

ORDINANCE NO. 272-2024

**AN ORDINANCE OF THE CITY OF CLEARLAKE REGULATING TOBACCO
PRODUCT SALES, REQUIRING THE LICENSURE OF TOBACCO RETAILERS, AND
AMENDING THE CLEARLAKE MUNICIPAL CODE**

The City Council of the City of Clearlake, State of California, ordains as follows:

**SECTION 1. ARTICLE 6-10 OF THE CLEARLAKE MUNICIPAL CODE IS HEREBY
ADDED AS FOLLOWS:**

6-10.100. Findings and Purpose.

- a. Findings. The City Council finds:
1. A local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City, to protect the health, safety, and welfare of our residents; and
 2. Approximately four hundred eighty thousand (480,000) people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation's leading cause of preventable death and continues to be an urgent public health issue; and
 3. Despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, and
 4. Requiring tobacco retailers to obtain a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell tobacco products to adults but will, however, allow the City of Clearlake to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco control and youth tobacco access laws, as evidenced by studies which found increased retailer compliance and reduced tobacco sales to youth following implementation and active enforcement of youth tobacco sales laws paired with penalties for violations; and
 5. The State of California acknowledges that youth usage of flavored tobacco products continues to rise and that while the Food and Drug Administration recently announced a partial ban of certain flavored electronic cigarette products, the policy does not adequately address the health and safety of California children as it makes dangerous exemptions; and
 6. The State of California, in response to the rising epidemic of youth usage of flavored tobacco products, the intentional targeted marketing of certain flavored tobacco products to communities of color, low-income individuals, and the lesbian, gay, bisexual, transgender and queer community, and the aggressive marketing of menthol-flavored products to African American community members, enacted SB 793, which came into effect on December 21, 2022; and
 6. Unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has increased among California youth; and

7. Strong policy enforcement and monitoring of retailer compliance with tobacco control policies (e.g., requiring identification checks) is necessary to achieve reductions in youth tobacco sales; and
 8. State law explicitly permits cities 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 Section 22971.3); and
 9. The City has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and
 10. The City Council 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 City and Lake County in order to protect the health, safety, and welfare of our residents; and
 11. The Board of Supervisors of Lake County has recently enacted a comprehensive tobacco retailer licensing ordinance in substantially similar format to the provisions below; and
 12. The City of Clearlake and Lake County contemplate a process by which the Lake County Department of Public Health implements the City's tobacco retailer licensing ordinance; and
 13. The City of Clearlake wishes to authorize the County Department of Public Health to implement its tobacco retailer licensing ordinance while retaining the City's authority to monitor compliance and otherwise implement the ordinance;
- b. It is the intent and purpose of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City of Clearlake and Lake County and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco products to youth, 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.

6-10.101. Definitions. The following words and phrases, whenever used in this article, 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 between two informed and willing parties, neither of which is under any compulsion to participate in the transaction.

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.

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.

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.

CITY means the City of Clearlake.

CITY COUNCIL means the City Council of the City of Clearlake.

COMPLIANCE CHECKS means systems the department uses to investigate and ensure that tobacco retailers are following and complying with the requirements of this article. 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.

COUNTY means Lake County.

DELIVERY SALE means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a tobacco retail establishment. Delivery sale includes the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes delivery by licensees or third parties by any means, including curbside pick-up.

DEPARTMENT means Lake County Department of Health Services and any agency or person designated by the Department to enforce or administer the provisions of this article. "Department" also means employees designated by the City of Clearlake to enforce or administer the provisions of this article.

ELECTRNIC 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, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

FLAVORED TOBACCO PRODUCT means any tobacco product that imparts 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 or odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or a cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product.

LICENSEE means a person granted a tobacco retailer's license for the location at which tobacco retailing is to occur.

LITTLE CIGAR means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than 4.5 pounds per thousand. "Little Cigar" includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.

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, 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.

PERSON means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

PROPRIETOR means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a 10% or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has or shares ultimate control over the day-to-day operations of a business.

RECREATION FACILITY means an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes, and includes but is not limited to a gymnasium, playing court, playing field, and swimming pool.

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 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.

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.

TOBACCO PRODUCT means:

- a. any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- b. any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- c. any component, part, or accessory of (1) or (2), whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.

Tobacco product does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

TOBACCO RETAILER means any person who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco products. This definition is without regard to the quantity of tobacco products sold, offered for sale, exchanged, or offered for exchange.

TOBACCO RETAILING means engaging in the activities of a tobacco retailer.

6-10.102. General Requirements and Prohibitions.

