PUBLIC HEALTH LAW CENTER
at Mitchell Hamline School of Law

American Lung Association.
California

June 2026

Law and Policy Partnership to End the Commercial Tobacco Epidemic

CALIFORNIA TOBACCO RETAILER LICENSING

A Comprehensive Model Ordinance

This Comprehensive Tobacco Retailer Licensing Ordinance was prepared to assist California cities and counties interested in establishing or strengthening a local tobacco retailer licensing ("TRL") program and further regulating the tobacco retail environment.

Communities adopt and enforce TRL laws to ensure compliance with local business standards, address youth access to tobacco products, reduce tobacco product waste, and limit the negative public health and equity impacts associated with commercial tobacco use.[1] This revised model ordinance takes a comprehensive approach to regulating the sale of tobacco products and the tobacco retail environment.

Photo: Nicole Morgan, CounterTobacco.org

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

It builds on core provisions such as requiring a local tobacco retailer license by incorporating several innovative policy options.

This model ordinance is based on an independent and objective analysis of the relevant law, evidence, and available data. Communities should consider all the evidence and decide for themselves which approach is appropriate for their local jurisdictions. The model ordinance offers cities and counties a variety of options to tailor this policy to meet the needs of their communities.[2,3]

While this model TRL reflects many innovative policy options, many communities in California are ready to address the tobacco retail environment more radically and may consider pursuing an endgame policy, including a total sales ban on tobacco products, in their jurisdictions. For more information on endgame policies, see the Public Health Law Center's resources: *Commercial Tobacco in California: Endgame Policies* and *End Commercial Tobacco Sales: A California Model Ordinance*.

Finally, no Public Health Law Center model policies, including this one, are intended to interfere with the sacred or ceremonial practices of American Indian community members or the internal policies of sovereign Tribal Nations.

Customizing the Ordinance

Context boxes are included throughout this ordinance to explain some key provisions. These boxes are not meant to be included in any final ordinance. A jurisdiction wishing to adopt all or part of this ordinance should keep this in mind and remove the context boxes. In some instances, the ordinance offers you a choice of options (such as [choice one/choice two]) prompting you to customize the language to fit your community's needs. A degree of customization is always necessary to make sure the ordinance is consistent with a community's existing laws. Such customization also ensures that communities are using this model ordinance to address local needs and engender health equity.

2 The Public Health Law Center revised and updated this 2026 model ordinance, which was originally developed by ChangeLab Solutions and released in 2018.

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

Tips for Using This Model Ordinance

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

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

This publication was prepared by the Public Health Law Center, a nonprofit organization that provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. The information in this document should not be considered legal advice. This model ordinance was made possible by funds received from Grant Number 24-10023 with the California Department of Public Health, California Tobacco Prevention Program, and the American Lung Association in California.

COMPREHENSIVE TOBACCO RETAILER LICENSING ORDINANCE

AN ORDINANCE OF THE [CITY/COUNTY] OF [JURISDICTION] REGULATING TOBACCO PRODUCT SALES, REQUIRING THE LICENSURE OF TOBACCO RETAILERS, AND AMENDING THE [JURISDICTION] MUNICIPAL CODE.

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The [city council/board of supervisors] of [jurisdiction] does ordain as follows:

Section 1. Findings of Fact and Purpose.

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

[insert appropriate WHEREAS clauses from *Tobacco Retailer Licensing in California: Findings for a Comprehensive Ordinance*]

Comment

A Findings of Fact and Purpose section is important because it provides the evidentiary basis for the proposed commercial tobacco control policies and demonstrates the jurisdiction's reasoning for adopting specific provisions. The model *Tobacco Retailer Licensing in California: Findings for a Comprehensive Ordinance* provides the evidentiary support for all findings in this model; however, jurisdictions should tailor their findings to the specific provisions being adopted. The Findings section is part of the ordinance and legislative record, but it often does not become codified in the municipal code. Whether included in a final ordinance or incorporated in the legislative record, the Findings of Fact and Purpose section plays an important evidentiary and educational role.

