

# CHAPTER 6.14

## LICENSING OF TOBACCO SELLERS

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### 6.14.010 DEFINITIONS.

The following words and phrases, whenever used in this Chapter, shall have the meaning provided in this section unless the context clearly requires otherwise:

**Characterizing Flavor.** A distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a Tobacco Product, including, but not limited to, tastes or aromas relating to any fruit, menthol, mint, wintergreen, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverages, herb, or spice. A Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of the ingredient information.

**Compliance Check.** The process in which the Agency sends a Youth Decoy into a Tobacco Retailer's establishment to attempt to purchase a Tobacco Product

**Electronic Nicotine Delivery Systems (ENDS).** An electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately and includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

**Flavored Tobacco Product.** Any tobacco product (other than cigarettes as defined by federal law) that contains a constituent that imparts a characterizing flavor

**PERSON.** Natural person, joint venture, joint stock company, organization, partnership, association, club, company, corporation, business, trust, or the manager, lessee, agent, servant, officer, or employee of any of them.

**Smoking.** Inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device

that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

**Tobacco paraphernalia.** Cigarette papers or wrappers, blunt wraps as defined in Section 308 of the Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

**TOBACCO PRODUCT.** Means any of the following:

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, or snuff.
2. ~~Any electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.~~ Any Electronic Nicotine Device System (ENDS) that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. Including any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.
3. Any component, part, or accessory of a Tobacco Product, whether or not sold separately.
4. "Tobacco Product" does not include a 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 the product is marketed and sold solely for an approved purpose.

**TOBACCO SELLER.** Any Person who sells, offers for sale, or offers to exchange, Tobacco Products, as defined in this section, for any form of consideration. "Tobacco Selling" shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco or Tobacco Products sold, offered for sale, exchanged, or offered for exchange.

**YOUTH DECOY.** A participant in a compliance check who is under the age of 21, reasonably appears under the age of 21 and who has participated in the Mendocino County Health and Human Services Agency, Public Health Branch training for youth involved with the tobacco control program compliance surveys.

#### 6.14.015 – Sales of Flavored Tobacco Product Prohibited.

A. It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco Retailer 's agents or employees to Sell or offer for Sale, or to possess with intent to Sell or offer for Sale, any Flavored Tobacco Product.

B. There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including, but not limited to, individual Flavored Tobacco Products, Packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to Sell or offer for Sale.

C. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:

1. made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
2. used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
3. taken action directed to Consumers that would be reasonably expected to cause Consumers to believe the Tobacco Product imparts a Characterizing Flavor.

#### **6.14.020 REQUIREMENT FOR TOBACCO SELLER'S LICENSE.**

A. It shall be unlawful for any Person to act as a Tobacco Seller without first obtaining and maintaining a valid Tobacco Seller's license pursuant to this Chapter for each location at which that activity is to occur. No license may be issued to authorize Tobacco Selling at other than a fixed location. For example, Tobacco Selling by Persons on foot or from vehicles is prohibited.

B. The term of a license is one year from the date of issuance, unless earlier suspended, terminated or revoked pursuant to § [6.14.090](#). Each licensed Tobacco Seller shall apply for the renewal of his or her Tobacco Seller's license no later than thirty (30) days prior to its expiration.

**COUNTY C. A Person selling Tobacco Products without a valid tobacco retailer license, including a Person whose privilege to sell tobacco products has been suspended or revoked:**

1. Shall keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this provision shall constitute Tobacco Retailing without a license under Section 6.20.090 and will incur administrative fines in accordance with 6.20.100.
2. Shall not display any advertising relating to Tobacco Products that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

C. Nothing in this Chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Seller's license any status or right other than the right to act as a Tobacco Seller at the location in the City 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, without limitation, any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by Cal. Labor Code § [6404.5](#).

D. It is the responsibility of each licensed Tobacco Seller to be informed regarding all laws applicable to Tobacco Selling, including those laws affecting the issuance of a tobacco and E-cigarette seller's license. No licensed Tobacco Seller may rely on the issuance of a license as a determination by the City that the Tobacco Seller has complied with all laws applicable to Tobacco Selling.

#### **6.14.022 PERFORMANCE STANDARDS – DEEMED APPROVED ACTIVITIES.**

An activity shall retain its “deemed approved” status only if it conforms to all of the following deemed approved performance standards:

A. The Tobacco Seller does not offer illegal paraphernalia or paraphernalia for the consumption of cannabis (not in county code) for sale. The offering of sale of such items shall result in immediate suspension of a Tobacco Seller’s license;

**Staff recommendation:** Tobacco sellers shall not display tobacco, tobacco paraphernalia, or tobacco advertisements in store windows facing the public right of way.

