

## COMPREHENSIVE RETAILER LICENSING TOBACCO ORDINANCE

### AN ORDINANCE OF THE COUNTY OF TRINITY REGULATING TOBACCO PRODUCT SALES, REQUIRING THE LICENSURE OF TOBACCO RETAILERS

The BOARD OF SUPERVISORS of TRINITY COUNTY does ordain as follows:

#### **SECTION I.**

WHEREAS, based in part on the information contained in this section, the Board of Supervisors finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the Trinity County; and

WHEREAS, the Board of Supervisors finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the Trinity County, to protect the health, safety, and welfare of our residents; and

WHEREAS, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

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); and

WHEREAS, California courts have affirmed the power of local governments to regulate business activity to discourage violations of law. See, e.g., *Cohen v. Board of Supervisors* (1985) 40 Cal. 3d 277; *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal. App. 4th 383; *Prime Gas, Inc. v. City of Sacramento* (2010) 184 Cal. App. 4th 697.

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;

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;

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

NOW THEREFORE, it is the intent of the Board of Supervisors, in enacting this ordinance, to ensure compliance with the business standards and practices of the County of Trinity and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the illegal sale or distribution of tobacco and nicotine products to persons under 21 years of age, 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.

## **SECTION II.**

### **CHAPTER 8.82 shall be added to the County Code and will read as follows:**

**Sec. 2.1. DEFINITIONS.** The following words and phrases, whenever used in this Chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

- (a) “Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value 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 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) “Drug paraphernalia” has the same meaning as provided in Health and Safety Code Sec. 11014.5, as may be amended from time to time.
- (k) “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.
- (l) “Department” means Trinity County Environmental Health Department and any agency or person designated by the Department to enforce or administer the provisions of this Chapter.
- (m) “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, vape, disposable vape, 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.
- (n) “Electronic smoking substance container” means any receptacle holding a substance that may be aerosolized or vaporized by an electronic smoking device, whether or not the substance contains nicotine.
- (o) “Flavored Tobacco Product” means any tobacco product that imparts:
  - (1) A taste or smell, other than the taste or smell of tobacco, distinguishable by an ordinary consumer either prior to or during the consumption of such tobacco product, including but not limited to the taste or smell of fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or
  - (2) A cooling or numbing sensation distinguishable by an ordinary consumer either prior to or during the consumption of such tobacco product.

- (p) “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.
- (q) “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.
- (r) “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.
- (s) “Mixed hazardous waste product” means any tobacco product that contains liquid for use in an electronic smoking device in combination with electronic waste, subject to 22 California Code of Regulations § 66261.9 and related regulations, into a single product that cannot be classified and disposed of only as acute hazardous waste, non-acute hazardous waste, or universal waste alone without disassembly by a waste management entity.
- (t) “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.
- (u) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- (v) “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.
- (w) “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.

- (x) “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.
- (y) “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.
- (z) “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.
- (aa) “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.
- (bb) “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.
- (cc) “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.
- (dd) “Tobacco Retailing” means engaging in the activities of a tobacco retailer.
- (ee) “Youth-Oriented Facility” means a parcel in the 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 as defined in California Health & Safety Code § 1596.78;

## **Sec. 2.2. GENERAL REQUIREMENTS AND PROHIBITIONS.**

- (a) **TOBACCO RETAILER'S LICENSE REQUIRED.** It shall be unlawful for any person to engage in tobacco retailing in the 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 public 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 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 is prohibited outdoors within twenty-five (25) feet of any retail establishment licensed under this 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) **MINIMUM AGE FOR PERSONS SELLING TOBACCO.** No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in tobacco retailing.
- (f) **DISPLAY OF LICENSE.** Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

- (g) **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.
- (h) **SELF-SERVICE DISPLAYS PROHIBITED.** Tobacco retailing by means of a self-service display is prohibited.
- (i) **ON-SITE SALES.** All sales of tobacco products shall be conducted in-person in the licensed location. It shall be a violation of this 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 County.
- (j) **HAZARDOUS WASTE COMPLIANCE AND TRAINING.** No tobacco retailer may sell any electronic smoking device without first:
  - (1) registering with the California Environmental Reporting System (CERS);
  - (2) obtaining an EPA identification number as a hazardous waste generator under applicable federal and state law; and
  - (3) completing a training program from the COUNTY that details the tobacco retailer's duties in storing, handling, and disposing of hazardous waste tobacco products.

