products without exemption.[1] 80% of youth who use tobacco started with a flavored product.[2]

Electronic Cigarette Devices

- **What it does:** Tobacco retailers cannot sell electronic smoking devices or accessories used with them, such as e-liquids.
- **Why it matters:** 3.6 million U.S. youth use e-cigarettes.[3] They are easy to hide and nicotine salts make it easy to get addicted. 5 Bay Area counties have ended their sale. Strong local policies can close potential loopholes in national or state regulations.

Minimum Pack Size

- **What it does:** Cigars, little cigars, cigarillos and wraps must be sold in pack sizes of at least 5 or sold individually for at least \$10.
- **Why it matters:** Federal law requires cigarettes to be sold in packs of 20. Cigarillos are easily available as singles or two packs for under \$1, making them more accessible to youth. Minimum pack requirements can increase the unit price but are more effective when combined with minimum price policies.



Minimum Price

- **What it does:** Cigarettes, cigars, little cigars, cigarillos, and wraps must cost above \$10 per package after taxes and fees. Single cigars and cigar wraps must cost at least \$10. These prices increase annually with the regional Consumer Price Index to remain a deterrent to price sensitive groups.
- **Why it matters:** The Surgeon General recommends \$10.00 for a pack of cigarettes to make them less accessible to youth.[4] Comparable prices for other tobacco products removes loopholes. Over 100 studies show that increasing tobacco prices reduces tobacco use by underage youth.[5]

Coupons/Discounting

- **What it does:** Tobacco retailers cannot honor coupons, promotions, or any other means of reducing the sale price of tobacco below the list price.
- **Why it matters:** The tobacco industry uses coupons to reduce the impact of price increases that are intended to keep youth from getting addicted.

Tobacco-Free Pharmacies

- **What it does:** Pharmacies or larger retailers containing pharmacies, such as Walgreens and Walmart, cannot be issued a TRL or sell tobacco products.
- **Why it matters:** A 2018 study showed 8% of pharmacies sold tobacco to minors.[6] It is ironic that people go to pharmacies to get healthy, and find tobacco on sale, often next to FDA approved smoking cessation products.

Proximity & Density

- **What it does:** Retailers who were not already in business when the ordinance was adopted must be at least 1000 feet away from areas that youth frequent and at least 600 feet from other tobacco retailers or cannabis dispensaries. Further, the jurisdiction will only issue a certain number of TRLs, proportional to the population of the area.
- **Why it matters:** Youth tobacco use rates are higher in areas with more tobacco retailers near schools. Further, low income and minority communities have larger numbers of tobacco retailers by population than other areas, exposing youth in those areas to greater risk of addiction. TRLs in excess of the density cap can be reduced by attrition.

Purchase/Use/Possession (PUP)

- **What it does:** Underage people are not penalized for purchasing, using, or possessing tobacco.
- **Why it matters:** Penalizing youth for possession of tobacco doesn't reduce tobacco use and can result in potentially dangerous encounters with law enforcement.

On-Site Sales

- **What it does:** All sales of tobacco must be in-person and take place over-the-counter at the licensed location. Other manners of sale, such as over the phone, the internet, mobile app, delivery, and curbside pick-up are not allowed.
- **Why it matters:** Internet sales can be used to circumvent local ordinances designed to stop youth access to tobacco.

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Sources:

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4. HHS, The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General, Atlanta, GA: HHS, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014, <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html>.
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COMPREHENSIVE TOBACCO RETAILER LICENSING ORDINANCE

Introduction

This Comprehensive Tobacco Retailer Licensing Ordinance was prepared to assist California cities and counties interested in establishing or strengthening a local tobacco retailer licensing (“TRL”) program and further regulating the tobacco retail environment. Communities adopt TRL laws to ensure compliance with local business standards, reduce youth access to tobacco products, limit the negative public health and equity impacts associated with tobacco use, and enforce local, state, and federal tobacco control laws.

The Public Health Law Center revised and updated this 2020 model ordinance, which was originally developed by ChangeLab Solutions and released in 2018. The Center acknowledges the excellent work done by ChangeLab Solutions in creating the original ordinance. This revised model ordinance takes a comprehensive approach to regulating the sale of tobacco products and the tobacco retail environment. It builds on core provisions such



as requiring a local tobacco retailer license by incorporating several innovative policy options. It also reflects changes to state and federal tobacco control laws such as Tobacco 21 and the federal Food and Drug Administration’s (“FDA”) Deeming Rule that expands the FDA’s regulatory

authority to all tobacco products. The model ordinance offers cities and counties a variety of options to tailor this policy to meet the needs of their communities.*

The model ordinance is based on an independent and objective analysis of the relevant law, evidence, and available data. Readers should consider all the evidence and decide for themselves which approach is appropriate for their local jurisdiction.

Customizing the Ordinance

Context boxes are included throughout the ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A city wishing to adopt all or part of this ordinance should keep this in mind and remove the context boxes.

