



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Meeting Agenda Public Safety Committee

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Wednesday, May 19, 2021

3:00 PM

Via Video Conference

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### MEETING CALLED TO ORDER

### ROLL CALL

DUE TO THE PROVISIONS OF THE GOVERNOR'S EXECUTIVE ORDERS N-25-20 AND N-29-20 WHICH SUSPEND CERTAIN REQUIREMENTS OF THE BROWN ACT, AND THE ORDER OF THE HEALTH OFFICER OF THE COUNTY OF MENDOCINO TO SHELTER IN PLACE TO MINIMIZE THE SPREAD OF COVID-19, THE PUBLIC SAFETY COMMITTEE AND STAFF WILL BE PARTICIPATING BY VIDEO CONFERENCE IN THE PUBLIC SAFETY COMMITTEE MEETING OF WEDNESDAY, MAY 19, 2021.

In compliance with the Shelter-in-Place Orders of the County and State, The meeting will be live-streamed on the City's website at <https://city.fortbragg.com/> and on Channel 3. Public Comment regarding matters on the agenda may be made in any of the following ways: (1) By joining the Zoom video conference, (2) Through the City's online eComment agenda feature, (3) Emailed to Police Services Technician Laura Godinez, [lgodinez@fortbragg.com](mailto:lgodinez@fortbragg.com), or (4) Written comments delivered through the drop-box for utility payments to the right of the front door at City Hall, 416 N. Franklin Street.

We appreciate your patience and willingness to protect the health and wellness of our community and staff. If you have any questions regarding this meeting, please contact Police Services Technician Laura Godinez, [lgodinez@fortbragg.com](mailto:lgodinez@fortbragg.com), 707-961-2800 ext. 101.

### ZOOM WEBINAR INVITATION

Please click the link below to join the webinar:  
<https://zoom.us/j/97805535082>

TO SPEAK DURING PUBLIC COMMENT PORTIONS OF THE AGENDA VIA ZOOM, PLEASE JOIN THE MEETING AND USE THE RAISE HAND FEATURE WHEN IT IS TIME FOR PUBLIC COMMENT.

### 1. APPROVAL OF MINUTES

- 1A. [21-237](#) Approve Minutes Of The Special Public Safety Committee Meeting April 28, 2021

Attachments: [PSCM Special 2021-04-28.pdf](#)

**2. PUBLIC COMMENTS ON NON-AGENDA ITEMS**

**3. CONDUCT OF BUSINESS**

- 3A. [21-214](#) Ordinance Banning Flavored Tobacco Sales

Attachments: [051921 Staff Report Tobacco Ordinance](#)  
[Att. 1 - Chapter 6.14 Recommended updates](#)  
[Att. 2 - Mendocino County Tobacco Ordinance](#)

**4. MATTERS FROM COMMITTEE / STAFF**

- 4A. [21-196](#) Receive Oral Update From Staff on Departmental Activities

**ADJOURNMENT**

STATE OF CALIFORNIA        )  
   )ss.  
 COUNTY OF MENDOCINO    )

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg and that I caused this agenda to be posted in the City Hall notice case on Friday May 14, 2021.

\_\_\_\_\_  
 Laura Godinez, Police Services Technician

**NOTICE TO THE PUBLIC**

**DISTRIBUTION OF ADDITIONAL INFORMATION FOLLOWING AGENDA PACKET DISTRIBUTION:**

- *Materials related to an item on this Agenda submitted to the Council/District/Agency after distribution of the agenda packet are available for public inspection in the lobby of City Hall at 416 N. Franklin Street during normal business hours.*
- *Such documents are also available on the City of Fort Bragg’s website at <http://city.fortbragg.com> subject to staff’s ability to post the documents before the meeting*

**ADA NOTICE AND HEARING IMPAIRED PROVISIONS:**

*It is the policy of the City of Fort Bragg to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. Upon request, this agenda will be made available in appropriate alternative formats to persons with disabilities.*

