ORDINANCE NO. ( )

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, REPEALING AND REPLACING CHAPTER 32A OF THE SONOMA COUNTY CODE PERTAINING TO LICENSURE OF TOBACCO RETAILERS

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

SECTION I. Chapter 32A of the Sonoma County Code is hereby repealed and replaced in its entirety as follows:

CHAPTER 32A - LICENSURE OF TOBACCO RETAILERS

Sec. 32A-1. Findings and purpose.

(a) Findings. The board of supervisors of the county of Sonoma hereby finds and declares as follows:

(1) Based in part on the information contained in this section, the board of supervisors finds that if tobacco retailers fail to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, this presents a threat to the public health, safety, and welfare of the residents of the county of Sonoma; and

(2) 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 county, to protect the health, safety, and welfare of our residents; and

(3) Approximately four hundred eighty thousand (480,000) people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death; and

(4) Five hundred seventy (570) residents of the county of Sonoma die each year from tobacco related causes representing fifteen percent (15%) of total annual deaths; and

(5) State law requires all tobacco retailers to be licensed by the California Department of Tax and Fee Administration primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

(6) State law (SB793) forbids retailers from selling flavored tobacco products and the law relies on localities to enforce the law; and

(7) 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

(8) California courts have affirmed the power of the county to regulate business activity to discourage violations of law. See, e.g., Cohen v. Board of Supervisors,

40 Cal. 3d 277 (1985); Bravo Vending v. City of Rancho Mirage, 16 Cal. App. 4th 383 (1993); Prime Gas, Inc. v. City of Sacramento, 184 Cal. App. 4th 697 (2010); and

(9) Despite efforts to limit youth access to tobacco, minors are still able to access these products, as evidenced by:

(i) In Sonoma County, eleven percent (11%) of eleventh graders have smoked a whole cigarette and four percent (4%) report any use of cigarettes in the past thirty (30) days; and

(ii) In Sonoma County, forty-six percent (46%) of eleventh graders have used an electronic cigarette and twenty-nine percent (29%) report any use of e-cigarettes in the past thirty (30) days; and

(iii) In Sonoma County, seventy-six percent (76%) of eleventh graders and forty-one percent (41%) of ninth graders report that it is "fairly" or "very" easy to obtain electronic-cigarettes; and

(10) California retailers continue to sell tobacco to underage consumers, as evidenced by the following:

(i) Nearly eighteen percent (18%) of all tobacco retailers were witnessed unlawfully selling to minors in 2019 according to the State Youth Tobacco Purchase Survey;

(ii) Among the fourteen and two-tenths percent (14.2%) of minors nationwide who smoked cigarettes in 2011, ninety-eight and one-half percent (98.5%) of the fourteen and two-tenths percent (14.2%) had usually obtained their own cigarettes by buying them in a store or gas station; and

(11) Research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes. For example:

(i) A review of forty-one (41) California communities with strong tobacco retailer licensing ordinances found that youth sales rates declined in 40 of these communities after the ordinances were enacted, with an average 69% decrease in the youth sales rate;

(ii) A requirement for a tobacco retailer license will allow the county to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws, but it will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults; and

(12) Studies indicate that laws prohibiting the sale of flavored tobacco products lead to decreases in youth tobacco use, as evidenced by the following:

(i) An evaluation of New York City's law, which prohibits the sale of all flavored tobacco, excluding menthol, indicated that as a result of the law, youth had 37% lower odds of ever trying flavored tobacco products and 28% lower odds of ever using any type of tobacco; and

(ii) An evaluation of a law in Providence, Rhode Island, which prohibits the sale of all flavored tobacco, excluding menthol, indicated that as a result of the law, current use of any tobacco product among high school youth declined from 22% to 12% and e-cigarette use declined from 13.3% to 6.6%, even as statewide e-cigarette use among high school increased to more than 20%; and

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

(14) The tobacco industry's price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy. Coupon receipt and redemption appears more prevalent among white, younger, female, sexual minority, and more nicotine dependent smokers; and

(15) Price-discounted sales account for a substantial proportion of overall tobacco product sales; and

(16) Although federal and state law ban the sale of individual cigarettes, neither federal nor California state laws restrict the sale of individual little cigars and full size cigars; and

(17) More than half (56%) of Sonoma County retailers sell little cigars and full size cigars individually, making them more affordable and appealing to youth. Additionally:

(18) 78.3% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than $1.00;

(19) Studies have estimated that if price discounts were prohibited across the United States, the number of people who smoke would decrease by more than 13%; the impact of a $10 federal minimum floor price for cigarettes could reduce the number of packs sold in the United States by 5.7 billion per year and prompt more than 10 million smokers to quit; and that a state-level minimum floor price law designed to raise the average price of cigarette packs by just under $2.00 could decrease the prevalence of cigarette use and consumption by more than 4% and reduce income-based smoking disparities in California; and

(20) The county has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

(21) The Tobacco Education and Research Oversight Committee for California, as well as the American Pharmacists Association, the California Pharmacists Association,

and the California Medical Association have called for the adoption of state and local prohibitions of tobacco sales in drug stores and pharmacies; and

(22) A study of California high school students found that the prevalence of smoking was higher at schools in neighborhoods with five (5) or more tobacco outlets than at schools in neighborhoods without tobacco outlets; and

(23) High density of tobacco retailers has been associated with increased smoking rates, particularly among youth; and

(24) A study of California neighborhoods found that the density and proximity of tobacco retailers influence smoking behaviors, including the number of cigarettes smoked per day; and

(25) Studies show that the number and density of tobacco retailers serving areas of economic disadvantage are disproportionately high; and

(26) Nearly eighteen (18) percent of all tobacco retailers statewide sold unlawfully to minors in 2019. Significant tobacco retailers (defined as businesses in which at least eighty percent (80%) of merchandise was tobacco products) sold to minors at an even higher rate than the statewide average, as high as thirty and six-tenths percent (30.6%) in 2019; and

(27) The availability of inexpensive tobacco products leads to increased tobacco users evidenced by the over one hundred (100) academic studies that conclusively show that when tobacco products are made more expensive fewer people use tobacco, fewer initiate tobacco use, and more people quit tobacco use; and

(28) Federal and State law prohibits the sales of "drug paraphernalia"; and

(29) Many cigarette, tobacco, and head shops sell items that are commonly known to be drug paraphernalia, including bongs and pipes used to smoke methamphetamine and other illicit drugs, and claim that such items are intended for tobacco use; and

(30) Cigarette butts are the most common toxic waste found in cleanups and the number one item found on California highways; and

(31) The toxic chemicals in cigarette butts are a threat to our aquatic ecosystems, the substances that leach out of cigarette butts are highly toxic to freshwater micro-organisms, and in 2010 over one million cigarettes were removed from California beaches and inland waterways as part of the International Coastal Cleanup; and

(32) E-cigarette waste is potentially a more serious environmental threat than cigarette butts since e-cigarettes introduce plastic, nicotine salts, heavy metals, lead mercury, and flammable lithium-ion batteries into waterways, soil and to wildlife; and

(33) A 2022 waste characterization study conducted at Sonoma County's central landfill found that e-cigarettes accounted for 70 tons of waste; and

(34) Adoption and implementation of this ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment, as adoption

and implementation of the standards, license requirements, and other measures contained in the ordinance will not in and of themselves result in any direct physical change to the environment subject to CEQA; and

(35) In the alternative, the adoption and implementation of this ordinance is exempt from CEQA pursuant to Sections 15307 and 15308 of the State CEQA Guidelines as an action taken to assure the maintenance, restoration, enhancement, and protection of natural resources and the environment as authorized by state law where the regulatory process involves procedures for protection of the environment; and the basis for this determination is that the proposed ordinance does establish standards, license requirements, and other measures that regulate the licensure of tobacco retailers more stringently than existing codes and reduce sales of tobacco products to minors, and these standards, license requirements, and other measures will protect human health, which is an aspect of the environment under Public Resources Code Section 21083(b)(3), by strengthening existing standards for preventing the sale of tobacco to youth and establishing new limitations on tobacco retailer licensure, and reduced sale of tobacco products will reduce the harmful environmental effects of disposal of tobacco products; and

(b) Purpose. 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 and to assure more responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, 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.

Sec. 32A-2. 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:

“Arm's length transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two (2) informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an arm's length transaction.

“Child-Resistant Packaging” means packaging that meets the definition set forth in the Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and that 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, as this definition may be amended from time to time.

“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. Cigarettes as defined herein include cigarettes as defined in California Revenue and Taxation Code Section 30003, as amended from time to time.

