


Agenda Report Reviewed by:
City Manager: 

**CITY OF SEBASTOPOL
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: September 15, 2020
To: Honorable Mayor and City Councilmembers
From: Vice Mayor Glass
City Manager
Interim Chief of Police
Planning Director
Subject: Approval of Waiving of Second Reading and Adoption of Ordinance 1131
– Tobacco Retailer License
Recommendation: Adopt the Ordinance
Funding: Currently Budgeted: _____ Yes _____ No X _____ N/A
Net General Fund Cost: Amount: \$

Account Code/Costs authorized in City Approved Budget AK (verified by Administrative Services Department)

Introduction:

At its September 1, 2020 regular meeting, the City Council received the staff report and presentation, held the public hearing and discussed an ordinance to add requirements for a Tobacco Retail License and restrict certain sales of tobacco products to the Municipal Code Section 8.06. The modifications requested by Council at this meeting have been incorporated into the final ordinance.

The ordinance is now presented for adoption. The ordinance will go into effect in 30 days after adoption. The ordinance will be enforced in six (6) months after adoption. During this six (6) month period retailers are expected to sell down their inventory of restricted products. Any state and/or federal regulations may be subject to a different timeline.

Recommendation:

Adopt the Ordinance.

Attachment:

Ordinance No. 1131

CITY OF SEBASTOPOL

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL AMENDING THE SEBASTOPOL MUNICIPAL CODE BY ADDING CHAPTER 8.06 (TOBACCO RETAIL LICENSING) TO TITLE 8 (HEALTH AND SAFETY) TO REQUIRE THE LICENSURE OF TOBACCO RETAILERS TO REGULATE THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS TO PROTECT MINORS

Sections:

8.06.010	TITLE	8.06.120	EXPIRATION
8.06.020	FINDINGS AND PURPOSE	8.06.130	LICENSES NONTRANSFERABLE
8.06.030	DEFINITIONS	8.06.140	LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE
8.06.040	GENERAL REQUIREMENTS AND PROHIBITIONS	8.06.150	FEE FOR LICENSE
8.06.050	SALE OF FLAVORED TOBACCO PRODUCTS & ELECTRONIC SMOKING DEVICES	8.06.160	COMPLIANCE MONITORING
8.06.060	TOBACCO PRODUCT PRICING AND PACKAGING.	8.06.170	SUSPENSION OR REVOCATION OF LICENSE
8.06.070	LIMITS ON ELIGIBILITY FOR A TOBACCO RETAIER LICENSE	8.06.180	TOBACCO RETAILING WITHOUT A VALID LICENSE
8.06.080	APPLICATION PROCEDURE	8.06.190	ADDITIONAL REMEDIES
8.06.090	LICENSE ISSUANCE OR DENIAL	8.06.200	EXCEPTIONS
8.06.110	LICENSE RENEWAL AND	8.06.210	OTHER LAWS
		8.06.220	CONSTRUCTION & SEVERABILITY
			PUBLIC RECORDS

8.06.010 TITLE

This ordinance shall be known as the “Tobacco Retail License Ordinance to Regulate the Sale and Distribution of Tobacco Products to Protect Minors of the City of Sebastopol”

8.06.020 FINDINGS AND PURPOSE

The City of Sebastopol (the City) hereby finds that:

WHEREAS, 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;

WHEREAS, approximately 480,000 people die in the United States from smoking-related diseases and exposure to secondhand smoke every year, making tobacco use the nation’s

leading cause of preventable death;¹

WHEREAS, the World Health Organization (WHO) estimates that tobacco kills roughly 6 million people and causes over half a trillion dollars in economic damage each year;²

WHEREAS, 5.6 million of today’s Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;³

WHEREAS, tobacco use is the number one cause of preventable death in California⁴ and continues to be an urgent public health issue, as evidenced by the following:

- 40,000 California adults die from their own smoking annually;⁵
- More than 25% of all adult cancer deaths in California are attributable to smoking;⁶
- Smoking costs California \$13.29 billion in annual health care expenses, \$3.58 billion in Medicaid costs caused by smoking, and \$10.35 billion in smoking-caused productivity losses;⁷
- Tobacco use can cause disease in nearly all of the organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States;⁸

WHEREAS, tobacco use among priority populations in California contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- African American (20.4%), Asian (11.4%), and Hispanic (15.2%) males all

¹ U.S. Department of Health and Human Services, *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Printed with corrections, January 2014, 11. Available at: https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.