*If you need assistance to ensure your full participation, please contact the City Clerk at (707) 961-2823. Notification 48 hours in advance of any need for assistance will enable the City to make reasonable arrangements to ensure accessibility.*

*This notice is in compliance with the Americans with Disabilities Act (28 CFR, 35.102-35.104 ADA Title II).*



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## Text File

File Number: 21-237

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**Agenda Date:** 5/19/2021

**Version:** 1

**Status:** Business

**In Control:** Public Safety Committee

**File Type:** Committee Minutes

**Agenda Number:** 1A.

Approve Minutes Of The Special Public Safety Committee Meeting April 28, 2021



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
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## Meeting Minutes Public Safety Committee

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Wednesday, April 28, 2021

3:00 PM

Via Video Conference

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### Special Meeting

#### MEETING CALLED TO ORDER

Meeting Chair Peters opened the meeting at 3:00 PM

#### ROLL CALL

Present: 2 - Bernie Norvell and Lindy Peters

#### 1. APPROVAL OF MINUTES

- 1A. [21-191](#) Approve Minutes of the Special Public Safety Committee Meeting March 17, 2021

A motion was made by Committee Member Norvell and seconded by Chair Peters that these Committee Minutes be approved for Council review. The motion was carried by unanimous vote.

#### 2. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Public Comments on non agenda items made by:

Jay McMartin

Robert Krebs

#### 3. CONDUCT OF BUSINESS

- 3A. [21-192](#) Receive Verbal Report On Police Department Continued De-Escalation Efforts

Police Captain O'Neal explained the three most important factors in De-Escalation Efforts for the local Police Department. The three factors are cultural aspect in the department, equipment available to officers, and final and foremost the most important one training. The Fort Bragg Police Department has officers complete more than the POST required 24 hour training every two years in order to maintain officers aware and fully trained on potential situations.

Captain O'Neal shared the different types of equipment available at the local department and also equipment that the department plans on purchasing to assist in de-escalation efforts. A short video was demonstrated where the Bolo Wrap was deployed in attempt to safely detain a subject. Captain O'Neal mentioned that the Bolo Wrap is one of the pieces of equipment the police department is planning on purchasing in the near future to assist the officers in difficult

situations.

**3B. [21-193](#)** Update on Tobacco Compliance Checks and Paraphernalia Ordinance

Police Officer Zavala presented the update on the Tobacco Compliance within the City's businesses. He mentioned that the businesses visited requested ID from persons who appear to be under the age of 25. He commented on the fact that all synthetic marijuana were secured in locked displays at the same businesses.

Captain O'Neal elaborated on the update regarding enforcing a Paraphernalia Ordinance in the City. He mentioned that the planned approach is adapting the State guidelines regarding non-displays of paraphernalia within the City.

**3C. [21-194](#)** Update on Graffiti Abatement Program

An update was given by Captain O'Neal and how the program has been very successful with the community taking care of the graffiti. One example he mentioned was Waste Management taking on the initiative in covering up graffiti on their dumpsters around the City. There was one business that did not comply and an employee from the City's Public Works Department had to cover up the graffiti. Captain O'Neal clarified that this program is not for targeting any home owner or business but to have everyone keep the community free from graffiti.

**3D. [21-195](#)** Receive Verbal Report on Homeless and Mental Health Current Issues

Police Chief Naulty elaborated on the recent increase in mental health calls and what approach needs to be done in order to have more expedited care units with professional personnel assisting officers during mental health calls. Chief Naulty informed the public that the most difficult aspect has been finding sufficient funding and assistance since the State closed down numerous mental health facilities years ago. Chief Naulty would like the City of Fort Bragg to become a more proactive City in assisting any person going through mental health issues with all available resources in the community.