"Consumer" means a person who purchases a tobacco product for consumption and not for sale to another person.

"County" means the unincorporated territory of the county of Sonoma.

"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.

"Department" means the County of Sonoma Department of Health Services including any officer, employee, or agent designated by the Director to administer any provisions of this chapter or enforce violations of any provisions of this chapter.

"Drug paraphernalia" has the meaning set forth in California Health and Safety Code Section 11014.5, as that section may be amended from time to time.

"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, e-hookah or other electronic nicotine delivery system. 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, as amended from time to time.

"Enforcing officer" means the Director of the Sonoma County Department of Health Services, including any officer, employee, or agent designated by the Director to enforce violations of any provisions of this chapter.

"Flavored Tobacco Product" means any tobacco product that imparts:

1. a taste or odor distinguishable by an ordinary consumer, other than the taste or odor of tobacco, either prior to or during the consumption of such tobacco product, including but not limited to tastes and odors relating to any 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 during the consumption of such tobacco products.

"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.

"Full Size 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 unit.

"Hearing officer" shall be an impartial person and the Department will choose one of the following:

1. Any Administrative Law Judge provided by the State of California Office of Administrative Hearings pursuant to Government Code section 27727;

2. Any duly appointed individual who meets the requirements of Government Code section 27724;
3. Any independent contractor hired from an organization that provides hearing officers; or,
4. Any person stipulated upon by the Department and appellant to hear an appeal.

“Immediate family member” means a parent, spouse, sibling, or child.

“Labeling” means written, printed, or graphic matter upon any tobacco product or any of its packaging, or accompanying such tobacco product.

“License” means a Tobacco Retail License issued by the County of Sonoma pursuant to this Chapter.

“Licensee” means any proprietor holding a license issued by the County of Sonoma pursuant to this Chapter.

“Licensed Premises” means all areas of the premises specified in an application for a license pursuant to this chapter and within which the licensee is authorized to distribute, sell, or store tobacco products in accordance with the provisions of this chapter.

“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 units. “Little cigar” includes, but is not limited to, tobacco products known or labeled as “small cigar” or “little cigar” or “cigarillo”.

“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.

“Moveable place of business” means any form of business that is operated out of a kiosk, cart, 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. Moveable business also means a temporary event booth space.

“Package” or “packaging” means a pack, box, carton, or container of any kind or, if no other container, any wrapping (including cellophane) in which a tobacco product is sold or offered for sale to a consumer.

“Person” means any natural person, partnership, cooperative association, corporation, joint venture, limited liability company, personal representative, receiver, trustee, assignee, social or professional club, fraternal organization, or any other legal entity or combination of the above acting as a single unit.

“Pharmacy” means a retail establishment in which the profession of pharmacy by a pharmacist licensed by the state of California in accordance with the Business and Professions Code is practiced and where prescriptions are offered for sale. A pharmacy may also offer other retail goods in addition to prescription pharmaceuticals.

“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 ten percent (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 can or does have or share ultimate control over the day-to-day operations of a business.

“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.

“Self-service display” means the open display or storage of tobacco products or tobacco accessories 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.

“Significant tobacco retailer” means any tobacco retailer for which the principal or core business is selling tobacco products, tobacco accessories, or both, as evidenced by any of the following: twenty percent (20%) or more of floor or display area is devoted to tobacco products, tobacco accessories, or both; or sixty percent (60%) or more of gross sales receipts are derived from the sale or exchange of tobacco products, tobacco accessories, or both; or fifty (50%) percent or more of completed sales transactions include tobacco products or tobacco accessories.

“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 or tobacco, whether natural or synthetic, that is intended for inhalation. “Smoking” includes using an electronic smoking device.

“Smokeless tobacco” means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity, including but not limited to chewing tobacco, snuff, or snus.

“Tobacco accessories” means any item designed for the consumption, use, or preparation of tobacco products.

“Tobacco product” means:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, full size cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
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.
4. Notwithstanding any provision of subsections (1), (2), and (3) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately.
5. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

“Tobacco retailer” means any person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, tobacco products, tobacco accessories, or electronic cigarettes. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange and includes significant tobacco retailers.

“Tobacco retailing” means engaging in the activities of a tobacco retailer.

“Youth-Oriented Area” means a parcel in a city or 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 recreation area open to the public or to all the residents of a private community;
7. a licensed child-care facility or preschool [other than a small-family day care home or a large-family day care home [as defined in California Health & Safety Code § 1596.78]].