In some instances, blanks (such as [_____]) prompt you to customize the language to fit your community's needs. In other instances, the ordinance offers you a choice of options (such as [choice one/choice two]). Some options are followed by a comment that describes the legal provisions in more detail. A degree of customization is always necessary to make sure the ordinance is consistent with a community's existing laws. Such customization also ensures that communities are using this model ordinance to address local needs and engender health equity.

Tips for Using This Model Ordinance

The best possible world is one without the death and health harms associated with commercial tobacco use.† Communities differ on their readiness and willingness to adopt certain tobacco control policies that are intended to help make that world a reality. Accordingly, this model ordinance represents a balance between state and federal minimum standards, best public health policy practices, and practicality for city governments in California. This model ordinance contains several policy components that communities may or may not choose to adopt at this time that may go beyond minimum state and federal requirements.

* This model ordinance uses "community" as shorthand for a group of people who will be impacted, either directly or indirectly, by a proposed changemaking strategy. People in a community (1) are in a particular geographic area, like a neighborhood or jurisdiction, and/or (2) share a common identity or characteristic.

† The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit: <http://www.keepitsacred.itcmi.org>. When the word "tobacco" is used throughout this document, a commercial context is implied and intended.

While the Public Health Law Center does not lobby, advocate, or directly represent communities, we can provide assistance through our publications and referrals to experts in the field. Education, stakeholder and community engagement, and a strong advocacy plan are key steps in the adoption of effective tobacco control policies. If a community is unaware of the resources available to it for engaging the community and developing an advocacy plan, or if a city is considering adopting an ordinance and is interested in learning about the range of resources available, please contact the Public Health Law Center. If you have any questions about this ordinance, you can reach us at www.publichealthlawcenter.org.

This publication was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice. This model ordinance was made possible by funds received from Grant Number 19-10229 with the California Department of Public Health, California Tobacco Control Program, and the American Lung Association in California.



**AN ORDINANCE OF THE [city/county] OF
[insert jurisdiction name] REGULATING TOBACCO PRODUCT
SALES, REQUIRING THE LICENSURE OF TOBACCO RETAILERS, AND
AMENDING THE [Insert Jurisdiction Name] MUNICIPAL CODE**

The [city council of the city/board of supervisors of the county] of [insert jurisdiction name]
does ordain as follows:

Note

This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction.

SECTION I. [See Appendix A: Findings]

Note

The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. An ordinance based on this model ordinance should include findings of fact — data, statistics, relevant epidemiological information, for instance — that support the purposes of this ordinance, as well as any legal precedent that directly supports the ordinance. In addition to serving an educational purpose and building support for the ordinance, the findings can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible record of the factual determinations made by the legislative body when considering the ordinance. Courts will generally defer to legislative determinations of factual issues, which often influence legal conclusions. A list of findings supporting this model ordinance appears in “Appendix A: Findings.” Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law.

**SECTION II. [article/section] of the County/City Code is hereby
amended to read as follows:**

Sec. [____ (*1)]. DEFINITIONS. The following words and phrases, whenever used in this [article/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 between two informed and willing parties, neither of which is under any compulsion to participate in the transaction.
- (B) “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- (C) “Cannabis Product” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- (D) “Cannabis Retailer” means any retail establishment in which cannabis or cannabis products are sold or offered for sale to persons that do not hold a license to engage in commercial cannabis activity issued by the State of California in accordance with the Business and Professions Code Section 26000 et seq., as that section may be amended from time to time.
- (E) “Child-Resistant Packaging” means packaging that meets the definition set forth in Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015.
- (F) “Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than 4.5 pounds per thousand.
- (G) “Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.
- (H) “Compliance checks” means systems the department uses to investigate and ensure that tobacco retailers are following and complying with the requirements of this [article/ chapter]. Compliance checks may involve the use of persons between the ages of 18 and 20 who purchase or attempt to purchase tobacco products. Compliance checks may also be conducted by the department or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to tobacco products.
- (I) “Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

- (J) “Delivery sale” means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a tobacco retail establishment. Delivery sale includes the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.
- (K) “Department” means [insert department name] and any agency or person designated by the Department to enforce or administer the provisions of this [article/chapter].
- (L) “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- (M) “Flavored Tobacco Product” means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.
- (N) “Full Retail Price” means the price listed for a tobacco product on its packaging or on any related shelving, advertising, or display where the tobacco product is sold or offered for sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.
- (O) “Little Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than 4.5 pounds per thousand. “Little Cigar” includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.
- (P) “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.
- (Q) “Moveable place of business” means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.