- a. *Tobacco Retailer's License Required.* It shall be unlawful for any person to engage in tobacco retailing in Lake County without first obtaining and maintaining a valid tobacco retailer's license for each location at which tobacco retailing is to occur. Tobacco retailing without a valid tobacco retailer's license is a nuisance as a matter of law.
- b. *Lawful Business Operation.* In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this article for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to the sale of tobacco products.
- c. *Smoking Prohibited.* Smoking, including smoking for the purpose of sampling any tobacco product, is prohibited within the indoor area of any retail establishment licensed under this article. Smoking is also prohibited outdoors within 25 feet of any retail establishment licensed under this article.

- d. *Minimum Legal Sales Age.* No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.
- e. *Display of License.* Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- f. *Positive Identification Required.* No person engaged in tobacco retailing shall sell a tobacco product to another person without first verifying by means of government-issued photographic identification that the recipient is at least 21 years of age.
- g. *Self-Service Displays Prohibited.* Tobacco retailing by means of a self-service display is prohibited. 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.
- h. *Distance From Youth Appealing Products.* It is unlawful for a tobacco retailer to place or maintain, or cause to be placed or maintained, any displays containing tobacco products within five feet of toys, candy, snacks or non-alcoholic beverages inside a licensed retail establishment.
- i. *On-site Sales.* All sales of tobacco products shall be conducted in-person in the licensed location. It shall be a violation of this article for any tobacco retailer or any of the tobacco retailer's agents or employees to engage in the delivery sale of tobacco products or to knowingly or recklessly sell or provide tobacco products to any person that intends to engage in the delivery sale of the tobacco product in the City of Clearlake.

6-10.103. Sale of Flavored Tobacco Products Prohibited.

- a. *Flavored Tobacco Product Sales Prohibited.* It shall be unlawful for any tobacco retailer to sell any flavored tobacco product.
- b. *Presumptive Flavored Tobacco Product.* A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has a taste or smell other than tobacco shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

6-10.104. Tobacco Product Pricing and Packaging.

- a. *Packaging and Labeling.* No tobacco retailer shall sell any tobacco product to any consumer unless the tobacco product: (1) is sold in the manufacturer's packaging intended for sale to consumers; (2) conforms to all applicable federal labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.
- b. *Display of Price.* The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.
- c. *Distribution of Tobacco Samples or Promotional Items.* It is unlawful for any person to distribute free or nominally priced tobacco products.

6-10.105. Limits on Eligibility for a Tobacco Retailer License.

- a. *Mobile Vending.* No license may issue to authorize tobacco retailing at other than a fixed location. No tobacco retail license will be issued to a moveable place of business.
- b. *Licensed Cannabis Businesses.* No license may issue, and no existing license may be renewed, to authorize tobacco retailing at a location licensed for commercial cannabis activity by the State of California.

6-10.106 Application Procedure.

- a. An application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. All applications shall be submitted on a form supplied by the Department.
- b. A license issued contrary to article, contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant Section 13(c) of this article. Nothing in this article shall be construed to vest in any person obtaining, and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.
- c. Applicant submissions shall contain the following information:
 - 1. The name, address, and telephone number of each proprietor of the business seeking a license.
 - 2. The business name, address, and telephone number of the location for which a license is sought.
 - 3. The name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this article.
 - 4. Proof that the location for which a tobacco retailer's license is sought has been issued all necessary state and local licenses for the sale of tobacco products.
 - 5. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this article or any other local, state, or federal law governing the sale of tobacco products and, if so, the dates and locations of all such violations within the previous five years.
 - 6. Such other information as the Department deems necessary for the administration or enforcement of this article as specified on the application form required by this section.
- d. A licensed tobacco retailer shall inform the Department in writing of any change in the information submitted on an application for a tobacco retailer's license within 30 calendar days of a change.

6-10.107. License Issuance or Denial.

- a. *Issuance of License.* Upon the receipt of a complete and adequate application for a tobacco retailer's license and the license fee required by

this article, the Department may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.

- b. *Denial of Application.* The Department may deny an application for a tobacco retailer's license based on any of the following:
 1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this article;
 2. The application seeks authorization for tobacco retailing at a location for which the jurisdiction prohibits a license to be issued;
 3. The application seeks authorization for tobacco retailing for a proprietor to whom this article prohibits a license to be issued; or
 4. The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this article, that is unlawful pursuant to any other chapter of this Code, or that is unlawful pursuant to any other law.
 5. Any other any other reason the granting of a license to the applicant that is not consistent with the requirements of this article, including the applicant's history of noncompliance with this article and other laws relating to the sale of tobacco products.

6-10.108. License Renewal and Expiration.