Section 2. [article/chapter] of the [city/county] code is hereby amended to read as follows:

Section 2.1. Definitions.

The following words and phrases, whenever used in this [article/chapter], will 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 business 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.

Comment

Under California law, the retail sale of any product containing tobacco requires a tobacco retailer license; furthermore, state law prohibits a cannabis retailer from holding a tobacco retailer license and vice versa. Products that contain both cannabis and tobacco cannot be sold in California, as no retailer may hold the licenses necessary to sell such a product.

(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, which is not a cigarette, as defined.

(G) **"Cigarette"** means:

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(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 as described herein, including products commonly referred to as little cigars; and

(3) any roll of tobacco wrapped in paper or in any other substance that is intended to be inserted into heated tobacco product devices.

Comment

The definitions for cigar and cigarette have been updated to ease enforcement, align with other areas of law, and advance public health. Cigarettes and little cigars are now fully captured and regulated as "cigarettes," aligning with federal law, and anything other than little cigars are captured as cigars, generally. Section 2.8, below, provides minimum package sizes and prices for these products and provides an exemption for "premium cigars." Another update to this definition is explicitly capturing the inserts into heated tobacco products as cigarettes.

(H) **"Compliance Checks"** means systems the department uses to investigate and ensure that tobacco retailers are following and complying with the requirements of this [article/chapter]. Compliance checks may involve the use of persons between the ages of 18 and 20 who purchase or attempt to purchase tobacco products. Compliance checks may also be conducted by the department or other units of government for educational, research, and training purposes or for investigating or enforcing federal, state, or local laws and regulations relating to tobacco products.

(I) **"Coupon"** means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

(J) **"Delivery Sale"** means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a 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 but is not limited to delivery by licensees or third parties by any means, including curbside pick-up, pick-up locker, or via shipment by a common carrier.

(K) **"Department"** means any agency or person designated by the [city/county] to enforce or administer the provisions of this [article/chapter].

(L) **"Displayed Price"** means the price displayed 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.

(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, electronic heated tobacco products, 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.

(N) **"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.

Comment

After California's flavor restriction, SB 793, took effect in 2023, new products began emerging claiming to impart a cooling sensation without being flavored. While the Public Health Law Center believes that the previous definitions for "Flavored Tobacco Product" and "Presumptive Flavored Tobacco Product" were sufficient to capture and prohibit these cooling sensation products, this model language has been updated to capture all flavored tobacco products explicitly and comprehensively, including sensation products. For more information see our commentary: *Big Tobacco Creates New "Sensation" with Same Old Playbook*.

Additionally, this definition — and state law — determines flavor based on the experience of an "ordinary consumer." An ordinary consumer is not expected to have refined or overly sensitive taste or smell, or the means to undertake laboratory testing when determining if a product is flavored; if to an ordinary consumer a product smells or tastes like it is flavored, then the product can be determined to be flavored. For more information on conducting a smell test, see our publication: *Flavored Tobacco Sales Prohibitions: Enforcement Options*.

(O) **"Full Retail Price"** means the displayed price plus all applicable taxes and fees if such taxes and fees are not included in the displayed price.

(P) **"Indoor Area"** means all space between a floor and ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

(Q) **"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.

(R) **"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.

(S) **"Nicotine"** means any form of the chemical nicotine, including any salt or complex, regardless of whether the chemical is naturally or synthetically derived. Nicotine also includes nicotine analogs.

(T) **"Nicotine analog"** means a substance with a chemical structure that is substantially similar to the chemical structure of nicotine, and:

(1) has an addictive effect that is substantially similar to, or stronger than, the addictive effect of nicotine; or

(2) has, or is represented as having, an effect on the human body that is substantially similar to that of nicotine.

Any communication by, or on behalf of, the manufacturer, distributor, or retailer of a tobacco product that indicates that the product contains a nicotine analog, as defined, constitutes presumptive evidence that the product contains a nicotine analog.