#### **4. MATTERS FROM COMMITTEE / STAFF**

**4A. [21-196](#)** Receive Oral Update From Staff on Departmental Activities

Public Works Director John Smith provided an update on projects that are currently being worked on around the City. Some of those projects mentioned were the re striping on streets and curbsides, replacing faded traffic signs, and other extra projects that were on hold due to staff shortages. There will be major work on about five alley ways off of Maple Street, where there should not be much traffic disruption while the work is being completed.

Committee Member Norvel commented on possibly having more foot patrol in the downtown area of the City. Captain O'Neal agreed on the fact that the Police Department should be more proactive in conducting more foot patrol in the downtown area. He is planning on establishing a sub station in the downtown area to accommodate the police officers in order

to complete their reports in a timely manner while having more availability to the downtown area.

Chief Naulty closed the meeting by mentioning that the police officers will be conducting more traffic enforcement around the City.

## **ADJOURNMENT**

**Chair Peters adjourned the meeting at 4:03 PM**



# City of Fort Bragg

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## Text File

File Number: 21-214

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**Agenda Date:** 5/19/2021

**Version:** 1

**Status:** Business

**In Control:** Public Safety Committee

**File Type:** Staff Report

**Agenda Number:** 3A.

**Ordinance Banning Flavored Tobacco Sales**



# CHAPTER 6.14

## LICENSING OF TOBACCO SELLERS

### Section

- [6.14.010 Definitions.](#)
- [6.14.020 Requirement for Tobacco Seller's license.](#)
- [6.14.022 Performance standards – Deemed approved activities.](#)
- [6.14.030 Application procedures.](#)
- [6.14.040 Issuance of license.](#)
- [6.14.050 Display of license.](#)
- [6.14.060 License fee.](#)
- [6.14.070 License nontransferable.](#)
- [6.14.080 License violation.](#)
- [6.14.090 Suspension, termination or revocation of license.](#)
- [6.14.100 Administrative fine.](#)
- [6.14.110 Enforcement.](#)

### 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)



## ORDINANCE NO. 4474

### ORDINANCE REPEALING AND REPLACING CHAPTER 6.20 OF THE MENDOCINO COUNTY CODE REGARDING LICENSURE OF TOBACCO RETAILERS

#### Sec. 6.20.010 - Definitions.

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

- (a) "Agency" means the County Health and Human Services Agency, Public Health Branch or the duly authorized designee of the County Health and Human Services Agency, Public Health Branch.
- (b) "Arm's Length Transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this Chapter is not an Arm's Length Transaction.
- (c) "Characterizing Flavor" means 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.
- (d) "Compliance Check" means the process in which the Agency sends a Youth Decoy into a Tobacco Retailer's establishment to attempt to purchase a Tobacco Product.
- (e) "Electronic Nicotine Delivery Systems (ENDS)" means 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.
- (f) "Flavored Tobacco Product" means any tobacco product (other than cigarettes as defined by federal law) that contains a constituent that imparts a characterizing flavor
- (g) "Hearing Officer" means either the "County Hearing Officer" identified by Chapter 2.76 of the Mendocino County Code or a person assigned by the Agency to conduct a hearing pursuant to this Chapter, who is qualified by training and experience to conduct such an adjudicatory hearing.
- (h) "Person" shall mean any person, firm, partnership, trust, estate, association, corporation, or organization of any kind. Where a principal acts through an agent, the word "person" shall include both such principal and agent.

- (i) "Smoking" means 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.
- (j) "Tobacco paraphernalia" means 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.
- (k) "Tobacco Product" means:
  1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
  2. Any Electronic 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. Notwithstanding any provision of subsections 1. and 2. to the contrary, "Tobacco Product" includes any component, part, or accessory of a Tobacco Product, whether or not sold separately. "Tobacco Product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marked and sold solely for such an approved purpose.
- (l) "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco or Tobacco Products: "Tobacco Retailing" 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.
- (m) "Youth Decoy" shall refer to a participant in a compliance check who is under the minimum age required for purchase pursuant to state and federal laws, reasonably appears under the same minimum age and who has participated in the Public Health Branch training for youth involved with the tobacco control program compliance surveys.