A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is 1 year. Each tobacco retailer shall apply for the renewal of their tobacco retailer's license and submit the license fee no later than 30 days prior to expiration of the current license. A retailer that fails to timely submit a renewal application and fee is ineligible for license renewal and must submit a new application pursuant to Section 6-10.106.

6-10.109. Licenses not Transferable; Past Violations at Retail Location.

- a. *Licenses not Transferable.* A tobacco retailer's license may not be transferred from one person to another or from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietors.
- b. *Past Violations.* Notwithstanding any other provision of this article, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
 1. the location has been transferred to new proprietor(s) in an arm's length transaction; and
 2. the Department determines that there is adequate documentary evidence submitted by the new proprietor(s) establishing that the new proprietor(s) have acquired the location in an arm's length transaction.

6-10.110. License Conveys a Limited, Conditional Privilege.

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

6-10.111. Fee for License.

The fee to issue or to renew a tobacco retailer's license shall be established by resolution of the City of Clearlake and shall be reviewed annually with the master fee schedule. The fee shall be calculated so as to recover the total cost of administration and enforcement of this article, including, but not limited to, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, ensure the licensee has a hazardous waste management plan for disposal of tobacco product waste but shall not exceed the cost of the administration and enforcement of this article. All fees and interest upon proceeds of fees shall be used exclusively to fund the administration and enforcement of this article. Fees are nonrefundable except as may be required by law.

6-10.112. Compliance Monitoring.

- a. Compliance with this article may be monitored by the County, acting as the Department via agreement with the City, or City staff acting as the Department. The City Manager may also designate another agency to perform these functions under agreement with that agency. Any peace officer may enforce the penal provisions of this Article.
- b. All licensed premises must be open to inspection by Department staff or designated persons during regular business hours. At the conclusion of any premise inspection, the license holder shall be provided a report, which, among other things, shall note any documented violations and provide the license holder no greater than fourteen (14) days to cure such violations. Any corrections shall be verified via documentation submitted by the license holder and/or in a subsequent inspection after the period to cure has lapsed.
- c. Prior to the Department's approval or denial of an application for a license, the Department shall inspect each proposed location for which a complete application for a tobacco retail license is submitted and a nonrefundable application fee has been paid.
- d. The Department shall endeavor to check the compliance of each tobacco retailer at least three times per 12-month period to ensure compliance with this article.
- e. Compliance checks shall determine, at a minimum, if the tobacco retailer is conducting business in a manner that complies with tobacco laws regulating youth access to tobacco. When appropriate, the compliance

checks shall determine compliance with other laws applicable to tobacco retailing.

- f. The Department may conduct compliance checks based on allegations of violations received from the public, as resources allow. In collaboration with law enforcement, compliance checks may involve the participation of persons between the ages of 18 and 20 to enter licensed premises to attempt to purchase tobacco products.
- g. The Department shall not enforce any law establishing a minimum age for tobacco purchases or possession against any 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 a compliance check supervised by a peace officer or a code enforcement official of the City or County; or
 - 2. The youth decoy is participating in a compliance check funded, in part, either directly or indirectly through subcontracting, by the City or the County, or funded, in part, either directly or indirectly, through subcontracting, by the California Department of Health Services.
- h. Nothing in this section shall create a right of action in any licensee or other person against the City, the County or their agents.

6-10.113. Suspension or Revocation of License.

- a. *Fines, Suspension, or Revocation of License for Violation.* In addition to any other penalty authorized by law, the following penalties shall be imposed on a tobacco retailer or licensee if the Department finds, 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 Sections 6-10.102 through 6-10.105 of this Article.
 - i. Upon a finding by the Department of a first violation at a location, the license shall be suspended for 30 days and the tobacco retailer shall pay a \$1000 fine.
 - ii. Upon a finding by the Department of a second violation at a location within any 60-month period, the license shall be suspended for 90 days and the tobacco retailer shall pay a \$2500 fine.
 - iii. Upon a finding by the Department of a third violation at a location within any 60-month period, the license shall be suspended for 120 days and the tobacco retailer shall pay a \$5000 fine.
 - iv. Upon a finding by the Department of four or more violations at a location within any 60-month period, the license shall be revoked, and no new license shall issue for the licensee until 5 years have passed from the date of revocation.
- b. *Appeal of Suspension or Revocation.* A decision of the Department to impose penalties under Section 6-10.113.a is appealable to a third-party Hearing Officer designated by the Department and any appeal must be

filed in writing with the Department within 10 days of mailing of the Department's decision. The appeal shall comply with the provisions of subsections b.1 through b.5 below. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to a Hearing Officer is not available for a revocation made pursuant to subsection c below.