² World Health Organization. *WHO Report on the Global Tobacco Epidemic, 2013: Enforcing Bans on Tobacco Advertising, Promotion and Sponsorship*, 2013, Executive Summary,1. Available at: http://www.who.int/tobacco/global_report/2013/en/.

³ U.S.HHS. *The Health Consequences of Smoking: 50 Years of Progress*, 4.

⁴ California Department of Public Health California Tobacco Control Program, “*The #1 Preventable Cause of Death – Tobacco Free CA*,” as of March 2, 2020. Available at: <https://tobaccofreeca.com/health/tobacco-is-the-number-one-preventable-cause-of-death/#:~:text=Tobacco%20products%20continue%20to%20be,year%20from%20tobacco%2Drelated%20diseases>.

⁵ Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs — 2014*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014, 82. Available at: https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf

⁶ Lortet-Tieulent J, Goding Sauer A, Siegel RL, et al. *State-Level Cancer Mortality Attributable to Cigarette Smoking in the United States*. *JAMA Intern Med*. 2016;176(12):1792-1798. doi: 10.1001/jamainternmed.2016.6530.

⁷ Campaign for Tobacco-Free Kids, *The Toll of Tobacco in California*. <https://www.tobaccofreekids.org/problem/toll-us/california>. Accessed July 19, 2020

⁸ U.S.HHS. *The Health Consequences of Smoking: 50 Years of Progress*, 7.

report a higher smoking prevalence than the statewide average among all adults (11.0%);⁹

- American Indian/Alaska Native (36.2%) Californians have the highest smoking prevalence (19.1%) among all reported adult demographic populations,
- Smoking is more prevalent among rural (14.9%) compared to urban (10.6%) Californians;¹⁰
- Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence;¹¹
- Adults who identify as lesbian, gay, bisexual, or transgender report smoking at a higher rate (17.4%) than the statewide average (11.0%);¹²
- Those who reported experiencing psychological distress over the past month smoke at rates (26.7%) higher than the statewide average (11.0%);¹³

WHEREAS, despite the state’s efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, research indicates over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;¹⁴
- In California, from 2013 to 2015, approximately 15% of 9th and 11th grade 2017 to 2018, approximately 13% of high school students reported using tobacco; students report using electronic smoking devices;¹⁵
- Disparities in tobacco use exist among California high school students, with higher rates found among LGBTQ, American Indian, and Pacific Islander youth;¹⁶
- Unless smoking rates decline, an estimated 441,000 of all California youth who are

⁹ California Department of Public Health California Tobacco Control Program. *California Tobacco Facts and Figures 2019*. Sacramento, CA: California Department of Public Health. 2019. Available at: <https://www.cdph.ca.gov/Programs/CCDC/DCDC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ California Tobacco Control Program, *California Tobacco Facts and Figures 2016*. Sacramento, CA: California Department of Public Health. 2016, 20. Available at: <https://www.cdph.ca.gov/Programs/CCDC/DCDC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>.

¹⁵ CDPH, *California Tobacco Facts and Figures 2019*.

¹⁶ Ibid.

alive today will die prematurely from smoking-related diseases;¹⁷

- In 2017, 22.8% of high school students in California had tried cigarette smoking;¹⁸
- Between 2014 and 2018, electronic smoking device use among California youth increased from 14.1% to 46.2%;¹⁹
- E-cigarettes (electronic smoking devices) have been the most commonly used tobacco product by youth in the United States since 2014.²⁰
- More than 80% of high-school students who consume tobacco use a vaping device.²¹

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting,²² as evidenced by the following:

- Tobacco companies target young adults ages 18 to 24 to increase their frequency of tobacco use and encourage their transition to habitual users;²³
- Tobacco industry documents state that if “a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one”;²⁴
- The tobacco industry spends an estimated \$620 million annually to market tobacco products to California residents;²⁵

¹⁷ U.S.HHS. *The Health Consequences of Smoking: 50 Years of Progress*, table 12.2.1, 693

¹⁸ Kann L, McManus T, Harris WA, et al, *Youth Risk Behavior Surveillance — United States, 2017*, MMWR Surveill Summ. 2018;67(8):1-114 and Supplementary Tables 52-93. Available at: https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm

¹⁹ Lin C, Baiocchi M, Halpern-Felsher B. *Longitudinal trends in e-cigarette devices used by Californian youth, 2014–2018*. *Addict Behav.* 2020; 108:106459. doi: 10.1016/j.addbeh.2020.106459.