- (R) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (S) "Pharmacy" means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.
- (T) "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has or shares ultimate control over the day-to-day operations of a business.
- (U) "Recreation Facility" means an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes, and includes but is not limited to a gymnasium, playing court, playing field, and swimming pool.
- (V) "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.
- (W) "Self-Service Display" means the open display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.
- (X) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. "Smoking" includes using an electronic smoking device.
- (Y) "Tobacco Product" means:
- (1) any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;

- (2) any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- (3) any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

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

Note

Both the definition of “electronic smoking device” and “tobacco product” in this model include substances that go into an electronic smoking device regardless of whether they contain nicotine. In a jurisdiction that already regulates the commercial sale of cannabis products, these definitions might result in an overlapping and possibly confusing regulatory regime where certain products are covered by both the tobacco and cannabis laws. The Center can provide additional language to exclude regulated cannabis products under a TRL.

- (Z) “Tobacco Retailer” means any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.
- (AA) “Tobacco Retailing” means engaging in the activities of a tobacco retailer.
- (AB) “Youth-Oriented Facility” means a parcel in the [city/county] that is occupied by:
 - (1) a private or public kindergarten, elementary, middle, junior high, or high school;
 - (2) a library open to the public;
 - (3) a playground open to the public;
 - (4) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;
 - (5) a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes;

- (6) a park open to the public or to all the residents of a private community;
- (7) a licensed child-care facility or preschool [other than a small-family day care home or a large-family day care home [as defined in California Health & Safety Code § 1596.78]];;

Sec. [____ (*2)]. GENERAL REQUIREMENTS AND PROHIBITIONS.

- (A) TOBACCO RETAILER'S LICENSE REQUIRED. It shall be unlawful for any person to engage in tobacco retailing in the [city/county] without first obtaining and maintaining a valid tobacco retailer's license for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law.
- (B) LAWFUL BUSINESS OPERATION. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [article/chapter] for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to the sale of tobacco products.
- (C) SMOKING PROHIBITED. Smoking, including smoking for the purpose of sampling any tobacco product, is prohibited within the indoor area of any retail establishment licensed under this chapter. Smoking also prohibited outdoors within 25 feet of any retail establishment licensed under this [article/chapter].
- (D) MINIMUM LEGAL SALES AGE. No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.
- (E) DISPLAY OF LICENSE. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- (F) POSITIVE IDENTIFICATION REQUIRED. No person engaged in tobacco retailing shall sell a tobacco product to another person without first verifying by means of government-issued photographic identification that the recipient is at least 21 years of age.
- (G) SELF-SERVICE DISPLAYS PROHIBITED. Tobacco retailing by means of a self-service display is prohibited.
- (H) ON-SITE SALES. All sales of tobacco products shall be conducted in-person in the licensed location. It shall be a violation of this [article/chapter] for any tobacco retailer or any of the tobacco retailer's agents or employees to engage in the delivery sale of tobacco products or to knowingly or recklessly sell or provide tobacco products to any person that intends to engage in the delivery sale of the tobacco product in the [city/county].

Sec. [____ (*3)]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED.

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

Sec. [____ (*4)]. TOBACCO PRODUCT PRICING AND PACKAGING.

- (A) PACKAGING AND LABELING. No tobacco retailer shall sell any tobacco product to any consumer unless the tobacco product: (1) is sold in the manufacturer's packaging intended for sale to consumers; (2) conforms to all applicable federal labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.
- (B) DISPLAY OF PRICE. The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.
- (C) DISTRIBUTION OF TOBACCO SAMPLES OR PROMOTIONAL ITEMS. It is unlawful for any person to distribute free or nominally priced tobacco products.
- (D) PROHIBITION OF TOBACCO COUPONS AND DISCOUNTS. No tobacco retailer shall:
 - (1) honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;
 - (2) sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item; or
 - (3) provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.
- (E) MINIMUM PACKAGE SIZE FOR LITTLE CIGARS AND CIGARS. No tobacco retailer shall sell:
 - (1) any little cigar unless it is sold in a package of at least [20] little cigars; or

- (2) any cigar unless it is sold in a package of at least [6] cigars ; provided, however, that this subsection shall not apply to a cigar that has a price of at least [\$X.00] per cigar, including all applicable taxes and fees.

(F) MINIMUM PRICES FOR CIGARETTES, LITTLE CIGARS, AND CIGARS. No tobacco retailer shall sell:

- (1) Cigarettes at a price that is less than [\$X.00] per package of 20 cigarettes, including all applicable taxes and fees;
- (2) Little cigars at a price that is less than [\$X.00] per package of little cigars, including all applicable taxes and fees; or
- (3) Cigars at a price that is less [\$X.00] per cigar, including all applicable taxes and fees.

The minimum prices established in this section shall be adjusted annually by the Department in proportion with the Consumer Price Index, using a system established by the Department.

Note

Indexing minimum prices to inflation is an efficient policy that does not require decision-makers to amend the TRL annually to keep up with prevailing prices. Jurisdictions in California have pegged the prices to the nearest U.S. Bureau of Labor Statistics statistical area, and the language here is broad enough that a jurisdiction can take that approach or determine another effective way to adjust the prices over time.

Sec. [____ (*5)]. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.