Comment

The tobacco industry continues to develop innovative new products in attempts to evade regulation. The introduction of nicotine analogs into the marketplace is just the latest example of industry malfeasance. Nicotine analogs are chemically similar to nicotine, have similar physiological effects, and have been used in various products, such as electronic cigarettes and oral pouches.

This definition was developed based on legal analysis of analogous federal laws and subsequent litigation, and tailored to avoid potential litigation risks. Changing the wording without consulting legal counsel or including criminal penalties in the ordinance could increase litigation risk.

This model ordinance regulates nicotine analog products the same as similar tobacco and nicotine products. Because of the uncertain health harms and risks of nicotine analog products, jurisdictions may consider prohibiting their sale entirely. Such an approach may come with additional legal risks that should be discussed with local counsel.

(U) **"Person"** means any human being, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(V) **"Pharmacy"** means any business establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the California Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the business 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 will 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 will be deemed to exist when a person has or shares ultimate control over the day-to-day operations of a business.

(X) **"Retail Establishment"** means any place of business where tobacco retailing occurs. Retail Establishment includes, but is not limited to, grocery stores, cigar bars, vape shops, convenience stores, liquor stores, hookah lounges, gasoline and other automobile service stations, bars, restaurants, and hotels.

(Y) **"Sale"** or **"Sell"** means any transfer of goods for money, trade, barter, or other consideration for a commercial purpose.

(Z) **"Self-Service Display"** means the 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 or a pick-up locker 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. "Smoking" does not include the use of traditional, sacred tobacco as part of an Indigenous practice or a lawfully recognized religious, spiritual, or cultural ceremony or practice.

(AB) **"Tobacco Product"** means:

(1) any product containing, made of, or derived from nicotine or commercially grown tobacco 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, a heated tobacco product, 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 sold separately and whether or not they contain nicotine or commercially grown tobacco, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

"Tobacco product" does not include any nicotine cessation product that has been approved for sale by the U.S. Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act as a "drug," "device," or "combination product."

Comment

Nicotine replacement therapies are important cessation aids and this model ordinance does not intend to restrict or limit their sale. Any tobacco products, including e-cigarettes, that are authorized by the FDA's Center for Tobacco Products and are thus regulated as tobacco products, not as cessation aids, are included in the definition of tobacco product and are subject to these restrictions.

As of the date of publishing, no e-cigarettes fall into this exception for FDA-approved cessation aids.

(AC) **"Tobacco Retailer"** means any person who sells or offers for sale tobacco products. This definition is without regard to the quantity of tobacco products sold or offered for sale.

(AD) **"Tobacco Retailing"** means engaging in the activities of a tobacco retailer.

(AE) **"Youth-Oriented Facility"** means a parcel in the [city/county] that is occupied by:

(1) a private or public kindergarten, elementary, middle, junior high, or high school;

(2) a library open to the public;

(3) a playground open to the public;

(4) a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities;

(5) a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes;

(6) a park open to the public or to all the residents of a private community;

(7) a licensed child-care facility or preschool [other than a small-family day care home or a large-family day care home [as defined in California Health and Safety Code Section 1596.78]];

Section 2.2. License.

(A) **TOBACCO RETAILER'S LICENSE REQUIRED.** It is unlawful for any person to engage in tobacco retailing in the [city/county] without first obtaining and maintaining a valid tobacco retailer's license for each location at which tobacco retailing occurs or is to occur. Each location refers to every retail establishment located on any particular parcel of land.

(B) **APPLICATION PROCEDURE.**

(1) An application for a tobacco retailer's license will be submitted in the name of each proprietor proposing to conduct retail tobacco sales and will be signed by each proprietor or authorized agent. All applications will be submitted on a form supplied by the department.

(2) Applicant submissions will contain the following information:

(i) The full name, residential address, and telephone number of each proprietor of the business seeking a license.

(ii) The business name, address, and telephone number of the single, fixed-location retail establishment for which a license is sought.

(iii) The name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this [article/chapter].

(iv) 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.