²⁰ U.S. Department of Health and Human Services, created through a partnership between the Office of the U.S. Surgeon General and the U.S. Centers for Disease Control and Prevention, Office on Smoking and Health. *Get the Facts on E-cigarettes/Know the Risks*, 2020 Available at: [https://e-cigarettes.surgeongeneral.gov/getthefacts.html#:~:text=E%2Dcigarettes%20have%20been%20the.\(ages%2018%2D24\).](https://e-cigarettes.surgeongeneral.gov/getthefacts.html#:~:text=E%2Dcigarettes%20have%20been%20the.(ages%2018%2D24).)

²¹ Office of Governor Newsom, E-cigarette executive order, September 16, 2019, Available at: <https://tobaccofreeca.com/e-cigarettes/governor-gavin-newsom-signs-executive-order-to-confront-youth-vaping-epidemic/>

²² California Tobacco Control Program, California Tobacco Facts and Figures 2019. Sacramento, CA: California Department of Public Health. 2019. Available at: <https://www.cdph.ca.gov/Programs/CCDPPH/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CATobaccoFactsandFigures2019.pdf>.

²³ Ling PM, Glantz SA. *Why and How the Tobacco Industry Sells Cigarettes to Young Adults: Evidence From Industry Documents*. *Am J Public Health.* 2002;92(6):908-916. doi: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447481/>

²⁴ Burrows, D.S. “Estimated Change in Industry Trend Following Federal Excise Tax Increase.” *UCSF Library Truth Tobacco Industry Documents*. Date Mod. Industry, Apr. 17, 2012, 2: <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/nnnw0084>. Accessed July 20, 2020.

²⁵ Campaign for Tobacco-Free Kids, *The Toll of Tobacco in California*. Accessed July 20, 2020

WHEREAS, California retailers continue to sell tobacco to underage consumers, evidenced by the following:

- 9.3% of high school students in California reported buying their own electronic cigarette from a store;²⁶
- 19.1% of California tobacco retailers unlawfully sold tobacco products to underage persons in 2018;²⁷

WHEREAS, 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 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 the following:

- Tobacco products are the number one seller in U.S. convenience stores, and in 2018, they generated an average of \$595,870 in sales per store;²⁸
- Systematic scientific reviews indicate that merchant compliance with youth tobacco sales laws reduces the rate of tobacco use among adolescents;^{29 30}
- Studies 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;^{31 32}
- A review of 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.³³

²⁶ Kann L, McManus T, Harris WA, et al. *Youth Risk Behavior Surveillance — United States, 2017*. MMWR Surveill Summ. 2018;67(8):1-114 and Supplementary Tables 52-93. Available at: <https://www.cdc.gov/healthyouth/data/yrbs/>

²⁷ California Tobacco Control Program. *California Tobacco Facts and Figures 2019*.

²⁸ National Association of Convenience Stores. *Convenience Stores and Their Communities*. 2019. Available at: <https://www.convenience.org/Topics/CommunityToolkit/Convenience-Stores-and-Their-Communities>

²⁹ U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf

³⁰ DiFranza JR. *Which interventions against the sale of tobacco to minors can be expected to reduce smoking?* Tob Control. 2012;21:436-442. doi: 10.1136/tobaccocontrol-2011-050145.

³¹ McLaughlin I. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool*. Tobacco Control Legal Consortium. 2010. Available at: <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf>.

³² Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington, DC: The National Academies Press. 2015. Available at: <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

³³ The American Lung Association in California Center for Tobacco Policy and Organizing, *Tobacco Retailer Licensing is Effective*. 2018. Available at: <https://center4tobaccopolicy.org/wp-content/uploads/2018/09/Tobacco-Retailer-Licensing-is-Effective>.

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,³⁴ largely because these flavored products are marketed to youth and young adults,^{35 - 36} and younger smokers were more likely than older smokers to have tried these products;³⁷

WHEREAS, neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, electronic smoking devices, and the solutions used in these devices;

WHEREAS, in 2018, more than 86% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 91% of tobacco retailers sold menthol cigarettes³⁸, and as of 2016, 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products;³⁹

WHEREAS, flavored tobacco products are used by the majority of youth and young adult tobacco users (86.4% and 57.7%, respectively) in California;⁴⁰

WHEREAS, mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco^{41 - 42} and that these products help establish tobacco habits that can lead to long-term addiction;^{43 - 44}

WHEREAS, between 2004 and 2014, use of non-menthol cigarettes decreased among all populations, but overall use of menthol cigarettes increased among young adults (ages 18 to 25)

Effective-September-2018.pdf.