- (A) **MOBILE VENDING.** No license may issue to authorize tobacco retailing at other than a fixed location. No tobacco retail license will be issued to a moveable place of business.
- (B) **LICENSED CANNABIS BUSINESSES.** No license may issue, and no existing license may be renewed, to authorize tobacco retailing at a location licensed for commercial cannabis activity by the State of California under Business and Professions Code Division 10.
- (C) **PHARMACIES.** No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.

- (D) **PROXIMITY TO YOUTH-ORIENTED FACILITIES.** No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of a youth-oriented facility as measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented facility is located to the nearest point of the property line of the parcel on which the applicant's business is located.
- (E) **PROXIMITY TO OTHER TOBACCO RETAILERS.** No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of a tobacco retailer location already licensed pursuant to this [article/chapter] as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing licensee's business is located.
- (F) **PROXIMITY TO CANNABIS RETAILERS.** No license may issue, and no existing license may be renewed, to authorize tobacco retailing within [1000] feet of an existing cannabis retailer as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing cannabis retailer is located.

Note

The three proximity limitations above would prohibit tobacco retailing within a certain distance of relevant businesses and facilities with no grandfathering of existing licensed retailers. As a result, retail licenses for locations that do not meet these proximity limitations would not be renewable after expiring. Issuing a tobacco retail license is a privilege, not a right, and jurisdictions have the authority to grant or deny tobacco retailer licenses. Accordingly, it would be unlikely for a tobacco retailer to successfully argue that refusing to renew their license is a violation of the constitutional guarantee against taking property without due process. To deal with potential "takings" claims, some jurisdictions have created a hearing process for affected businesses where they can make hardship arguments and ask for additional time to sell prohibited products, allowing for some more flexibility on a case-by-case basis and under extraordinary circumstances.

- (G) **POPULATION AND DENSITY.** The issuing of tobacco retailer licenses is limited as follows:
- (1) The total number of tobacco retailer licenses within the [city/county] shall be limited to one for each [2,500] inhabitants of the [city/county].

- (2) For the purposes of this subsection, the total population of the [city/county] shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed.
- (3) No new license may issue to authorize tobacco retailing if the number of tobacco retailer licenses already issued equals or exceeds the total number authorized pursuant to subsection (1).

Sec. [____ (*6)]. APPLICATION PROCEDURE.

- (A) An application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. All applications shall be submitted on a form supplied by the Department.
- (B) A license issued contrary to this [article/chapter], contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to Section [____ (*13) (c)] of this [article/chapter]. Nothing in this [article/chapter] shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.
- (C) Applicant submissions shall contain the following information:
 - (1) The name, address, and telephone number of each proprietor of the business seeking a license.
 - (2) The business name, address, and telephone number of the location for which a license is sought.
 - (3) The name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this [article/chapter].
 - (4) Proof that the location for which a tobacco retailer's license is sought has been issued all necessary state licenses for the sale of tobacco products.
 - (5) Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this [article/chapter] or any other local, state, or federal law governing the sale of tobacco products and, if so, the dates and locations of all such violations within the previous five years.

- (6) A signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product without a license required by this [article/chapter].
- (7) Such other information as the Department deems necessary for the administration or enforcement of this [article/chapter] as specified on the application form required by this section.
- (D) A licensed tobacco retailer shall inform the Department in writing of any change in the information submitted on an application for a tobacco retailer's license within [10] business days of a change.

Sec. [____ (*7)]. LICENSE ISSUANCE OR DENIAL.

- (A) **ISSUANCE OF LICENSE.** Upon the receipt of a complete and adequate application for a tobacco retailer's license and the license fee required by this [article/chapter], the Department may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.
- (B) **DENIAL OF APPLICATION.** The department may deny an application for a tobacco retailer's license based on any of the following:
 - (1) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this [article/chapter];
 - (2) The application seeks authorization for tobacco retailing at a location for which this [article/chapter] prohibits a license to be issued;
 - (3) The application seeks authorization for tobacco retailing for a proprietor to whom this [article/chapter] prohibits a license to be issued; or
 - (4) The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this [article/chapter], that is unlawful pursuant to any other [article/chapter] of this Code, or that is unlawful pursuant to any other law.
 - (5) Any other any other suitable reason the granting of a license to the applicant is not consistent with the public health and welfare, including the applicant's history of noncompliance with this [article/chapter] and other laws relating to the sale of tobacco products.

Sec. [____ (*8)]. LICENSE RENEWAL AND EXPIRATION.

- (A) RENEWAL OF LICENSE. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is [1 year]. Each tobacco retailer shall apply for the renewal of their tobacco retailer's license and submit the license fee no later than [30] days prior to expiration of the current license. A retailer that fails to timely submit a renewal application and fee is ineligible for license renewal and must submit a new application pursuant to Section [____ (*6)].

Sec. [____ (*9)]. LICENSES NOT TRANSFERABLE, PAST VIOLATIONS AT RETAIL LOCATION.