(v) Whether or not any proprietor or any agent of the proprietor has been found to have violated this [article/chapter] or any other local, state, Tribal, 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.

(vi) A signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product without a license required by this [article/chapter].

(vii) Such other information as the department deems necessary for the administration or enforcement of this [article/chapter] as specified on the application form required by this section.

(3) A licensed tobacco retailer will 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.

(C) **ACTION.** The [city council/board of supervisors] may approve or deny the application for a license, or it may delay action for a reasonable period of time deemed necessary to complete any investigation of the application or the applicant. If the [city council/board of supervisors] approves the application, the department will issue the license to the applicant. If the [city council/board of supervisors] denies the application, notice of the denial will be given to the applicant along with notice of the applicant's right to appeal the decision.

(D) **TERM.** A tobacco retailer's license is valid for 1 year from the date of issue. 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.

(E) **REVOCATION OR SUSPENSION.** Any license may be suspended or revoked following the procedures set forth in Section 2.10.

(F) **TRANSFERS.** All licenses issued are valid only on the premises for which the license was issued and only for the proprietor to whom the license was issued. The transfer of any license to another location or proprietor is prohibited. A new tobacco retailer's license is required whenever a retail establishment has a change in proprietors.

(G) **PAST VIOLATIONS.** Notwithstanding any other provision of this [article/chapter], prior violations at a location will continue to be counted against a location and license ineligibility periods will continue to apply to a location unless:

(1) the retail establishment has been sold to new proprietor(s) in an arm's length transaction; and

(2) the new proprietor provides the [city/county] with clear and convincing evidence that the new proprietor has acquired the retail establishment in an arm's length transaction.

(H) **DISPLAY.** Tobacco retailers must conspicuously display both state and local tobacco retail licenses at each retail establishment in a manner visible to the public.

(I) **RENEWALS.** The renewal of a license issued under this ordinance will be handled in the same manner as the original application. Each tobacco retailer will 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.

(J) **ISSUANCE IS A PRIVILEGE AND NOT A RIGHT.** Nothing in this [article/chapter] will be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the [city/county] identified on the face of the permit. Nothing in this [article/chapter] will be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law.

Section 2.3. Limits on Eligibility for a Tobacco Retailer License.

(A) **MOBILE VENDING.** No license may issue to authorize tobacco retailing anywhere other than a fixed location. No tobacco retail license will be issued to a moveable place of business.

(B) **MINIMUM CLERK AGE.** Individuals employed by a tobacco retailer licensed under this ordinance must not be younger than the minimum legal sales age to sell tobacco products.

(C) **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.

(D) **PHARMACIES.** No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.

(E) **PROXIMITY TO YOUTH-ORIENTED FACILITIES.** No license may issue, and no existing license may be renewed, to a retail establishment 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.

(F) **PROXIMITY TO OTHER TOBACCO RETAILERS.** No license may issue, and no existing license may be renewed, to a retail establishment within [2,000] feet of a tobacco retailer location already licensed pursuant to this [article/chapter] as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing licensee's business is located.

(G) **PROXIMITY TO CANNABIS RETAILERS.** No license may issue, and no existing license may be renewed, to a retail establishment within [1,000] feet of an existing cannabis retailer as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located to the nearest point of the property line of the parcel on which an existing cannabis retailer is located.

Comment

When jurisdictions are considering a minimum distance provision or other density measures, jurisdictions can map out the current retail climate and demonstrate what the effects of the measure would be in the community. This can also help jurisdictions determine the number of feet to use as a setback. This information can be included in the findings.

(H) **POPULATION AND DENSITY.** The issuing of tobacco retailer licenses is limited as follows:

(1) The total number of tobacco retailer licenses within the [city/county] will be limited to one for each [2,500] inhabitants of the [city/county].

(2) For the purposes of this subsection, the total population of the [city/county] will be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed.

(3) No new license may issue to authorize tobacco retailing if the number of tobacco retailer licenses already issued equals or exceeds the total number authorized pursuant to subsection (1).