Tobacco retailers shall pay all costs for obtaining and maintaining the necessary CERS registration, EPA identification number, and any periodic mandated trainings or other requirements.

- (k) **PROHIBITION ON SALE OF NON-TOBACCO DRUG PARAPHERNALIA.** No person engaged in tobacco retailing shall sell products or accessories for products considered controlled substances under the Uniform Controlled Substances Act, Health and Safety Code Div. 10, subject to determination according to Sec. 11014.5 of that chapter.

### **Sec. 2.3. 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.** Any communication by, or on behalf of, the manufacturer or retailer of a tobacco product that indicates that the product imparts: a taste or smell other than the taste or smell of tobacco; or a cooling or numbing sensation, constitutes presumptive evidence of a violation of this section. Presumptive

evidence may include but is not limited to the use of terms such as “cool,” “chill,” “ice,” “fresh,” “arctic,” or “frost” to describe the product.

#### **Sec. 2.4. 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.

#### **Sec. 2.5. 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 1,000 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 1,000 feet of a tobacco retailer location already licensed pursuant to this 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) **GRACE PROVISION.** Any tobacco retailer that was operating and had a valid state issued tobacco retail license prior to the enactment of this chapter shall be exempted from subsections (d) through (e) for the duration of the time that a valid County tobacco retailer's license is held. Any lapse in license will nullify the grace provision and the tobacco retailer will be subject to all sections, subsections, and requirements herein.

#### **Sec. 2.6. 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 Chapter, contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to Section 2.13 of this Chapter. Nothing in this Chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.
- (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 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 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 Chapter.

(7) Such other information as the Department deems necessary for the administration or enforcement of this Chapter as specified on the application form required by this section.

(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. 2.7. LICENSE ISSUANCE OR DENIAL.**

(a) **ISSUANCE OF LICENSE.** Upon the receipt of a complete and accurate application for a tobacco retailer's license and the license fee required by this 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 Chapter;

(2) The application seeks authorization for tobacco retailing at a location for which this Chapter prohibits a license to be issued;

(3) The application seeks authorization for tobacco retailing for a proprietor to whom this 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 Chapter, that is unlawful pursuant to any other 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 Chapter and other laws relating to the sale of tobacco products.

### **Sec. 2.8. LICENSE RENEWAL AND EXPIRATION.**

**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 2.6.

**Sec. 2.9. 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 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 COUNTY with clear and convincing evidence that the new proprietor(s) have acquired the location in an arm's length transaction.

**Sec. 2.10. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.**

Nothing in this Chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the County identified on the face of the permit. Nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

**Sec. 2.11. 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 Board of Supervisors. The fee shall be calculated so as to recover the total cost of administration and enforcement of this 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 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.

**Sec. 2.12. COMPLIANCE MONITORING.**

- (a) Compliance with this Chapter shall be monitored by the Department. In addition, the County may designate additional persons to monitor compliance with this Chapter. All

licensed premises must be open to inspection by County staff or designated persons during regular business hours.