**Sec. 6.20.015 - 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.

**Sec. 6.20.020 - Requirement for Tobacco Retailer License.**

- (a) It shall be unlawful for any Person to act as a Tobacco Retailer without first obtaining and maintaining a valid Tobacco Retailer's license pursuant to this Chapter for each location at which that activity is to occur. No license may be issued to authorize Tobacco Retailing at other than a fixed location.
- (b) The payment of the license fee designated in Section 6.20.060 confers paid status upon a license for a term of one year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's license no later than thirty (30) days prior to expiration of the payment term.
- (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.
- (d) Nothing in this Chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the right to act as a Tobacco Retailer at the location in the County of Mendocino identified on the face of the permit. 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 Labor Code §6404.5.
- (e) It is the responsibility of each Tobacco Retailer to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's

license. No Retailer may rely on the issuance of a license as a determination by the Agency that the Retailer has complied with all laws applicable to Tobacco Retailing.

**Sec. 6.20.030 - Application Procedure.**

- (a) Application for a Tobacco Retailer's license shall be submitted to Health and Human Services Agency, Public Health, Tobacco Retail License Program in the name of each Person proposing to conduct retail tobacco sales and shall be signed by each Person or an authorized agent thereof on an annual basis. It is the responsibility of each Person to be informed of the laws affecting the issuance of a Tobacco Retailer'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 6.20.090(h) of this Chapter. All applications shall be submitted on a form supplied by the Agency and shall contain the following information:
  - 1. The name, address, and telephone number of each Person.
  - 2. The business name, address, and telephone number of the single fixed location for which a Tobacco Retailer's License is sought.
  - 3. 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 2 above.
  - 4. 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.
  - 5. Such other information as the Agency deems necessary for the administration or enforcement of this ordinance.
- (b) All licensed Tobacco Retailers shall inform the Agency in writing of any change in the information submitted on the application for a Tobacco Retailer's license within 14 days of a change.

**Sec. 6.20.040 - Issuance of License.**

Upon the receipt of an application for a Tobacco Retailer's license and the license fee, the Agency shall issue a license unless substantial evidence demonstrates one or more of the following bases for denial exists:

- (a) The information presented in the application is incomplete, inaccurate, or false. Intentionally supplying inaccurate or false information shall be a violation of this Chapter.
- (b) The application seeks authorization for Tobacco Retailing by a Person for which or whom a suspension is in effect pursuant to Section 6.20.090 of this Chapter; or by a Person which or who has had a license revoked pursuant to Section 6.20.090 of this Chapter.

- (c) The Tobacco Retailer at the time of the application is indebted to the County for any delinquent license fees or fines pursuant to this Chapter, unless such licensee, with the consent of the Agency enters into a written agreement with the County to pay such delinquent fees in at least monthly installments extending over a period not to exceed one year and is current with said installment payments.
- (d) The Tobacco Retailer has violated this Chapter or any other tobacco control law three (3) or more times within the previous sixty (60) months.

**Sec. 6.20.050 - Display of License.**

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

**Sec. 6.20.060 - Fees for License.**

The fee to issue or to renew a Tobacco Retailer's license shall be paid annually and shall be established by resolution of Board of Supervisors of the County of Mendocino. The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and enforcement, but shall not exceed the cost of the regulatory program authorized by this Chapter. Annual fees shall not be pro-rated or refunded during the course of the year. The Agency may charge a re-inspection fee to offset the additional staff time required to handle non-compliant businesses. Additional inspections thereafter will be billed based on actual costs incurred.

**Sec. 6.20.070 - Licenses Nontransferable.**

A Tobacco Retailer's license is nontransferable from one Person to another or from one location to another. Whenever a Tobacco Retailing location has a change in ownership, a new Tobacco Retailer's license is required.