(4) When the maximum number of licenses has been issued pursuant to subsection (1) and licenses become available due to non-renewal or revocation, the jurisdiction may place persons seeking licensure on a waiting list as follows:

(a) New applicants who have purchased a retail establishment currently holding a valid retail license will be entitled to first priority;

(b) All other new applicants will be placed on the waiting list on a first-come, first-served basis; and

(c) No new applicant will be placed on the waiting list unless the applicant meets all other application requirements in accordance with this ordinance.

Section 2.4. 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 also prohibited outdoors within 25 feet of any retail establishment licensed under this [article/chapter].

Comment

California Labor Code Section 6404.5(e) creates exemptions to the state's clean indoor air law, including for tobacco retailers. Local ordinances may close this gap and any other smoke-free air gap in state law. Additionally, the sale of food and drink at an establishment precludes the retailer from claiming this exemption, meaning a hookah lounge or cigar bar may not sell food or drink in addition to their tobacco products and retain their licenses. See our publication, *Gaps in California's Smoke-Free Law: Hookah Lounges & Other Tobacco Retailers*. Also see Health and Safety Code Section 118915 and Cal. Att'y Gen. Op. No.09-507 (Dec. 21, 2011).

Section 2.5. Fee for License.

The fee to issue or to renew a tobacco retailer's license will be established from time to time by resolution of the [city council/board of supervisors]. The fee will be calculated so as to recover the total cost of administration and enforcement of this [article/chapter], including, but not limited to, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, administrative hearings and appeals, and additional legal proceedings stemming from any violation, but will not exceed the cost of the regulatory program authorized by this [article/chapter]. All fees and interest upon proceeds of fees will be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

Comment

The Public Health Law Center provides a free tool to use in calculating and establishing license fees. Please see Tobacco Retail Licensing Calculator.

Section 2.6. Basis For Denial of License.

(A) **DENIAL OF APPLICATION.** The department may deny the issuance or renewal of a license based on any of the following grounds:

(1) The applicant is under 21 years of age.

(2) The information presented in the application is inaccurate or false. A license issued contrary to this [article/chapter], contrary to any other law, or on the basis of false or misleading information, will be revoked pursuant to Section 2.10 of this [article/chapter].

(3) The application seeks authorization for tobacco retailing at a location for which this [article/chapter] prohibits a licensed to be issued.

(4) The application seeks authorization for tobacco retailing for a proprietor to whom this [article/chapter] prohibits a license to be issued.

(5) The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this [article/chapter], that is unlawful pursuant to any other [article/chapter] of this code, or that is unlawful pursuant to any other law.

(6) The applicant has been penalized within the past 5 years for any tobacco retailing related violation of a federal, Tribal, state, or local law, ordinance, provision, or other regulation. Such laws include, but are not limited to, the Family Smoking Prevention and Tobacco Control Act, the Prevent All Cigarette Trafficking (PACT) Act, the Stop Tobacco Access to Kids (STAKE) Act, and California Penal Code § 308.

(7) The applicant has had a license to sell tobacco products suspended or revoked within the preceding 12 months of the date of application.

(8) Any suitable reason the granting of a license to the applicant is not consistent with the public health and welfare, including the applicant's history of noncompliance with this [article/chapter] and other laws relating to the sale of tobacco products.

(B) **MISTAKEN ISSUANCE.** If a license is mistakenly issued to a person or renewed, the [city/county] will revoke the license upon the discovery that the proprietor was ineligible for the license under this ordinance. The [city/county] will provide the license holder with notice of the revocation, along with information on the right to appeal.

Section 2.7. Prohibited Sales.

(A) **IN GENERAL.** No proprietor may sell or offer to sell any tobacco product:

(1) By means of self-service display. All tobacco products must be stored behind the sales counter, in a locked case, in a storage unit, or in another area not freely accessible to the general public.

(2) By means of delivery sales. The delivery sale of tobacco products is prohibited in the [city/county]. All sales of tobacco products will be conducted in person in a licensed retail establishment. It is unlawful to sell or provide tobacco products knowingly or recklessly to any person that intends to engage in the delivery sale of the tobacco product in the [city/county].