- (A) LICENSES NOT TRANSFERRABLE. A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietors.
- (B) PAST VIOLATIONS. Notwithstanding any other provision of this [article/chapter], prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
- (1) the location has been transferred to new proprietor(s) in an arm's length transaction; and
 - (2) the new proprietor(s) provide the [city/county] with clear and convincing evidence that the new proprietor(s) have acquired the location in an arm's length transaction.

Sec. [____ (*10)]. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

Nothing in this [article/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 [City/County] identified on the face of the permit. Nothing in this [article/chapter] shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

Sec. [____ (*11)]. FEE FOR LICENSE.

The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the [city council/board of supervisors]. The fee shall be calculated so as to recover the total cost of administration and enforcement of this [article/chapter], including, but not limited to, issuing a license, administering the license program, retailer education,

retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this [article/ chapter]. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

Note

The California Constitution places some limits on how much a jurisdiction can charge in a fee, deeming excessive fees to be taxes that require a vote of the people. Nonetheless, without a referendum, it is lawful to impose a fee on applicants in an amount sufficient to offset the reasonable regulatory cost of the entire tobacco retailer enforcement program of the locality. *Sinclair Paint Co. v. Board of Equalization*, 15 Cal. 4th 866 (1997); *Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982 (2012).

The license fee can incorporate the cost of enforcing all tobacco laws related to tobacco retailing because a violation of any tobacco-related law is a basis for suspension of a license. The Public Health Law Center can provide further information on some of the factors to consider when calculating a reasonable license fee.

Sec. [____ (*12)]. COMPLIANCE MONITORING.

- (A) Compliance with this [article/chapter] shall be monitored by the Department. In addition, the [City/County] may designate additional persons to monitor compliance with this [article/chapter]. All licensed premises must be open to inspection by [city/ county] staff or designated persons during regular business hours.
- (B) The Department shall inspect each tobacco retailer at least [3] times per 12 month period to ensure compliance with this [article/chapter].

Note

Subsection (b) allows for the inspection of licensed premises to check for any violations of this ordinance or other tobacco control laws. For example, some inspections might focus on pricing or flavored product violations, but preferably inspectors would be able to review compliance with all applicable laws during the inspections. For more information on challenges and case studies in enforcing TRL requirements please contact the Center.

- (C) The [city/county] will conduct at least [one] compliance check per 12-month period that involves the participation of persons between the ages of 18 and 20 to enter licensed premises to attempt to purchase tobacco products.

Note

This underage sales compliance provision requires a minimum of one check per year, but jurisdictions might choose to require more frequent compliance checks to ensure consistent compliance.

- (D) Nothing in this section shall create a right of action in any licensee or other person against the [city/county] or its agents.

Sec. [____ (*13)]. 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 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, have violated any of the requirements, conditions, or prohibitions of this [article/chapter]; such violation is determined by any court of competent jurisdiction; or the licensee has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section [____ (*2)] above.
- (1) Upon a finding by the Department of a first violation of this [article/chapter] at a location, the license shall be suspended for [30] days.
 - (2) Upon a finding by the Department of a second violation of this [article/chapter] at a location within any [5]-year period, the license shall be suspended for [90] days.
 - (3) Upon a finding by the Department of a third violation of this [article/chapter] at a location within any [5] year period, the license shall be suspended for [1] year.
 - (4) Upon a finding by the Department of four or more violations of this [article/chapter] at a location within any [5] year period, the license shall be revoked.
- (B) **APPEAL OF SUSPENSION OR REVOCATION.** A decision of the Department to suspend or revoke a license is appealable to [the name of appellate agency, panel, or person (for

example, Board of Supervisors, city manager, or director of the health department)] and any appeal must be filed in writing with [the name of the agency, panel, or person to receive the notice (for example, Board of Supervisors)] within 10 days of mailing of the Department's decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to [the name of appellate agency, panel, or person] is not available for a revocation made pursuant to subsection (c) below.

- (C) **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 [____(*7)] existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the [city/county].

Sec. [____ (*14)]. TOBACCO RETAILING WITHOUT A VALID LICENSE.

- (A) **INELIGIBLE FOR LICENSE.** In addition to any other penalty authorized by law, if the Department finds, or if a court of competent jurisdiction determines, based on a 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, 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 [30] days have passed from the date of the violation.
- (2) After a second violation of this section at a location within any [5 year] 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 [90] days have passed from the date of the violation.
- (3) After of a third or subsequent violation of this section at a location within any [5 year] 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 [5] years have passed from the date of the violation.

Sec. [____ (*15)]. ADDITIONAL REMEDIES.

- (A) The remedies provided by this [article/chapter] are cumulative and in addition to any other remedies available at law or in equity.