³⁴ 21 U.S.C. § 387g(a)(1)(A).

³⁵ U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 2012.

³⁶ Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. 2015

³⁷ U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 2012.

³⁸ Schleicher NC, Johnson T, Vishwakarma M, et al. California Tobacco Retail Surveillance Study 2018. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/CaliforniaTobaccoRetailSurveillanceStudyReport-2018.pdf>.

³⁹ California Department of Public Health, California Tobacco Control Program. *2016 Healthy Stores for a Healthy Community Survey Results-all counties*. 2016. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/HSHTechnicalReport2016.pdf>. received the following from CTCP: <https://3rz43f180d43qd3m43t15x17-wpengine.netdna-ssl.com/wp-content/uploads/2020/06/HSHC-Retail-Survey-Results-All-Counties.xlsx>.

⁴⁰ California Tobacco Control Program. *California Tobacco Facts and Figures 2019*.

⁴¹ 21 U.S.C. § 387g(a)(1)(A).

⁴² Wackowski O, Delnevo CD. *Menthol cigarettes and indicators of tobacco dependence among adolescents*. *Addict Behav.* 2007;32(9):1964-1969. doi: 10.1016/j.addbeh.2006.12.023.

⁴³ U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, 2012.

⁴⁴ Villanti AC, Johnson AL, Glasser AM, et al. *Association of Flavored Tobacco Use With Tobacco Initiation and Subsequent Use Among US Youth and Adults*, 2013-2015. *JAMA Netw Open.* 2019;2(10):e1913804. doi: 10.1001/jamanetworkopen.2019.13804.

and adults (ages 26+);⁴⁵

WHEREAS, flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation;^{46 - 47}

WHEREAS, in 2018, the Surgeon General issued an “Advisory on E-cigarette Use Among Youth” emphasizing the importance of protecting our children from a lifetime of nicotine addiction and associated health risks by immediately addressing the epidemic of youth e-cigarette (electronic smoking device) use.⁴⁸

WHEREAS, the FDA declared the use of e-cigarettes (electronic smoking device) among children to be an epidemic on December 4, 2019.⁴⁹

WHEREAS, a review of advertising, promotions, and pack prices near California high schools found that “for each 10 percentage point increase in the proportion of Black students, the proportion of menthol advertising increased by 5.9% ... the odds of a Newport [a leading brand of mentholated cigarettes] promotion were 50% higher ... and the cost of Newport was 12 cents lower.” There was no such association found for non-mentholated cigarettes;⁵⁰

WHEREAS, scientific reviews by the FDA and the Tobacco Products Scientific Advisory Committee (“TPSAC”) found marketing of menthol cigarettes likely increases the prevalence of smoking among the entire population, but especially among youth, African Americans,⁵¹ and possibly Hispanic and Latino individuals;⁵² and that menthol cigarettes are associated with increased initiation and progression to regular cigarette smoking, increased dependence on cigarettes, and reduced success in smoking cessation, especially among African American

⁴⁵ Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. *Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004-2014*. *Tob Control*. 2016;25(Suppl 2):ii14-ii20. doi: 10.1136/tobaccocontrol-2016-053329.

⁴⁶ United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1 (D.D.C. 2006), aff’d in part, vacated in part, 566 F.3d 1095 (D.C. Cir. 2009), and order clarified, 778 F. Supp. 2d 8 (D.D.C. 2011).

⁴⁷ Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. *Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults*. *Am J Public Health*. 2008;98(9):1685-1692. doi: 10.2105/AJPH.2007.125542

⁴⁸ U.S. Depart. HHS, *Surgeon General’s Advisory on E-cigarette Use Among Youth*. 2018. Available at: <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>

⁴⁹ U.S. Food and Drug Administration, *The Federal Response to the Epidemic of E-Cigarette Use, Especially Among Children, And the Food and Drug Administration’s Compliance Policy*, December 4, 2019. Available at: <https://www.fda.gov/news-events/congressional-testimony/federal-response-epidemic-e-cigarette-use-especially-among-children-and-food-and-drug>

⁵⁰ Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. *Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods*. *Nicotine Tob Res*. 2012;14(1):116-121. doi: 10.1093/ntr/ntr122.

⁵¹ Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013. Available at: <https://www.fda.gov/media/86497/download>
<http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>.