**Sec. 6.20.080 - License Violation.**

VIOLATION OF LAWS RELATED TO TOBACCO PRODUCTS. It shall be a violation of a Tobacco Retailer's license for a Person or his or her agent or employee to violate any local, state, or federal tobacco-related laws regarding the sales, advertising or display of Tobacco Products, including, but not limited to, the Stop Tobacco Access to Kids Enforcement Act ("STAKE Act"), California Businesses and Professions Code section 22958, and California Penal Code section 308.

**Sec. 6.20.085 - Compliance Monitoring.**

The County anticipates that compliance checks of each Tobacco Retailer will be conducted at least two (2) times during each twelve-month period by the Agency or its designee(s). The Mendocino County Sheriff's Office shall also have authority to assist in enforcement. Retailers may be subject to additional inspections based on random selection, past violation(s) or complaints. Nothing in this paragraph shall create a right of action in any licensee or other Person against the County or its agents. Compliance checks shall be carried out in an effort to enforce

any local, state, or federal law related to tobacco sales and/or tobacco related sales, especially those related to a minimum age for tobacco purchases or possession. The County 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:

- (a) the Youth Decoy is participating in a compliance check supervised by a law enforcement official, a code enforcement official, or any peace officer; or
- (b) the Youth Decoy is participating in a compliance check funded or supervised in any part by the County or, funded or supervised in any part by the California Department of Health Services.

**Sec. 6.20.090 - Suspension, Termination or Revocation of License.**

- (a) **TOBACCO RETAILING WITHOUT A VALID LICENSE.** In addition to any other penalty authorized by law, including the application of Administrative Fines under Section 6.20.100, if the Agency finds based on a preponderance of the evidence, after notice and an opportunity to be heard pursuant to section 6.20.090(d) 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 at a location within any sixty (60) month period, no new license may be issued for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until one (1) year has passed from the date of the violation.
  - 2. After a second violation at a location within any sixty (60) month period, no new license may be issued for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until three (3) years have passed from the date of the violation.
  - 3. After a third violation at a location within any sixty (60) month period, no new license may be issued for the Person or the location unless ownership of the business at the location has been transferred in an Arm's Length Transaction.
- (b) **VIOLATION OF MINIMUM AGE LAWS RELATED TO TOBACCO PRODUCTS: SUSPENSION, REVOCATION.** In addition to any other remedy authorized by law after notice and opportunity to be heard pursuant to section 6.20.090(d), a Tobacco Retailer's license may be suspended or revoked as provided in this section if the Agency finds, based on a preponderance of the evidence, that the licensee, or any of the licensee's agents or employees, has violated tobacco-related laws as indicated in Section 6.20.80. A Tobacco Retailer shall also be charged the following fines. All administrative penalties resulting from violation of this Chapter and collected by the Agency shall be maintained in a fund specifically designated for compliance monitoring, enforcement efforts and education related to the sale of Tobacco Products to youth.
  - 1. Upon a finding by the Agency of a first license violation within any thirty-six (36) month period, the Person shall receive a letter of reprimand from the Agency which shall advise the Person that if Person trains all sales employees at the location of the sale in the laws pertaining to the sale of Tobacco Products to persons under the minimum age allowed by state law to purchase Tobacco Products, and

techniques to ensure future compliance with said laws, no penalty will be imposed. Person must submit to the Department, within 30 days, an affidavit signed by Person and the sales employees that said training has been completed. If Person fails to timely submit the affidavit, the Agency shall impose a fine of one thousand dollars (\$1,000.00) for a first violation in any thirty-six (36) month period.