B. The Tobacco Seller does not sell Tobacco Products to a Person under the minimum age for purchase pursuant to state and federal laws;

C. The Tobacco Seller does not adversely affect the peace or safety of Persons residing or working in the surrounding area;

D. The Tobacco Seller’s activities do not result in repeated nuisance activities within the premises or in close proximity of the premises, including but not limited to disturbance of the peace, illegal drug activity, harassment of passersby, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, curfew violations, or police detentions and arrests;

E. The Tobacco Seller’s activities do not result in violations to any applicable provision of any other City, state, or federal regulation, ordinance or statute;

F. The Tobacco Seller’s upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of the surrounding neighborhood.

(Ord. 926, § 2, passed 11-14-2016)

## 6.14.030 APPLICATION PROCEDURES.

Application for a Tobacco Seller’s license shall be submitted for the location sought in the name of each Person proposing to hold the license and shall be signed by each Person or an authorized agent thereof. It is the responsibility of each Person to be informed of the laws affecting the issuance of a Tobacco Seller’s license. A license that is issued in error or on the basis of false or misleading information supplied by a Person may be revoked pursuant to Section [6.14.090](#). All applications shall be submitted on a form supplied by the City and shall contain the following information:

A. The name, address, and telephone number of each Person intending to hold the license.

B. The business name, address, and telephone number of each location for which a Tobacco Seller’s License is sought.

C. The name and mailing address authorized by each Person to receive all license-related communications and notices (the “Authorized Address”). If an Authorized Address is not supplied, each Person shall be understood to consent to the provision of notice at the business address specified pursuant to subparagraph B above.

D. Whether or not any Person has previously been issued a license pursuant to this Chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation.

E. Such other information as the City deems necessary for the administration or enforcement of this Chapter.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.040 ISSUANCE OF LICENSE.**

Upon the receipt of an application for a Tobacco Seller's license and the license fee, the City shall issue a license for the location sought unless substantial evidence in the record demonstrates one of the following bases for denial:

A. The application is incomplete or inaccurate; or

B. The application seeks authorization for Tobacco Selling by a Person for whom a suspension is in effect or whose license has been revoked pursuant to Section [6.14.090](#) of this Chapter.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.050 DISPLAY OF LICENSE.**

Each license shall be prominently displayed in a publicly visible location at the licensed premises.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.060 LICENSE FEE.**

The fee to issue or to renew a Tobacco Seller's license shall be established by resolution of the City Council.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.070 LICENSE NONTRANSFERABLE.**

A Tobacco Seller's license is nontransferable. If the information required in the license application pursuant to Section [6.14.030](#), items A, B, or C changes, the licensed Tobacco Seller must notify the City within 14 days, and update all information on the license application form in order to continue to act as a licensed Tobacco Seller. For example, if a Tobacco Seller to whom a license has been issued changes business location, the Tobacco Seller must supply updated license information within 14 days of Tobacco Selling at the new location. If a business is sold, the new owner must apply for a license for that location before Tobacco Selling. The current licensee shall notify the City of the sale of the Tobacco Selling business.

(Ord. 905, §2, passed 12-10-2012)

#### **6.14.080 LICENSE VIOLATION.**

A. *Violation of Tobacco-Related Laws.* It shall be a violation of a Tobacco Seller's license for a licensed Tobacco Seller or his or her agent or employee to violate any local, state, or federal tobacco-related law.

B. *License Compliance Monitoring.* The City of Fort Bragg anticipates that compliance checks of each licensed Tobacco Seller will be conducted at least two (2) times during each twelve-month period by the Mendocino County Health and Human Services Agency, Public Health Branch. The City shall not enforce any tobacco-related minimum-age law against a person who otherwise would be in violation of such law because of the person's age (hereinafter "youth decoy") if the violation occurs when:

1. The youth decoy is participating in a compliance check supervised by a law enforcement official, a code enforcement official, or any peace officer; or
2. The youth decoy is participating in a compliance check funded or supervised in part by the County of Mendocino or, funded or supervised in any part by the California Department of Health Services.

(Ord. 905, §2, passed 12-10-2012)

## **6.14.090 SUSPENSION, TERMINATION OR REVOCATION OF LICENSE.**

A. *Administrative Penalties.* The remedies provided by these provisions are cumulative and in addition to any other remedies available at law or in equity. Upon a determination by the City that a licensed Tobacco Seller has engaged in any conduct that violates the provisions of this Chapter, the City may impose the following administrative penalties.

1. Upon a finding by the City of a first license violation within any thirty-six (36)-month period, the licensed Tobacco Seller shall receive a Letter of Reprimand from the City which shall advise the licensed Tobacco Seller that if the licensed Tobacco Seller trains all sales employees at the location of the sale in the laws pertaining to the sale of tobacco products to minors and techniques to ensure future compliance with said laws no penalty will be imposed. The licensed Tobacco Seller must file with the City, within thirty (30) days of receipt of the Letter of Reprimand, an affidavit signed by the licensed Tobacco Seller and each of its sales employees, affirming that said training has been completed. If licensed Tobacco Seller fails to timely submit the affidavit, the City shall impose a fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for a first violation in any thirty-six (36)-month period.
2. Upon a finding by the City of a second license violation within any thirty-six (36)-month period, the licensed Tobacco Seller shall pay a fine of not less than fifteen hundred dollars (\$1,500) and not exceeding two thousand dollars (\$2,000) or the license shall be suspended for not less than fourteen (14) days and not more than twenty-one (21) days.
3. Upon a finding by the City of a third license violation within any thirty-six (36)-month period, the licensed Tobacco Seller shall pay a fine not less than three thousand dollars (\$3,000) and not exceeding five thousand dollars (\$5,000) or the license shall be suspended for not less than thirty (30) nor more than sixty (60) days for a third violation.