1. Upon determining the existence of any of the grounds pursuant to this article for the suspension or revocation of a license, or the imposition of a penalty for tobacco retailing without a license, the Hearing Officer shall issue a notice of intended decision to the licensee, or the person against whom the penalty for tobacco retailing without a license is directed. The notice shall be provided by personal service or by first class mail, postage prepaid, and shall include a copy of the affidavit or certificate of mailing.
 2. The notice of intended decision shall state all the grounds upon which the revocation, suspension, or imposition of penalty is based.
 3. The notice of intended decision shall specify the effective date of the action.
 4. The notice of intended decision shall state that the Department shall give the licensee, or the person subject to the penalty for tobacco retailing without a license, an opportunity to request a hearing thereon. The hearing shall be an informal hearing before the Hearing Officer. Within 30 days of the hearing, or within 10 days if no hearing is requested, the Hearing Officer shall issue a decision and serve the decision.
- c. *Revocation of License Wrongly Issued.* A tobacco retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 6-10.107 existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the Department.

6-10.114. Tobacco Retailing Without a Valid License.

- a. *Ineligible for License.* In addition to any other penalty authorized by law, if the Department finds, or if a court of competent jurisdiction determines, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows: After a first violation of this section at a location, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until 30 days have passed from the date of the violation; and the tobacco retailer will be issued a \$5000 fine for selling without a

license. Notification of this violation will be sent to the jurisdiction in which the tobacco retailer was selling without a license.

6-10.115. Sale of Tobacco Products to Minors.

- a. Any licensee or tobacco retailer who sells, gives, or in any way furnishes to another person who is under 21 years of age any tobacco products resulting in an arrest or citation under the California Penal Code shall result in the suspension of the tobacco retail owner's license pending final disposition of the case. During the period of suspension, the licensee or tobacco retail owner shall be given reasonable notice and an opportunity to demonstrate to the Department that the tobacco products were not sold, given, or in any way furnished to another person who is under 21 years of age.
 1. Upon a finding by the Department of a first violation at a location, the license shall be suspended for 30 days unless final disposition of the case does not result in a conviction.
 2. Upon a finding by the Department of a second violation at a location within any 60-month period, the license shall be suspended for 90 days unless final disposition of the case does not result in a conviction.
 3. Upon a finding by the Department of a third violation at a location within any 60-month period, the license shall be suspended for 120 days unless final disposition of the case does not result in a conviction.
 4. Upon a finding by the Department of four or more violations at a location within any 60-month period, the license shall be revoked, and no new license shall issue for the licensee until 5 years have passed from the date of revocation unless final disposition of the case does not result in a conviction.

6-10.116. Additional Remedies.

- a. The remedies provided by this article are cumulative and in addition to any other remedies available at law or in equity.
- b. Whenever evidence of a violation of this article is obtained in any part through the participation of a person under the age of 21 years, such person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this article and the alleged violation shall be adjudicated based upon the evidence presented.
- c. In addition to other remedies provided by this chapter or by other law, any violation of this article may be remedied by criminal prosecution by the District Attorney and/or administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.
- d. For the purposes of the civil remedies provided in this article:

1. Each day on which a tobacco product is distributed, sold, or offered for sale in violation of this article shall constitute a separate violation of this article; and
 2. Each individual tobacco product that is distributed, sold, or offered for sale in violation of this article shall constitute a separate violation of this article.
- e. All tobacco retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer.

6-10.117. Exceptions.

- a. Nothing in this article 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.

6-10.118. Construction and Severability.

It is the intent of the City Council to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this article, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this article, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 2. The City Council finds this ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act (“CEQA”) Guidelines, because there is no potential for it to result in an impact to or physical change in the environment, either directly or indirectly. In the event this ordinance is found to be subject to CEQA, it is exempt from CEQA pursuant to section 15061(b)(3) of the CEQA Guidelines, known as the “Common Sense” exemption, because it can be seen with certainty that there is no possibility of a significant effect on the environment.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect commencing thirty (30) days after its final adoption and a summary hereof shall be published once within fifteen (15) days in a newspaper of general circulation printed and published in the County of Lake and circulated in the City of Clearlake, hereby designated for that purpose by the City Council.

SECTION 7. The City Clerk shall certify to the passage and adoption of this ordinance and shall cause the same to be published in the manner and form provided by law in a newspaper of general circulation printed and published in the City of Clearlake, State of California.

Introduced at a regular meeting of the City Council on the 7th day of November, 2024, by the following roll call vote:

MOTION:

AYES:

NOES:

ABSENT

ABSTAINED

Passed and approved at the regular meeting of the City Council on the ____ day of ____, 2024, by the following roll call vote:

MOTION:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

, City Clerk

, Mayor

APPROVED AS TO FORM:

Dean J. Pucci, City Attorney