- (B) Whenever evidence of a violation of this [article/chapter] is obtained in any part through the participation of a person under the age of 18 years, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this [article/chapter] and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (C) Violations of this [article/chapter] are subject to a civil action brought by the [district attorney] or the [county counsel], punishable by a civil fine not less than [\$250] and not exceeding [\$1,000] per violation.
- (D) Violations of this [article/chapter] may, in the discretion of the [district attorney/county counsel], be prosecuted as infractions or misdemeanors when the interests of justice so require.
- (E) Violations of this [article/chapter] are hereby declared to be public nuisances.
- (F) In addition to other remedies provided by this [article/chapter] or by other law, any violation of this [article/chapter] may be remedied by a civil action brought by the [district attorney/county counsel], including administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.
- (G) Tobacco products offered for sale in violation of this [article/chapter] are subject to seizure by the Department or its designee and shall be forfeited after the licensee or any other owner of the tobacco products seized is given reasonable notice and an opportunity to demonstrate that the tobacco products were not offered for sale in violation of this [article/chapter]. The decision by the Department may be appealed pursuant to the procedures set forth in Section [____(*13)(b)]. Forfeited tobacco products shall be destroyed and properly disposed of at the cost of the seller after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.
- (H) For the purposes of the civil remedies provided in this [article/chapter]:
 - (1) Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this [article/chapter] shall constitute a separate violation of this [article/chapter]; and
 - (2) Each individual tobacco product that is distributed, sold, or offered for sale in violation of this [article/chapter] shall constitute a separate violation of this [article/chapter].

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

Sec. [____ (*16)]. EXCEPTIONS.

- (A) Nothing in this [article/chapter] prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious or spiritual ceremony or practice.
- (B) Nothing in this [article/chapter] shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

Sec. [____ (*17)]. CONSTRUCTION & SEVERABILITY. It is the intent of the [board of supervisors/city council] of [county/city] to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this [article/chapter], or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this [article/chapter], or its application to any other person or circumstance. The [board of supervisors/city council] of [jurisdiction] 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.

Sec. [____ (*18)]. PUBLIC RECORDS. All information provided to the Department by a licensee or license applicant pursuant to this [article/chapter] shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 et seq.) or any other applicable law.

SECTION III. EFFECTIVE DATE. This Ordinance shall take effect and be in force from and after [30 days after date of enactment]; provided, however, that Section [____ (*3)] shall not take effect until [6 months after date of enactment].

Appendix A: Findings.

The [city council of the city/board of supervisors of the county] of [insert jurisdiction name] hereby finds and declares as follows:

WHEREAS, the [city council/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 [city council/board of supervisors], to protect the health, safety, and welfare of our residents;

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death;²

WHEREAS, the World Health Organization (WHO) estimates that tobacco kills 8 million people and causes over 1.4 trillion dollars in economic damage each year;¹³⁶

WHEREAS, 5.6 million of today's Americans who are younger than 18 years of age are projected to die prematurely from a smoking-related illness;²

WHEREAS, tobacco use is the number one cause of preventable death in California¹³⁷ and continues to be an urgent public health issue, as evidenced by the following:

- 40,000 California adults die from their own smoking annually;¹
- More than 25% of all adult cancer deaths in California are attributable to smoking;¹³⁸
- Smoking costs California \$13.29 billion in annual health care expenses, \$3.58 billion in Medicaid costs caused by smoking, and \$10.35 billion in smoking-caused productivity losses;¹³⁹
- Tobacco use can cause disease in nearly all of the organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States;²

WHEREAS, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- African American (20.4%), Asian or Pacific Islander (11.4%), and Hispanic (15.2%) males all report a higher smoking prevalence than the statewide average among all adults (11.0%);⁹
- American Indian/Alaska Native Californians have the highest smoking prevalence (19.1%) among all reported adult demographic populations;⁹

- Smoking is more prevalent among rural (14.9%) compared to urban (10.6%) Californians;⁹
- Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence;⁹
- Adults who identify as lesbian, gay, bisexual, or transgender report smoking at a higher rate (17.4%) than the statewide average (11.0%);⁹
- Those who reported experiencing psychological distress in the past month smoke at rates (26.7%) higher than the statewide average (11.0%);⁹

[insert local data if available]

WHEREAS, despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, research indicates over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;¹⁴⁰
- In California, from 2017 to 2018, approximately 13% of high school students reported using tobacco;⁹
- Disparities in tobacco use exist among California high school students, with higher rates found among LGBTQ, American Indian, and Pacific Islander youth;⁹
- Unless smoking rates decline, an estimated 441,000 of all California youth who are alive today will die prematurely from smoking-related diseases;²
- In 2017, 22.8% of high school students in California had tried cigarette smoking;¹⁴¹
- Between 2014 and 2018, electronic smoking device use among California youth increased from 14.1% to 46.2%;⁸

[insert local data if available]

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting,¹¹ as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;⁶⁶
- Tobacco industry documents state that if "a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one",¹⁴²

- The tobacco industry spends an estimated \$496 million annually to market tobacco products to California residents;¹³⁹

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- 9.3% of high school students in California reported buying their own electronic cigarette from a store;¹⁴¹
- 19.1% of California tobacco retailers unlawfully sold tobacco products to underage persons in 2018;⁹

[insert local data if available]