Sec. 32A-3. Requirements and prohibitions.

(a) License Required. It shall be unlawful for any person to engage in tobacco retailing in the county without first obtaining and maintaining a valid license pursuant to this chapter for each location at which tobacco retailing is to occur. Tobacco retailing without a valid license is a violation of this chapter and is a public nuisance.

(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 is issued, it shall be a violation of this chapter and is a public nuisance for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to tobacco products, tobacco accessories, or tobacco retailing.

(c) Smoking Prohibited. Smoking, including smoking for the purpose of sampling any tobacco product, is prohibited within the indoor area or within 20 feet of any licensed premises under this chapter.

(d) Display of License. Each license shall be prominently displayed in a publicly visible location at the licensed premises.

(e) Positive Identification Required for Sale. No person engaged in tobacco retailing shall sell or transfer a tobacco product or tobacco accessory without first verifying by means of a government-issued photographic identification that the recipient is at least 21 years of age.

(f) Minimum Age for Persons Selling Tobacco. Individuals employed by, or acting as an agent of, licensee under this ordinance must be at least eighteen (18) years of age to sell tobacco products, tobacco accessories electronic smoking devices, or other nicotine delivery products.

(g) Self-Service Displays Prohibited. Tobacco retailing by means of a self-service display is prohibited.

(h) On-Site Sales. All sales of tobacco products and tobacco accessories to consumers shall be conducted in the licensed premises. It shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to engage in the delivery or sale of tobacco products or to knowingly or negligently sell or provide tobacco products to any person that intends to engage in the delivery or sale of the tobacco product in the County.

(i) False and Misleading Advertising Prohibited. A tobacco retailer without a valid license, and any tobacco retailer with a suspended license:

(1) Shall not sell tobacco products and tobacco accessories in violation of this chapter.

(2) Shall keep all tobacco products and tobacco accessories out of public view. The public display of tobacco products or tobacco accessories in violation of this provision shall constitute tobacco retailing without a license under Section 32A-3(a); and

(3) Shall not display any advertisement relating to tobacco products or tobacco accessories that promotes the sale or distribution of such products from the retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

(j) Drug Paraphernalia. 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 regulating controlled substances or drug paraphernalia, such as, for example, California Health and Safety Code section 11364.7, as that section may be amended from time to time.

(k) Positive identification required for entry: Significant tobacco retailers. No significant tobacco retailer shall allow the following individuals to enter its premises: (1) any individual who is younger than the minimum age established by state law for the purchase or possession of tobacco products; (2) any individual who appears to be under the age of twenty-seven (27) years, unless an examination of the individual's identification confirms that the individual is at least the minimum age under state law to purchase and possess tobacco products.

Sec. 32A-4. Sale of Flavored Tobacco Products & Electronic Smoking Devices Prohibited.

(a) Flavored Tobacco Product Sales Prohibited. It shall be unlawful for any tobacco retailer to sell any flavored tobacco product.

(1) Presumptive Flavored Tobacco Product. Any communication by or on behalf of the manufacturer or retailer of a tobacco product that such tobacco product imparts a taste or odor other than the taste or odor of tobacco, or that imparts a cooling or numbing sensation, constitutes presumptive evidence that the tobacco product is a flavored tobacco product. This includes but is not limited to public statements that a product has a minty or cooling effect, such as describing the product as “chill”, “ice”, “fresh”, “artic”, or “frost”.

(b) Electronic Smoking Device Sales Prohibited. It shall be unlawful for any tobacco retailer to sell any electronic smoking device.

(c) Subsection (b) shall not become enforceable until May 7, 2024.

Sec. 32A-5. Tobacco Product Pricing and Packaging.

(a) Packaging and Labeling. No tobacco retailer shall sell any tobacco product to any consumer unless such product: (1) is sold in the original manufacturer's packaging intended for sale to the consumer; and (2) conforms to all applicable federal labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.

(b) Display of Price. The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.

(c) Distribution of Tobacco Samples or Promotional Items. It is unlawful for any person to distribute free or nominally priced tobacco products.

(d) Prohibition of Tobacco Coupons and Discounts. No tobacco retailer shall:

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

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

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

(e) Minimum Package Size for Little Cigars. No tobacco retailer shall sell to a consumer any little cigar unless it is sold in a package of at least five (5) little cigars minimum pack size.