⁵² Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*. 2011. Available at: <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>

menthol smokers;⁵³

WHEREAS, research indicates that the FDA ban on all flavored cigarette products (except menthol) led to a 6% decrease in youth tobacco use and a 17% decrease in the likelihood of a youth becoming a cigarette smoker; tobacco use by youth decreased by 6% and the likelihood of a youth becoming a cigarette smoker;⁵⁴

WHEREAS, studies indicate that laws prohibiting the sale of flavored tobacco products lead to decreases in youth tobacco use, as evidenced by the following:

- 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;⁵⁵
- 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%;⁵⁶

WHEREAS, the health effects of non-cigarette tobacco products such as cigars, cigarillos, smokeless tobacco, and shisha are substantial as demonstrated by research that shows that non-cigarette tobacco products have addictive levels of nicotine, harmful toxins, and dangerous cinogens;⁵⁷⁻⁵⁸

WHEREAS, unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has increased among California youth;⁵⁹

WHEREAS, the availability of inexpensive tobacco products leads to increased tobacco use as evidenced by more than 100 academic studies that conclusively show that when tobacco products are made more expensive, fewer people use tobacco, fewer initiate tobacco use, and

⁵³ FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes*. 2013.

⁵⁴ Courtemanche CJ, Palmer MK, Pesko MF. *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use*. *Am J Prev Med*. 2017;52(5):e139-e146. doi: 10.1016/j.amepre.2016.11.019.

⁵⁵ Farley SM, Johns M. *New York City flavoured tobacco product sales ban evaluation*. *Tob Control*. 2017;26(1):78-84. doi: 10.1136/tobaccocontrol-2015-052418.

⁵⁶ Pearlman DN, Arnold JA, Guardino GA, Boles Welsh E. *Advancing Tobacco Control Through Point of Sale Policies*, Providence, Rhode Island. *Prev Chronic Dis*. 2019;16:E129. doi: 10.5888/pcd16.180614.

⁵⁷ Hoffmann D, Hoffmann I. Chapter 3: Chemistry and Toxicology. In: *Smoking and Tobacco Control Monograph No. 9: Cigars: Health Effects and Trends*. National Cancer Institute; 1998.

⁵⁸ Pickworth WB, Rosenberry ZR, Yi D, et al. Cigarillo and Little Cigar Mainstream Smoke Constituents from Replicated Human Smoking. *Chem Res Toxicol*. 2018;31(4):251-258. doi: 10.1021/acs.chemrestox.7b00312.

⁵⁹ California Tobacco Control Program. *California Tobacco Facts and Figures 2019*.

more people quit tobacco use;⁶⁰⁻⁶¹

WHEREAS, research has also consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations;⁶²

WHEREAS, a systematic review by the U.S. Community Preventive Services Task Force found that a 20% price increase would reduce demand for cigarettes by approximately 10.4%, the prevalence of adult tobacco use by 3.6%, and initiation of tobacco use by young people by 8.6%;⁶³

WHEREAS, unequal price increases across different types of tobacco products lead to substitution from one product to another;^{64, 65}

WHEREAS, youth are particularly responsive to changes in tobacco prices,^{66- 67} and evidence suggests that tobacco companies deliberately target youth with price reductions;⁶⁸⁻⁶⁹

WHEREAS, evidence also suggests that cigarettes are cheaper in neighborhoods with lower household incomes,^{70,71} Newport menthol cigarettes cost less in areas with higher proportions of African Americans⁷² and underserved communities are targeted with price discounts and

⁶⁰ U.S.HHS. *The Health Consequences of Smoking: 50 Years of Progress*, price 706, 707+

⁶¹ Jawad M, Lee JT, Glantz S, Millett C. *Price elasticity of demand of non-cigarette tobacco products: a systematic review and meta-analysis*. *Tob Control*. 2018. doi: 10.1136/tobaccocontrol-2017-054056.

⁶² Yao T, Ong MK, Max W, et al. *Responsiveness to cigarette prices by different racial/ethnic groups of US adults*. *Tob Control*. 2018;27(3):301-309. doi: 10.1136/tobaccocontrol-2016-053434.

⁶³ Community Preventive Services Task Force. *Reducing Tobacco Use and Secondhand Smoke Exposure: Interventions to Increase the Unit Price for Tobacco Products*. 2012. Available at: <https://www.thecommunityguide.org/findings/tobacco-use-and-secondhand-smoke-exposure-interventions-increase-unit-price-tobacco>.