2. Upon a finding by the Agency of a second license violation within any thirty-six (36) month period, the Tobacco Retailer shall pay a fine of two thousand dollars (\$2,000.00) and the Person's license shall be suspended for twenty-one (21) days.
  3. Upon a finding by the Agency of a third license violation within any thirty-six (36) month period, the Tobacco Retailer shall pay a fine of five thousand (\$5,000.00) and the Person's license shall be suspended for sixty (60) days.
  4. Upon a finding by the Agency of a fourth license violation within any thirty-six (36) month period, the Tobacco Retailer shall pay a fine of ten thousand dollars (\$10,000.00) and the Person's license shall be suspended for one hundred eighty (180) days.
  5. Upon a finding by the Agency of a fifth or subsequent license violation within any thirty-six (36) month period, the Tobacco Retailer shall pay a fine of twenty thousand dollars (\$20,000.00) and the Person's license shall be revoked for not less than one year.
- (c) **NO DISPLAY OR ADVERTISING.** During any period of suspension or revocation the licensee:
1. Shall remove all Tobacco Products from public view. Failure to do so shall result in an administrative fine pursuant to Section 6.20.100, with each day constituting a separate violation.
  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. Failure to do so shall result in an administrative fine pursuant to Section 6.20.100, with each day constituting a separate violation.
- (d) **NOTICE OF INTENDED DECISION.** Upon the existence of any of the grounds for ineligibility, denial, suspension, or revocation of a license pursuant to this chapter, the Agency shall issue to the license applicant or holder a notice of intended decision. The notice of intended decision shall state the grounds upon which the denial, revocation, or suspension is based. The notice of intended decision shall specify the effective date of the action. The notice of intended decision shall advise the license applicant or holder that the suspension or revocation shall become final unless the person files a written request for administrative review within 10 calendar days of the date of service of the notice of intended decision.
- (e) **SERVICE PROCEDURES.** The Agency's decision to impose a suspension or revocation may be served by personal service or by certified mail, postage prepaid with a return receipt requested. Simultaneously, the decision may be sent by first class mail, postage prepaid with certificate of mailing requested. Certified and first class mail will be addressed to the Tobacco Retailer at the address shown on the license application. If the decision is sent by certified mail and returned unsigned, then service shall be deemed effective

pursuant to first class mail, provided the decision sent by first class mail is not returned by the United States Postal Service undelivered. In the case of service by certified mail for which a signed receipt is returned, the date of service shall be the date of signing of the receipt. In the case of service by regular first class mail, the date of service shall be the date upon which such mail was deposited in the United States Mail with postage prepaid, plus five days.

- (f) **TERMINATION OF LICENSE FOR FAILURE TO PAY RENEWAL FEES.** A Tobacco Retailer's license which is not timely renewed pursuant to §6.20.020(b) shall automatically be deemed terminated by operation of law.
- (g) **REVOCAION OF LICENSE ISSUED IN ERROR.** A Tobacco Retailer's license shall be revoked if the Agency finds, after notice and opportunity to be heard, that one or more of the bases for denial of a license under §6.20.040 existed at the time application was made or at any time before the license issued. The decision by the Agency shall be the final decision of the County. The revocation shall be without prejudice to the filing of a new application for a license.
- (h) **REVOCAION OF LICENSE OBTAINED UNDER FALSE PRETENSES.** Tobacco Retailers whose licenses are obtained under false pretenses shall have their license revoked. This revocation shall be with prejudice. One calendar year must elapse between any revocation pursuant to this subsection and any subsequent application.
- (i) **APPEAL OF SUSPENSION, PENALTIES OR REVOCAION.** Requests for appeal must be filed with the Agency within ten (10) calendar days from the date of a properly served decision under 6.20.090(e). With respect to suspensions or revocations, if such an appeal is timely made it shall stay enforcement of the appealed action. An appeal is not available for a revocation made pursuant to 6.20.090(f) above. The Agency may engage in settlement negotiations and may enter into a settlement agreement with a Tobacco Retailer alleged to have violated this Chapter; provided a timely appeal has been filed. Settlements shall not be confidential.