(3) By any other means, to any other person, or in any other manner of form prohibited by applicable Tribal, federal, state, or other local law, ordinance provision, or other regulation.

(B) **MINIMUM LEGAL SALES AGE.**

(1) No person engaged in tobacco retailing may sell a tobacco product to a person under 21 years of age.

(2) Positive age verification required. No person engaged in tobacco retailing may sell a tobacco product to another person without first verifying by means of a government-issued photographic identification that the recipient is at least 21 years of age

Comment

The minimum legal sales age in California state law is 21; however, state law expressly states that this is a floor and local jurisdictions may adopt more restrictive measures — including raising the minimum legal sales age above 21 or considering a nicotine-free generation policy. For more information, see *The Nicotine-Free Generation Approach: Overview for California Communities*.

(C) **SIGNAGE.** Notice of the legal sales age, positive age verification requirement, possible penalties for underage sales, and the toll-free telephone number for reporting any unlawful sale must be posted prominently and in plain view at all times at each location where tobacco products are offered for sale. The required signage must be posted in a manner that is clearly visible to anyone who is, or is considering, making a purchase.

(D) **FLAVORED TOBACCO PRODUCTS.**

(1) Sales Prohibited. It is unlawful for any tobacco retailer to sell any flavored tobacco product.

(2) 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.

Comment

In 2025, the California Department of Justice established the Unflavored Tobacco List (UTL). This list establishes the list of covered, unflavored products that are permitted to be sold under state law. Importantly, flavored shisha, premium cigars, and loose leaf tobacco are exempt in certain circumstances under the state law, and do not appear on the UTL, even

when unflavored. This model language, and many jurisdictions in California, establishes a comprehensive flavor ban with no exceptions. The UTL can be used as a tool for local enforcement, but in jurisdictions where local restrictions are more comprehensive, the list is unlikely to be the only tool jurisdictions use. For more information, visit the UTL homepage on the State of California Department of Justice website.

Comment

A growing number of California communities are concerned about the environmental health burden and harms caused by tobacco products and some have banned the sale of "disposable" electronic smoking devices and "filtered" cigarettes to address this problem. Also, some cities ban the sale of all electronic smoking devices, including disposable products that contain multiple types of hazardous waste within one device. Hazardous waste laws require proper disposal of such devices at appropriately equipped facilities, which are not accessible, feasible, or affordable in every jurisdiction. Jurisdictions interested in curtailing the influx of tobacco product waste can refer to our *Tobacco Product Waste Toolkit* or reach out to the Public Health Law Center for legal technical assistance on this matter.

Section 2.8. Tobacco Product Pricing and Packaging.

(A) Packaging and labeling. No tobacco retailer will 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 full retail price of each tobacco product offered for sale must 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 product samples or promotional items. It is unlawful for any person to distribute free or nominally-priced tobacco products.

(D) Prohibition of tobacco product coupons and discounts. No tobacco retailer will:

(1) honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;

(2) sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item; or

(3) provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.

(E) Minimum package size for cigarettes and cigars. No tobacco retailer will sell:

(1) any cigarette, including any little cigar, unless sold in a package of at least [20]; or

(2) any cigar unless it is sold in a package of at least [6] provided, however, that this subsection will not apply to a cigar that has a displayed price of at least [$8.00] per cigar.

(F) Minimum prices for cigarettes and cigars. No tobacco retailer will sell:

(1) Cigarettes, including little cigars, at a displayed price that is less than [$15.00] per package of [20], plus $1.75 for every additional cigarette or little cigar; or

(2) Cigars at a displayed price that is less than [$8.00] per cigar or cigars at a displayed price of less than [$48.00] per package of [6], plus [$8.00] for every additional cigar.

The minimum prices established in this section will be adjusted annually by the department in proportion to changes in the annual Consumer Price Index, using a system established by the department.