WHEREAS, requiring tobacco retailers to obtain a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell tobacco products to adults but will, however, allow the [city council/board of supervisors] to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco control and youth tobacco access laws, as evidenced by the following:

- Tobacco products are the number one seller in U.S. convenience stores, and in 2018, they generated an average of \$523,084 in sales per store;¹⁴³
- Systematic scientific reviews indicate that merchant compliance with youth tobacco sales laws reduces the rate of tobacco use among adolescents;^{26,27}
- Studies found increased retailer compliance and reduced tobacco sales to youth following implementation and active enforcement of youth tobacco sales laws paired with penalties for violations;^{144,145}
- A review of 41 California communities with strong tobacco retailer licensing ordinances found that youth sales rates declined in 40 of these communities after the ordinances were enacted, with an average 69% decrease in the youth sales rate;²⁵

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,²⁸ largely because these flavored products are marketed to youth and young adults,^{26,35,145} and younger smokers were more likely than older smokers to have tried these products;²⁶

WHEREAS, neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices;

WHEREAS, in 2018, more than 86% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 91% of tobacco retailers sold menthol cigarettes,⁸⁰ and, as of 2016, 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products;¹⁴⁷

WHEREAS, flavored tobacco products are used by the majority of youth and young adult tobacco users (86.4% and 57.7%, respectively) in California;⁹

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco^{26,148,149} and that these products help establish tobacco habits that can lead to long-term addiction;^{26,150,151}

WHEREAS, between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25) and adults (ages 26+);³⁰

WHEREAS, flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation;^{11,26,152,153}

WHEREAS, a review of advertising, promotions, and pack prices near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of mentholated cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.” There was no such association found for non-mentholated cigarettes;¹⁵⁴

WHEREAS, scientific reviews by the FDA and the Tobacco Products Scientific Advisory Committee (“TPSAC”) found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, but especially among youth, African Americans,³³ and possibly Hispanic and Latino individuals;³⁴ and that menthol cigarettes are associated with increased initiation and progression to regular cigarette smoking, increased dependence on cigarettes, and reduced success in smoking cessation, especially among African American menthol smokers;³³

WHEREAS, research indicates that the FDA ban in 2009 on all flavored cigarette products (except menthol) led to a 6% decrease in youth tobacco use and a 17% decrease in the likelihood of a youth becoming a cigarette smoker;¹⁵⁵

WHEREAS, studies indicate that laws prohibiting the sale of flavored tobacco products lead to decreases in youth tobacco use, as evidenced by the following:

- An evaluation of New York City's law, which prohibits the sale of all flavored tobacco, excluding menthol, indicated that as a result of the law, youth had 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco;¹⁵⁶
- An evaluation of a law in Providence, Rhode Island, which prohibits the sale of all flavored tobacco, excluding menthol, indicated that as a result of the law, current use of any tobacco product among high school youth declined from 22% to 12% and e-cigarette use declined from 13.3% to 6.6%, even as statewide e-cigarette use among high school increased to more than 20%;¹⁵⁷

WHEREAS, the health effects of non-cigarette tobacco products such as cigars, cigarillos, smokeless tobacco, and shisha are substantial as demonstrated by research that shows that non-cigarette tobacco products have addictive levels of nicotine, harmful toxins, and dangerous carcinogens;¹⁵⁸⁻¹⁶⁴

WHEREAS, unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has increased among California youth;⁹

WHEREAS, the availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than 100 academic studies that conclusively show that when tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use;^{2,48-51,53-58}

WHEREAS, research has also consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations;¹⁶⁵

WHEREAS, a systematic review by the U.S. Community Preventive Services Task Force found that a 20% price increase would reduce demand for cigarettes by approximately 10.4%, the prevalence of adult tobacco use by 3.6%, and initiation of tobacco use by young people by 8.6%;⁴⁹

WHEREAS, unequal price increases across different types of tobacco products lead to substitution from one product to another;^{56,58}

WHEREAS, youth are particularly responsive to changes in tobacco prices,^{26,52,54,166} and evidence suggests that tobacco companies deliberately target youth with price reductions;^{26,51,64-66,167}

WHEREAS, evidence also suggests that cigarettes are cheaper in neighborhoods with lower household incomes,^{118,168} Newport menthol cigarettes cost less in areas with higher proportions of African Americans,¹¹⁸ and underserved communities are targeted with price discounts and coupons;¹⁶⁹⁻¹⁷¹

WHEREAS, tobacco companies spend considerably to decrease the price of their products in order to counter state and local tobacco control efforts, appeal to price-sensitive consumers, and increase demand for tobacco products. For example, tobacco companies spent the majority of their cigarette marketing budgets on price discounts, accounting for nearly \$6.2 billion of \$8.6 billion advertising and promotional expenditures in 2018;^{50,51,62}