4. Upon a finding by the City of a fourth license violation within any thirty-six (36)-month period, the licensed Tobacco Seller shall pay a fine of not less than ten thousand dollars (\$10,000) and not exceeding twenty thousand dollars (\$20,000) or the license shall be suspended for not less than ninety (90) nor more than one hundred eighty (180) days.

5. Upon a finding by the City of a fifth or subsequent license violation within any thirty-six (36)-month period licensed Tobacco Seller's license shall be revoked for not less than one (1) year.

B. *Notification of Violation and Administrative Penalties.* The City shall verbally notify a licensed Tobacco Seller found violating this Chapter within forty-eight (48) hours or by written Notice of Violation within five (5) days.

C. *Settlement of Administrative Penalties.* The City may engage in settlement discussions with the licensed Tobacco Seller regarding violations if a written request by the Tobacco Seller is received by the City within fifteen (15) calendar days of receipt of Notice of Violation. Settlement discussions may include imposition of fines, suspensions or other reasonable conditions intended to avoid future violations. A Notice of Settlement shall be memorialized if an agreement is reached and provided to the City, and no appeal shall be taken. Settlements will not be confidential and will be conferred without approval from the City Council. Settlements will include an admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations.

D. *Appeal of Suspension, Penalties or Revocation.* A decision of the City to impose penalties or to revoke or suspend a license under this Section [6.14.090](#) is appealable in accordance with the procedures described in Chapter [1.08](#).

E. *License Suspension Requires the Removal of all Tobacco Products from Public View.* A Tobacco Seller whose license is suspended must remove from public view all Tobacco Products and tobacco advertising for the duration of the suspension. Failure to remove such items from view will be regarded as a violation of this ordinance equivalent to that of selling to minors.

F. *Revocation of License Obtained Under False Pretenses.* A Tobacco Seller whose license is obtained under false pretenses shall have that license revoked. This revocation shall be with prejudice. A licensee whose license is revoked pursuant to this subsection may not apply for a new license for a period of one (1) year from the date the license is revoked.

G. *Revocation of License Issued in Error.* A Tobacco Seller's license shall be revoked if the City finds, after notice and opportunity to be heard, that one or more of the bases for denial of a license under Section [6.14.040](#) existed at the time application was made or at any time before the license was issued. The revocation shall be without prejudice to the filing of a new application for a license.

H. *Termination of License for Failure to Pay Renewal Fees.* A Tobacco Seller's license which is not timely renewed pursuant to Section [6.14.020](#)(B) shall automatically be deemed terminated by operation of law. No Person shall engage in Tobacco Selling at such location until a new license has been issued for that location.

(Ord. 905, §2, passed 12-10-2012)

## **6.14.100 ADMINISTRATIVE FINE.**

A. *Grounds for Fine.* If the City determines, based on substantial record evidence, that a Tobacco Seller, or any employee, contractor or agent of a Tobacco Seller, has engaged in Tobacco Selling without a license, or during a period when the Tobacco Seller's license is suspended, the City shall fine the Tobacco Seller a fine not exceeding five hundred dollars (\$500) per violation. Each day that the Tobacco Seller engages in Tobacco Selling in violation of this Section [6.14.100](#) shall constitute a separate violation.

B. *Notice of Violation.* A notice of violation and of intent to impose a fine shall be personally served on, or sent by certified mail to, the Tobacco Seller subject to the fine. The notice shall state the basis of the City's determinations and include an advisement of the right to request a hearing to contest the fine. A decision of the City to impose a fine under this Section [6.14.100](#) is appealable in accordance with the procedures described in Chapter [1.08](#).

(Ord. 905, §2, passed 12-10-2012)

## **6.14.110 ENFORCEMENT.**

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

A. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this ordinance shall constitute a violation.

B. In addition to the administrative enforcement procedures provided by Section [6.14.090](#), violations of this ordinance may, at the discretion of the District Attorney, be prosecuted as misdemeanors.

C. Violations of this Chapter are hereby declared to be public nuisances.

D. Violations of this Chapter are hereby declared to be unfair business practices and are presumed to at least nominally damage each and every resident of the community in which the business operates.

E. In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the City Attorney or the District Attorney, including, for example, administrative or judicial nuisance abatement proceedings, other legally authorized enforcement proceedings, and suits for injunctive relief.

F. Any Person acting for the interests of itself, its members, or the general public may bring an action for injunctive relief to prevent future such violations or to recover such actual damages as he or she may prove.

(Ord. 905, §2, passed 12-10-2012)