Comment

Many jurisdictions have established minimum prices and package sizes for cigarettes and cigars, consistent with federal and state law or more restrictive. Jurisdictions may be interested in establishing minimum prices and package sizes for other tobacco products, including electronic cigarettes and nicotine pouches. The goal of establishing minimum prices for the most commonly sold tobacco products is to reduce youth initiation and use

by significantly increasing prices. Sample language for minimum prices and package sizes for other tobacco products can be found in our publication *Comprehensive Minimum Prices & Packaging: Guidance and Considerations*.

Section 2.9. Compliance Monitoring.

(A) Compliance with this [article/chapter] will be monitored by the department. In addition, the [city/county] may designate additional persons to monitor compliance with this [article/chapter]. All licensed premises must be open to inspection by [city/county] staff or designated persons during regular business hours.

(B) The department will inspect each tobacco retailer at least [2] times per 12-month period to ensure compliance with this [article/chapter]. At least [1] of those compliance checks will be a compliance check that involves the participation of persons between the ages of 18 and 20 to enter the licensed premises to attempt to purchase tobacco products.

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

Section 2.10. Proprietor Penalty Responsibility.

All proprietors are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products at any retail establishment. The sale of any tobacco product by an employee at or from the retail establishment is considered to be an act of the proprietor, and any related remedies or enforcement actions will be pursued against the proprietor.

Section 2.11. Violations and Penalties.

(A) **VIOLATIONS.**

(1) **NOTICE.** A person violating this ordinance may be issued, either personally or by mail, an administrative citation from the [city/county] that sets forth the alleged violation and that informs the alleged violator of the person's right to a hearing on the matter and how and where a hearing may be requested, including a contact address and phone number.

(2) **HEARINGS.** Upon issuance of an administrative citation, a person accused of violating this ordinance may request in writing a hearing on the matter. Hearing requests must be made within 10 business days of the issuance of the citation and delivered to the department or other designated [city/county] officer. Failure to properly request a hearing within 10 business days of the issuance of the citation will terminate the person's right to a hearing.

(3) **HEARING OFFICER.** The [city council/board of supervisors] will designate a hearing officer. The hearing officer will be an impartial employee of the [city/county] or an impartial person retained by the [city/county] to conduct the hearing.

(4) **DECISION.** A decision will be issued by the hearing officer within 10 business days of the hearing. The decision will be based on a preponderance of the evidence standard. If the hearing officer determines that a violation of this ordinance did occur, that decision, along with the hearing officer's reasons for finding a violation and the penalty to be imposed, will be recorded in writing, a copy of which will be provided to the [city/county] and the accused violator by in-person delivery or mail as soon as practicable. If the hearing officer finds that no violation occurred or finds grounds for not imposing any penalty, those findings will be recorded and a copy will be provided to the [city/county] and the acquitted accused violator by in-person delivery or mail as soon as practicable. The decision of the hearing officer is final, subject to an appeal as described in section 2.10, paragraph (A)(6) of this section.

(5) **COSTS.** If the administrative citation is upheld by the hearing officer, the [city/county] expenses in holding the hearing up to a maximum of [$1,000] must be paid by the person requesting the hearing.

(6) **APPEAL OF HEARING OFFICER DECISION.** Appeals of any decision made by the hearing officer may be heard by the [city council/board of supervisors]. Any appeal must be filed with the [city council/board of supervisors] within 10 business days of the date of the decision.

(7) **CONTINUED VIOLATION.**

(a) Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this [article/chapter] will constitute a separate violation of this [article/chapter]; and

(b) Each individual tobacco product that is distributed, sold, or offered for sale in violation of this [article/chapter] will constitute a separate violation of this [article/chapter].

(B) **SUSPENSIONS AND REVOCATIONS.**

(1) **SUSPENSION OR REVOCATION OF A LICENSE FOR VIOLATION.** In addition to any other penalty authorized by law, a tobacco retailer's license will be suspended or revoked if the department finds, based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, have violated any of the requirements, conditions, or prohibitions of this [article/chapter]; such violation is determined by any court of competent jurisdiction; or the licensee has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 2.2 above.