**Sec. 6.20.100 - Administrative Fine.**

- (a) **GROUND FOR FINE.** If the Agency finds, based on a preponderance of the evidence, that any unlicensed person, including a person named on a revoked or suspended license, has engaged in Tobacco Retailing without a valid license, including the failure to remove Tobacco Products from public view and failure to remove advertising promoting the sale of Tobacco Products, the Agency shall fine that Person:
  - 1. a fine not exceeding one hundred dollars (\$100) for a first violation in any thirty-six (36) month period; or
  - 2. a fine not exceeding two hundred dollars (\$200) for a second violation in any thirty-six (36) month period; or
  - 3. a fine not exceeding five hundred dollars (\$500) for a third or subsequent violation in any thirty-six (36) month period.

Each and every day a violation of this provision exists shall constitute a separate violation.

- (b) **NOTICE OF VIOLATION.** A notice of violation and of intent to impose a fine shall state the basis of the Agency's determinations as identified below and include an advisement of the



right to appeal. Any appeal must be made in accordance with the procedure identified in Section 6.20.105 below. The notice of violation shall contain the following:

1. The name and address of the responsible Tobacco Retailer;
  2. The basis of the Agency's determinations;
  3. A statement explaining how, where, to whom, and within what number of days the penalty shall be paid;
  4. A statement explaining that the fine is effective immediately with the understanding that any subsequent Notice of Violation would be considered a repeat violation subject to a higher penalty;
  5. Identification of appeal rights, including the time within which the Notice of Violation may be contested.
- (c) **SERVICE OF NOTICE OF VIOLATION.** The notice of violation and of intent to impose a fine may be served by personal service or by certified mail, postage prepaid with a return receipt requested. Simultaneously, the decision may be sent by first class mail, postage prepaid with certificate of mailing requested. Certified and first class mail will be addressed to the Tobacco Retailer at the address shown on the license application. If the decision is sent by certified mail and returned unsigned, then service shall be deemed effective pursuant to first class mail, provided the decision sent by first class mail is not returned by the United States Postal Service undelivered. In the case of service by certified mail for which a signed receipt is returned, the date of service shall be the date of signing of the receipt. In the case of service by regular first class mail, the date of service shall be the date upon which such mail was deposited in the United States Mail with postage prepaid, plus five days.
- (d) **IMPOSITION OF FINE.** If no appeal is timely received, the Agency's determination on the violation and the imposition of a fine shall be final and payment shall be made within thirty (30) calendar days of written demand made in the manner specified above for a notice of violation. If the fine is not paid within that time, the fine may be collected, along with interest at the legal rate, in any manner provided by law. In the event that a judicial action is necessary to compel payment of the fine and accumulated interest, the Person or Persons subject to the fine shall also be liable for the costs of the suit and attorney's fees incurred by the County in collecting the fine.
- (e) **FAILURE TO PAY FINE.** The Agency or County may impose any remedy authorized by law to collect the administrative fine if not paid timely pursuant to the provisions of this Chapter.

#### **Sec. 6.20.105. Appeal Procedure.**

Whenever this Chapter provides for a right to appeal, the recipient must give notice to the Agency within 10 calendar days from the date of service by providing a document in writing, bearing the title, "Appeal of Tobacco Retail Decision", containing the name, address, and phone number of the appellant and the grounds on which the decision is being contested.

- (a) The notice of appeal shall be accompanied by an advance deposit in the amount of the total administrative penalty. If the Board of Supervisors has established a hearing fee, the hearing fee shall also be provided.