(f) Minimum Price for Cigarettes, Little Cigars, Full Size Cigars, Smokeless Tobacco. No tobacco retailer shall sell to a consumer:

(1) A package of cigarettes at the Full Retail Price that is less than ten dollars ($10.00) per package of twenty (20) cigarettes.

(2) A package of little cigars at the Full Retail Price that is less than two dollars per each little cigar ($2.00).

(3) A single full size cigar at the Full Retail Price that is less than ten dollars ($10.00).

(4) A package of smokeless tobacco at the Full Retail Price that is less than ten dollars ($10.00).

(g) (i) Subsection (d, e, & f) shall not become effective until May 7, 2024.

Sec. 32A-6. Limits on eligibility for a license.

(a) Mobile Vending. No license may be issued to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles is prohibited. No license will be issued to a moveable place of business.

(b) Marijuana Dispensary. No license may be issued to authorize tobacco retailing in a marijuana dispensary established pursuant to Chapter 26 of the county code regardless of whether the retail establishment sells other retail goods in addition to marijuana.

(c) Pharmacies. No license may be issued to authorize tobacco retailing in a pharmacy.

(d) Excessive Density. The issuing of license is limited as follows:

(1) No license may be issued to authorize tobacco retailing if the number of licenses issued exceeds one (1) retailer per two thousand (2,000) inhabitants of unincorporated Sonoma County.

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

(e) Proximity to Youth-Oriented Area. No new license may issue, to authorize tobacco retailing within one thousand (1,000) feet of a youth-oriented area as measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented area 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 new license may issue, to authorize tobacco retailing within five hundred (500) 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.

(g) Significant Tobacco Retailers. No license may be issued to authorize tobacco retailing by a significant tobacco retailer.

(h) Exceptions.

(1) A tobacco retailer that meets all of the following requirements shall be exempt from the limitations specified in subsections (d)—(g) and may receive or renew a license so long as it is otherwise eligible.

(i) On the effective date of this ordinance, the tobacco retailer is open for business and is operating as a tobacco retailer;

(ii) On the effective date of this ordinance, the tobacco retailer maintains a valid tobacco retailer's license issued by the state of California's board of equalization, if the tobacco retailer sells products that require such license;

(iii) The license issued by the department is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);

(iv) The tobacco retailer has not violated this chapter or any other tobacco control law three (3) or more times within the previous five-year period;

(v) The tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days;

(vi) The tobacco retailer does not substantially change the business premises or business operation;

(vii) The tobacco retailer continuously retains the right to operate under other applicable laws including without limitation Chapter 7 and Chapter 26 of the county code.

Sec. 32A-7. Application procedure.

(a) Application for a 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 on an annual basis. All applications shall be submitted on a form supplied by the Department.

It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of a license. No proprietor may rely on the issuance of a license as a determination by the department that the proprietor has complied with all laws applicable to tobacco retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be null and void. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a license any status or right to act as a tobacco retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the department and 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 single fixed location for which a license is sought and whether the fixed location is within one thousand (1,000) feet of a youth-sensitive area as measured in Section 32A-6(e), if the applicant's business is a significant tobacco retailer as defined by Section 32A-2, or if the fixed location is within five hundred (500) feet of another tobacco retailer as measured in Section 32A-6(f).

(3) A single name and mailing address authorized by each proprietor to receive all communications and notices (the “authorized address”) required by, authorized by, or convenient to the enforcement of this chapter. If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.

(4) Proof that the location for which a license is sought has been issued all necessary state licenses for the sale of tobacco products.

(5) Whether any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended or revoked and, if so, the date of the suspension or revocation.

(6) Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this or any other local, state, or federal law governing the sale of tobacco products or California Health and Safety Code Section 11351 as amended from time to time, and, if so, the dates and locations of all such violations within the previous five years.

(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.

(b) An applicant shall inform the department in writing of any change in the information submitted on an application for a license within ten (10) business days of a change.

(c) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code Section 6250 et seq.) or any other applicable law.

Sec. 32A-8. Issuance of license.

Upon the receipt of a complete application for a license and the license fee required by this chapter on an annual basis, the department shall issue a license for one (1) year, unless sufficient evidence demonstrates that one (1) or more of the following bases for denial exists and that none of the exceptions set out in Section 32A-6(h) are applicable:

(a) The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.