(a) Upon a finding by the department of a first violation of this [article/chapter] at a location, the license will be suspended for [30] days.

(b) Upon a finding by the department of a second violation of this [article/chapter] at a location within any [5] year period, the license will be suspended for [90] days.

(c) Upon a finding by the department of a third violation of this [article/chapter] at a location within any [5] year period, the license will be suspended for [1] year.

(d) Upon a finding by the department of four or more violations of this [article/chapter] at a location within any [5] year period, the license will be revoked.

(e) The application of any penalties under this [article/chapter] will coincide with any pertinent and applicable state and federal penalties, including those established in California Business and Professions Code Section 22950 *et seq.* and Health and Safety Code Section 104559.5.

(2) **APPEAL OF SUSPENSION OR REVOCATION.** A decision of the department to suspend or revoke a license is appealable to [the designated appellate body or person] and any appeal must be filed in writing within 10 days of mailing of the department's decision. If such an appeal is timely made, it will stay enforcement of the appealed action. An appeal to [the designated appellate body or person] is not available for a revocation made pursuant to Section 2.6(B).

Section 2.12. Administrative Fines.

Violations of this [article/chapter] are subject to administrative fines of not less than [$250] and not exceeding $1,000 per violation.

Section 2.13. Tobacco Retailing Without a Valid 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 will be ineligible to apply for, or to be issued, a tobacco retailer's license as follows:

(A) 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 sold in an arm's length transaction, until [30] days have passed from the date of the violation.

(B) 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 sold in an arm's length transaction, until [90] days have passed from the date of the violation.

(C) After 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 sold in an arm's length transaction, until [5] years have passed from the date of the violation.

Section 2.14. Additional Remedies.

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

Comment

Many communities have categorized violations of their tobacco retailer licenses as public nuisances; in the past, this was encouraged in contrast to categorizing violations as criminal offenses, as a means to promote equity and social justice. Public nuisance, however, still carries with it risks for perpetuating harms against individuals and communities that undermine a pursuit of equity and social justice.

(B) In addition to other remedies provided by this [article/chapter] or by other law, any violation of this [article/chapter] may be remedied by a civil action brought by the

[district attorney/county counsel], including administrative abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.

(C) Tobacco products offered for sale in violation of this [article/chapter] are subject to seizure by the department or its designee and will be forfeited after the proprietor or any other owner of the tobacco products seized is given reasonable notice and an opportunity to demonstrate that the tobacco products were not offered for sale in violation of this [article/chapter]. The decision by the department may be appealed pursuant to the procedures set forth in Section 2.10. Proprietors are responsible for the costs associated with proper transportation, storage, and disposal of all forfeited tobacco products in compliance with relevant state and federal laws 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. The department will provide the violator an itemized accounting of the costs for proper transportation, storage, and disposal of all forfeited tobacco products under this section.

Section 2.15. Purchase, Use, or Possession Penalties Prohibited.

Nothing in this [article/chapter] will be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

Section 2.16. Construction & Severability.

It is the intent of the [city council/board of supervisors] to supplement applicable state and federal law and not to duplicate or contradict such law. If any section or provision of this ordinance is held invalid, such invalidity will not affect other sections or provisions that can be given force and effect without the invalidated section or provision. The [city council/board of supervisors] affirms that it would have adopted each section or provision in the ordinance irrespective of the fact that any one or more other sections or provisions is invalidated or made unenforceable.

Section 2.17. Public Records.

All information provided to the department by a licensee or license applicant pursuant to this [article/chapter] will be subject to disclosure under the California Public Records Act (California Government Code section 7920 *et seq.*) or any other applicable law.

Section 2.18. Notice.

The [city/county] clerk will certify to the passage and adoption of this ordinance and will cause this ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the California Government Code.

Section 3. Effective Date.

This ordinance will go into effect and be in full force on [date]; provided, however, that Section 2.3 will not take effect until [6 months after date of enactment].