- (b) Any notice of appeal filed without providing the advance deposit and hearing fee (if applicable) shall be deemed incomplete.
- (c) The Agency receiving a timely and properly filed appeal, shall then cause the matter to be set for hearing before a Hearing Officer by notifying the Hearing Officer directly or by requesting County Counsel to coordinate the Hearing Officer.
- (d) A hearing before a Hearing Officer shall be set for a date that is not less than ten (10) and not more than (30) days from the date that the notice of appeal is filed.
- (e) Either the Hearing Officer or County Counsel in cooperation with the Hearing Officer, shall notify the parties in writing, at least ten (10) days prior to the hearing date, of the date and location of the hearing. It shall be sufficient to provide notice to the appellant by using the address listed in the request for appeal.
- (f) At the prescribed time and place, the Hearing Officer shall consider relevant evidence from all parties as to whether the violation of tobacco-related laws occurred. The Agency's notice of violation, intended decision and any additional documents submitted by the Agency shall constitute prima facie evidence of the respective facts contained in those documents.
- (g) Parties may choose to be represented by an attorney. However, the Administrative Procedure Act (commencing with Government Code Section 11500) shall not be applicable to such hearing nor shall formal rules of evidence in civil or criminal proceedings be applicable.
- (h) The failure of any appellant to appear at the scheduled hearing shall constitute an abandonment of the appeal.
- (i) The Hearing Officer may continue the hearing and request additional information from the parties prior to issuing a written decision.
- (j) The Agency has the burden of proving by a preponderance of the evidence that the alleged violation occurred.
- (k) Following conclusion of the hearing and based on the evidence before it, the Hearing Officer shall prepare a written decision that either grants or denies the appeal, contains findings of facts and conclusions of law in support of the Hearing Officer's decision to impose fines, a license suspension, condition or some combination thereof. The Hearing Officer's written decision shall be the final decision of the County and shall become final upon the date notice thereof is mailed to the appellant by certified mail.
- (l) If the Hearing Officer determines that the Tobacco Retail Decision shall be upheld, then the fine amount identified, or as otherwise adjusted by the Hearing Officer, shall be immediately collectable by the Agency. If the Hearing Officer determines the Tobacco Retail Decision should not be upheld, the Hearing Officer shall order the Citation dismissed, and the Agency shall return the advance deposit.

- (m) Any determination of the Hearing Officer shall be subject to judicial review pursuant to Code of Civil Procedure Section 1094.5.

**Sec. 6.20.110 - 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 this Chapter, violations of this ordinance may, at the discretion of the District Attorney, be prosecuted as misdemeanors.
- (c) Violations of this ordinance are hereby declared to be public nuisances.
- (d) Violations of this ordinance 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 ordinance may be remedied by a civil action brought by the County Counsel or the District Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code 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.
- (g) Any person who is found to have violated this Chapter shall be liable for such costs, expenses and disbursements paid or incurred by the County or any of its contractors in the correction, abatement, prosecution of, or administrative hearing, on the violation. Re-inspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the establishment and may be set by the Board of Supervisors in the Master Fee Schedule.

**Sec. 6.20.120 - Severability.**

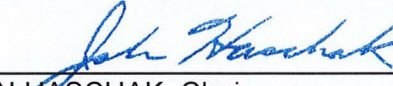
If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining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

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 17<sup>th</sup> day of November, 2020, by the following roll call vote:

AYES: Supervisors Brown, McCowen, Haschak, Gjerde, and Williams  
NOES: None  
ABSENT: None

WHEREUPON, the Chair declared the Ordinance passed and adopted and SO ORDERED.

ATTEST: CARMEL J. ANGELO  
Clerk of the Board

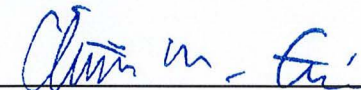
  
\_\_\_\_\_  
JOHN HASCHAK, Chair  
Mendocino County Board of Supervisors

  
\_\_\_\_\_  
Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

APPROVED AS TO FORM:  
CHRISTIAN M. CURTIS  
County Counsel

BY: CARMEL J. ANGELO  
Clerk of the Board

  
\_\_\_\_\_

  
\_\_\_\_\_  
Deputy



# City of Fort Bragg

416 N Franklin Street  
Fort Bragg, CA 95437  
Phone: (707) 961-2823  
Fax: (707) 961-2802

## Text File

File Number: 21-196

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**Agenda Date:** 4/28/2021

**Version:** 1

**Status:** Staff Comments

**In Control:** Public Safety Committee

**File Type:** Staff Report

**Agenda Number:** 4A.

Receive Oral Update From Staff on Departmental Activities