(b) The Department has information that the applicant, or the applicant's agent(s) or employee(s), violated any local, State, or federal tobacco control law or Health and Safety Code Section 11351 within the preceding 365 days;

(c) The application seeks authorization for tobacco retailing at a location for which this chapter prohibits issuance of a license.

(d) The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued.

(e) 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.

(f) Any Denial of a License under this section may be appealed pursuant to Section 32A-14.

Sec. 32A-9. Transferability of license.

(a) A license that is exempt from the restrictions of Section 32A-6(d) (excessive density) may be transferred from one (1) person to another person or from one (1) location to another location.

(b) A licensee that is exempt from the restrictions of Section 32A-6(e) (youth-oriented areas) and Section 32A-6(f) (Proximity to other Tobacco Retailers) may not transfer a license except to either:

(1) An immediate family member if the tobacco retailer does not change its business location; or

(2) A new location not within one thousand (1,000) feet of a youth-oriented area.

(c) A significant tobacco retailer may not transfer a license unless the significant tobacco retailer changes its business location, unless the transfer is to an immediate family member.

(d) A licensee may not transfer a license:

(1) To any new proprietor and/or new location that does not meet all the requirements of this chapter; or

(2) If the tobacco retailer has violated this chapter or any other tobacco control law three (3) or more times within the previous five-year period. For purposes of calculating eligibility to transfer a license under this subsection, prior violations at a location shall continue to be counted against a location unless:

(i) The business at the location has been transferred to new proprietor(s) in an arm's length transaction; and

(ii) The new proprietor(s) provide the department with clear and convincing evidence that the new proprietor(s) have acquired or are acquiring the business at the location in an arm's length transaction.

Sec. 32A-10. License Renewal and Expiration.

Renewal of License.

(a) The term of a license is 1 year.

(b) Licensee shall submit the application renewal and license fee no later than 30 days prior to expiration of the current license. A licensee that fails to timely submit an application and license fee is ineligible for license renewal.

(c) A license shall not be renewed if any penalties or fees issued against licensee in accordance with this chapter have not been timely paid in full before the expiration of the license.

Sec. 32A-11. License conveys a limited, conditional privilege.

Nothing in this chapter shall be construed to grant any person obtaining and maintaining a 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 license. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this code including without limitation Chapter 7 and Chapter 26 of the county code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. For example, obtaining a license does not make the tobacco retailer a “retail or wholesale tobacco shop” for the purposes of California Labor Code Section 6404.5.

Sec. 32A-12. Fee for license.

The fee to issue or to renew a license shall be paid annually. The fee shall be established and may be adjusted from time to time by resolution of the County Board of Supervisors. The fee shall be calculated so as to recover the regulatory cost of administration and enforcement of this chapter, including, for example, issuing a license, administering the license program, tobacco retailer education, tobacco retailer inspection and compliance check, 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 administration and enforcement of this chapter. Fees are nonrefundable except as may be required by law.

Sec. 32A-13. Compliance monitoring.

(a) Compliance with this chapter shall be monitored by the department. The department may designate any number of persons to monitor compliance with this chapter.

(b) The department shall inspect each tobacco retailer at least once every twelve (12) months. The Sonoma County Sheriff's Office shall also have authority to assist in the enforcement of the provisions of this chapter. Nothing in this paragraph shall create a right of action in any licensee or other person against the county, department, or its agents.

(c) All areas of the licensed premises must be open to inspection by the Department during business hours. Licensee shall cooperate during such inspections and investigations. The Department shall have the right to enter licensed premises without prior notice during business hours.

(d) Failure to provide or arrange for access to a licensed premises for any inspection or investigation is a violation of this ordinance.

(e) The Department shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

(1) The youth decoy is participating in an inspection supervised by a peace officer, code enforcement official, or the person designated by the department to monitor compliance with this chapter;

(2) The youth decoy is acting as an agent of a person designated by the department to monitor compliance with this chapter; or

(3) The youth decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the department or the California Department of Public Health.

(f) Any records obtained during any inspection or investigation shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

(g) Written complaints from persons regarding any premises that may be potentially non-compliant with this chapter, including anonymous complaints, may be directed to the department.

Sec. 32A-14. Enforcement

(a) The enforcing officer, in consultation with county counsel as needed, will interpret this chapter and determine if violation(s) of this chapter have occurred, implement enforcement actions, and determine if compliance is met.