WHEREAS, the tobacco industry's price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy.⁷⁰ Coupon receipt and redemption appears more prevalent among white, younger, female, sexual minority, and more nicotine dependent smokers.¹⁷² In California, individuals who used price minimization strategies saved an average \$1.04 per pack (or 18.6% off the total) in 2010;⁷⁰

WHEREAS, price-discounted sales account for a substantial proportion of overall tobacco product sales;⁶³

WHEREAS, although federal and state law ban the sale of individual cigarettes,^{78,173} neither federal nor California state laws restrict the sale of individual little cigars and cigars;

WHEREAS, many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth.⁷⁹ Additionally:

- 78.3% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than \$1.00;⁷⁹
- Between 2012 and 2016, annual sales of cigarillos increased by 78% overall and by 155% for "concept-flavored" (e.g., Jazz) cigarillos;¹⁷⁴

WHEREAS, a 10% increase in cigar prices has been associated with decreased cigar sales^{175,176} and may significantly reduce cigar use among youth;¹⁷⁷

WHEREAS, neither federal nor California state laws set a minimum price for tobacco products;

WHEREAS, minimum price markups and related laws in other states have been shown to be effective at increasing the price of cigarettes but may remain vulnerable to price manipulation by the tobacco industry without attention to coupons and discounts;⁸²

WHEREAS, studies have estimated that if price discounts were prohibited across the United States, the number of people who smoke would decrease by more than 13%;⁶⁸ the impact of a \$10 federal minimum floor price for cigarettes could reduce the number of packs sold in the United States by 5.7 billion per year and prompt more than 10 million smokers to quit;⁵⁵ and that a state-level minimum floor price law designed to raise the average price of cigarette

packs by just under \$2.00 could decrease the prevalence of cigarette use and consumption by more than 4% and reduce income-based smoking disparities in California;⁸⁶

WHEREAS, by selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not so dangerous to smoke;^{178,179}

WHEREAS, pharmacies sell cigarettes cheaper than other stores¹¹⁸ and advertise tobacco product discounts more than other stores in California;⁸⁰

WHEREAS, tobacco-free pharmacy sales policies decrease the availability of tobacco products by reducing tobacco retailer density by up to three times compared with communities that do not have such policies,¹¹⁹ and immediately after the nationwide CVS policy change to not sell tobacco products, cigarette purchases declined and smokers who had previously purchased their cigarettes exclusively at CVS were up to twice as likely to stop buying cigarettes entirely;¹²⁰

WHEREAS, research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day,⁹⁰ particularly in neighborhoods experiencing poverty;^{90,180-182}

WHEREAS, the density of tobacco retailers near adolescents' homes has been associated with increased youth smoking rates¹⁰¹ and initiation of noncigarette tobacco product use;¹⁸³

WHEREAS, adults who smoke are likely to have a harder time quitting when residential proximity to tobacco retailers is closer¹⁰⁷ and density is higher;¹⁸⁴⁻¹⁸⁶

WHEREAS, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;⁹³⁻⁹⁸

WHEREAS, tobacco retailer density is higher in urban compared to rural areas, except for low-income communities, which have higher tobacco retailer densities regardless of geography, and Hispanic communities, which are associated with variable retailer densities across geography;^{97,187}

WHEREAS, policies to reduce tobacco retailer density have been shown to be effective^{103,104,188,189} and can reduce or eliminate inequities in the location and distribution of tobacco retailers;^{103,104}

WHEREAS, six out of 10 tobacco retailers in California sold cigar products using cannabis-related flavor descriptors and these retailers were more prevalent in school neighborhoods with lower median income;¹⁹⁰

WHEREAS, both youth and adult tobacco users are more likely to also use cannabis;^{191,192}

WHEREAS, strict enforcement of policies prohibiting retail sales of cigarettes to youth, sales of cigarettes via vending machines, and other means through which youth gain access to tobacco in the commercial settings can limit their opportunities to obtain these products;^{26,27}

WHEREAS, strong policy enforcement and monitoring of retailer compliance with tobacco control policies (e.g., requiring identification checks) is necessary to achieve reductions in youth tobacco sales;^{193,194}

WHEREAS, the Institute of Medicine recognizes that retailers are not likely to comply with youth tobacco access laws unless such laws are actively enforced through retailer compliance checks paired with meaningful penalties on business owners for violations;¹⁹⁵

WHEREAS, 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);

WHEREAS, California courts have affirmed the power of the [city council/board of supervisors] 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);

WHEREAS, over 180 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop youth from using tobacco;⁹

WHEREAS, the [city council/board of supervisors] has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

WHEREAS, the [city council/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 [Insert jurisdiction name] in order to protect the health, safety, and welfare of our residents;

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

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- 16 Cal. Bus. & Prof. Code § 22970.1 (Finding that state tobacco excise tax revenues “have declined by hundreds of millions of dollars per year due, in part, to unlawful distributions and untaxed sales of cigarettes and tobacco products,” and that “the licensing of ... retailers will help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products.”).
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- 18 Cal. Bus. & Prof. Code § 22971.3 (“Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.”).
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