- (b) The Department shall inspect each tobacco retailer at least 2 times per 12 month period to ensure compliance with this Chapter.
- (c) The County will conduct at least 1 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.
- (d) Nothing in this section shall create a right of action in any licensee or other person against the County or its agents.
- (e) **HAZARDOUS MATERIALS COMPLIANCE.** No tobacco retailer may store any electronic smoking substance container, bulk nicotine, or other chemicals used in manufacturing or preparing electronic smoking device substances without first:
  - (1) Certifying to the County that it is in compliance with this subsection and the requirements of California Health and Safety Code Chapter 6.95 applicable to any hazardous materials, regardless of the amount of nicotine on premises and regardless of whether the nicotine is contained in consumer products or not; and
  - (2) Completing a training program from the County that details the tobacco retailer's duties in placarding, storing, planning, and preparing for emergencies consistent with hazardous materials requirements.
  - (3) No tobacco retailer may sell electronic smoking devices without first posting a sign, visible to customers, provided by the Department, that states:  
"E-liquid is a deadly poison and e-cigarettes can explode and catch fire. E-cigarettes and nicotine e-liquid are hazardous waste under California law and should not be disposed of in the regular trash. These products must be disposed of as household hazardous waste at the nearest household hazardous waste facility."

Consistent with the California Health and Safety Code, the County requires tobacco retailers selling electronic smoking devices and products containing nicotine to comply with all placarding, storing, planning and emergency preparation standards in Health and Safety Code Chapter 6.95 regardless of the amount of nicotine on premises and regardless of whether it is contained in consumer products or not. Tobacco retailers shall pay all costs of compliance and periodic mandated trainings.

### **Sec. 2.13. 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 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 2.2. above.

(1) Upon a finding by the Department of a first violation of this 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 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 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 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 the designated hearing officer and any appeal must be filed in writing with the Department 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 Department 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 2.7. 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 County.

#### **Sec. 2.14. 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. 2.15. ADDITIONAL REMEDIES.**

- (a) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- (b) Whenever evidence of a violation of this Chapter is obtained in any part through the participation of a person under the age of 21 years, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (c) Violations of this Chapter are subject to a civil action brought by the district attorney, punishable according to the following schedule:
  - (1) A fine not exceeding one thousand dollars for a first violation;
  - (2) A fine not exceeding two thousand five hundred dollars for a second violation of the same ordinance, term, or condition;
  - (3) A fine not exceeding five thousand dollars for a third, and each additional, violation of the same ordinance, term, or condition;
  - (4) A second or subsequent violation need only be of the same ordinance, term, or condition to require the larger fine, and need not involve the same personnel or property, provided that the same responsible party is cited. The fine amounts shall be cumulative where multiple citations are issued;
- (d) 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 district attorney, including administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.
- (e) Tobacco products offered for sale in violation of this 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 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.

(f) For the purposes of the civil remedies provided in this Chapter:

1. Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this Chapter shall constitute a separate violation of this Chapter; and
2. Each individual tobacco product that is distributed, sold, or offered for sale in violation of this Chapter shall constitute a separate violation of this Chapter.

(g) 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. 2.16. EXCEPTIONS.**

- (a) Nothing in this Chapter prevents the provision of non-commercial 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 Chapter shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

**Sec. 2.17. CONSTRUCTION & SEVERABILITY.** It is the intent of the Board of Supervisor of Trinity County 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 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 Chapter, or its application to any other person or circumstance. The Board of Supervisor of Trinity County 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. 2.18. PUBLIC RECORDS.** All information provided to the Department by a licensee or license applicant pursuant to this Chapter shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 et seq.) or any other applicable law.

**Sec. 2.19. CEQA.** The County finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment).

**SECTION III. EFFECTIVE DATE.** This ordinance shall be published, pursuant to Section 25124 (a) of the Government Code of the State of California, before the expiration of fifteen days after the passage of the ordinance, once, with the names of the supervisors voting for and against the ordinance a newspaper of general circulation in the County of Trinity. This ordinance shall become effective 30 days after enactment.

The foregoing ordinance was introduced at a regular meeting of the Board of Supervisors on the \_\_\_\_ day of \_\_\_\_\_, 2024, and passed and adopted by the Board of Supervisors of the County of Trinity, State of California, on the \_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

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Chair, Board of Supervisors

ATTEST:

TRENT TUTHILL, Clerk of Board

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Deputy