(b) The following enforcement remedies are available under this chapter:

(1) Suspension or Revocation of License for Violation. A license shall be suspended or revoked if any court of competent jurisdiction determines, or enforcing officer finds based on a preponderance of the evidence, after the licensee is afforded

notice and an opportunity to appeal, that the licensee, or any of the licensee's agents or employees, has violated this chapter or has pleaded guilty, “no contest” or its equivalent, or admitted to a violation of any law applicable to the licensee in violation of this chapter.

(i) For a first violation at a location, the license may be suspended for up to thirty (30) days.

(ii) For a second violation at a location within any sixty-month period, the license may be suspended for up to sixty (60) days.

(iii) For a third violation at a location within any sixty-month period, the license may be suspended for up to ninety (90) days.

(iv) For four (4) or more violations at a location within any sixty-month period, the license shall be revoked.

(v) During any period of suspension or revocation, the licensee shall be conspicuously posted, at each point of sale register and near the entrance door of the tobacco retail location, a notice of a tobacco retail license suspension or revocation provided by the Department. The notice shall include the suspension or revocation period, reason for suspension or revocation, licensee and location information, and contact information to report violations.

(2) Revocation of License Wrongly Issued. A license is null and void if the department finds that one (1) or more of the bases for denial of a license under Section 32A-8 (a-f) existed at the time application was made or at any time before the license was issued. Such a revocation shall be without prejudice to the filing of a new license application. The decision by the department shall be the final and not subject to appeal.

(3) Tobacco Retailing Without a Valid License. If the enforcing officer finds based on preponderance of evidence, after notice and an opportunity to appeal, that any person has engaged in tobacco retailing at a location without a valid license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a license as follows:

(i) For one (1) year from the date of the violation for the first violation within any six-month period.

(ii) For three (3) years from the date of the violation for the second violation within any six-month period.

(iii) And for any third or subsequent violations within any sixty-month period, no license shall be issued for the person or location. Except that the location may become eligible for a license if the business at the location has been transferred to new proprietor(s) in an arm's length transaction and the new proprietor(s) provide the department with clear and convincing evidence that the new proprietor(s) have acquired or are acquiring the business at the location in an arm's length transaction.

(4) Additional Enforcement Remedies. In addition to the remedies provided above, violations are subject to enforcement in accordance with Chapter 1 of the Sonoma

County Code. Chapter 1 sets the procedures for the establishment and imposition of such additional enforcement remedies and shall govern the imposition, enforcement, collection, and review of such remedies. If there is a conflict between the provisions of Chapter 1 and Chapter 32, the provisions in Chapter 32 shall take control. In addition, the enforcing officer may assess violations on the basis of:

(i) Each day on which a tobacco product or tobacco accessories are offered for sale in violation of this chapter; or

(ii) Each individual retail tobacco product and each individual retail item of tobacco accessories that is distributed, sold, or offered for sale in violation of this chapter; or

(iii) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter.

(5) Litigation. Civil action or prosecution as misdemeanor or infraction may be used. Violations of this chapter are hereby declared to be public nuisances. Violations may be assessed on the basis of Sec. 32A-14(b)(iv)(1)(a-c) above. In any civil action or prosecution, the Department may seek reimbursement for the costs of any investigation, inspection or monitoring and for the reasonable costs of preparing and bringing the enforcement. The Department may elect to seek recovery of its own attorneys' fees. When the Department seeks recovery of its attorneys' fees, an award of attorneys' fees may be made available to the prevailing party, provided that the award of attorneys' fees to the prevailing party shall not exceed the amount of reasonable attorneys' fees incurred by the Department in the same action or proceeding. These remedies shall be deemed nonexclusive, cumulative and in addition to any other remedy the Department may have at law or in equity, including but not limited to injunctive relief to prevent violations of this chapter.

(c) All licensees 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 or agent shall be considered an act of the tobacco retailer. Under Sonoma County Code, each responsible party is jointly and severally liable for abating a violation, paying associated costs and civil penalties, and otherwise complying with an order or final determination.

(d) Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen (18) years old, 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 on sufficiency and persuasiveness of the evidence presented.

(e) Any appeal allowed for under this section shall be conducted pursuant Section 32A-15.

Sec. 32A-15. Appeals.

(a) Appeal. Any appeal allowed under Section 32A-14 must be submitted in writing within ten (10) calendar days of the effective date of notice and using forms approved by the Department. The Department may consider any failure to comply as a waiver of the right to appeal.

(b) Appeal Procedure for Additional Enforcement Remedies. Chapter 1 of the Sonoma County Code sets the procedures for any such appeals, except that no hearing shall be scheduled until the full amount of the violation(s) has been deposited or an advance deposit hardship waiver has been granted.

(c) Appeal Procedure Related to Licenses.

(1) Appeals for Denial of a License and Appeals for Tobacco Retailing Without a Valid License. The hearing officer may order that the parties present their case and, if ordered, their rebuttal, in the form of exhibits and written statements sworn by the witness offering such statements as evidence. The hearing officer may issue a decision based upon the written record. The hearing officer does not need to set the appeal for testimonial hearing.

(2) Appeals for Suspension or Revocation of License. A timely appeal shall stay enforcement of the license suspension or revocation until the hearing officer issues a written decision and the following appeal procedure shall be followed:

(i) No later than fifteen (15) calendar days after receipt of the request for appeal, the hearing officer shall set the date, time, and location of the hearing; the hearing officer and parties may stipulate to set the hearing. All parties shall be notified at least ten (10) calendar days before the date of the hearing, unless waived by stipulation. The hearing officer may continue the hearing from time to time, in their sole discretion, to allow for orderly completion of the hearing.

(ii) The administrative hearing process will follow that of Sonoma County Municipal Code 1.7.3 (l)(2).

(iii) The hearing officer shall issue a written decision. Notice of the written decision, including findings of facts, conclusions of law, and notification of the time period in which judicial review may be sought pursuant to Code of Civil Procedure Section 1094.6 shall be served upon all parties. Any decision rendered by the hearing officer shall be a final determination, subject to judicial review under the provisions of California Code of Civil Procedure Sections 1094.5 and 1094.6. C.C.P. Section 1094.6 governs limitation of time for filing petitions under Section 1094.5.

(d) The hearing officer may consolidate multiple appeals.

Sec. 32A-16. Exceptions.

(a) Nothing in this chapter prevents the provision of tobacco products to any person as part of an indigenous practice or a lawfully recognized religious or spiritual ceremony or practice.

(b) Nothing in this chapter shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

Sec. 32A-17. Savings.

This chapter does not intend to regulate and shall not be interpreted to regulate any conduct the regulation of which has been preempted by the United States or the State of California. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other

provision of applicable law. It is the intent of the Department 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.

Sec. 32A-18. Severability.

The provisions of this chapter are declared to be severable and 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 illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, or unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this chapter or their application to persons and circumstances. The board of supervisors of the county of Sonoma hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one (1) or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Sec. 32A-19. Effective Date.

This ordinance shall become effective thirty (30) days after the date of its adoption by the board of supervisors. However, Section 32A-4 (b) and Section 32A-5 (d-g) shall not take effect until May 7, 2024.

SECTION II. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION III. Adoption and implementation of this ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment. Adoption and implementation of the standards, license requirements, and other measures contained in the ordinance will not result in any direct physical change to the environment on their own. In the alternative, the adoption and implementation of this ordinance is exempt from CEQA pursuant to Section 15308 of the State CEQA Guidelines as an action taken to assure the maintenance, restoration, enhancement, and protection of environment where the regulatory process involves procedures for protection of the environment. The basis for this determination is that this ordinance does not in itself approve any construction activities, but instead establishes standards, license requirements, and other measures that regulate the licensure of tobacco retailers more stringently than existing codes. These standards, license requirements, and other measures will assure the protection of human health, which is an aspect of the environment under Public Resources Code Section 21083(b)(3), by strengthening existing standards for preventing the sale of tobacco to youth and establishing new limitations on tobacco retailer licensure. The Director of the Department of Health Services is directed to file a notice of exemption in accordance with CEQA and the State CEQA Guidelines.

SECTION IV. This Ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, introduced on the 24th day of October, 2023, and finally passed and adopted this 7th day of November, 2023, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Gorin:	Rabbitt:	Gore:	Hopkins:	Coursey:
Ayes:	Noes:	Absent:	Abstain:	

WHEREUPON, the Chair declared the above and foregoing Ordinance duly adopted and

SO ORDERED.

_____
Chair, Board of Supervisors
County of Sonoma

ATTEST:

_____
M. Christina Rivera,
Clerk of the Board of Supervisors