⁶⁴ Huang J, Gwarnicki C, *A comprehensive examination of own- and cross-price elasticities of tobacco*.

⁶⁵ Jawad M, Lee JT, Glantz S, Millett C, *Price elasticity of demand of non-cigarette tobacco products*, 2018.

⁶⁶ 2012 U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, 2012*.

⁶⁷ Levy DT, Tam J, Kuo C, Fong GT, Chaloupka F. *The Impact of Implementing Tobacco Control Policies: The 2017 Tobacco Control Policy Scorecard*. *J Public Health Manag Pract*. 2018;24(5):448-457. doi: 10.1097/PHH.0000000000000780.

⁶⁸ U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, 2012*.

⁶⁹ Tessman GK, Caraballo RS, Corey CG, Xu X, Chang CM. *Exposure to tobacco coupons among U.S. middle and high school students*. *Am J Prev Med*. 2014;47(2 Suppl 1):S61-68. doi: 10.1016/j.amepre.2014.05.001.

⁷⁰ Henriksen L, Schleicher NC, Barker DC, Liu Y, Chaloupka FJ. *Prices for Tobacco and Nontobacco Products in Pharmacies Versus Other Stores: Results From Retail Marketing Surveillance in California and in the United States*. *Am J Public Health*. 2016;106(10):1858-1864. doi: 10.2105/AJPH.2016.303306.

⁷¹ Mills SD, Golden SD, Henriksen L. *Neighbourhood disparities in the price of the cheapest cigarettes in the USA*. *J Epidemiol Community Health*. 2019;73(9):894-896. doi: 10.1136/jech-2018-210998.

⁷² Henriksen L, Schleicher NC, Barker DC, Liu Y, Chaloupka FJ. *Prices for Tobacco*

coupons;⁷³⁻⁷⁴

WHEREAS, 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 marketing budgets on price discounts, accounting for nearly \$6.2 billion of \$8.6 billion advertising and promotional expenditures in 2018;⁷⁵⁻⁷⁶

WHEREAS, price-discounted sales account for a substantial proportion of overall tobacco product sales;⁷⁷

WHEREAS, although federal and state law ban the sale of individual cigarettes,^{78,79} neither federal nor California state laws restrict the sale of individual little cigars and cigars;

WHEREAS, many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth.⁸⁰ For example:

- 78.3% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than \$1.00;⁸¹
- Between 2012 and 2106, annual sales of cigarillos increased by 78%, and by 155% for “concept-flavored” (e.g. Jazz) cigarillos;⁸²

WHEREAS, a 10% increase in cigar prices has been associated with decreased cigar

⁷³ Counter Tobacco. *Disparities in Point-of-Sale Advertising and Retailer Density*. <https://countertobacco.org/resources-tools/evidence-summaries/disparities-in-point-of-sale-advertising-and-retailer-density/>. Accessed May 18, 2020.

⁷⁴ Henriksen L, Schleicher NC, Johnson TO, Roeseler A, Zhu SH. *Retail Tobacco Marketing in Rural Versus Nonrural Counties: Product Availability, Discounts, and Prices*. *Health Promot Pract*. 2020;21(1_suppl):27S-36S. doi: 10.1177/1524839919888652

⁷⁵ CDC. *State Cigarette Minimum Price Laws — United States*, 2009.

⁷⁶ NCI. *Monograph 2: Smokeless Tobacco or Health* 1992.

⁷⁷ Wang TW, Falvey K, Gammon DG, et al. *Sales Trends in Price-Discounted Cigarettes, Large Cigars, Little Cigars, and Cigarillos-United States*, 2011-2016. *Nicotine Tob Res*. 2018;20(11):1401-1406. doi: 10.1093/ntr/ntx249.

⁷⁸ 21 C.F.R. § 1140.16(b).

⁷⁹ Cal. Penal Code § 308.3(a).

⁸⁰ Schleicher NC, Johnson T, Rigdon J, et al. California Tobacco Retail Surveillance Study, 2017. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/SurveyInstrument sTrainingManualsAndProtocols/CaliforniaTobaccoRetailSurveillanceStudt2017-CTRSS%206-4.pdf> . <https://tobaccoeval.ucdavis.edu/sites/g/files/dgvnsk5301/files/inline-files/CaliforniaTobaccoRetailSurveillanceStudt2017-CTRSS%206-4.pdf>

⁸¹ Ibid.

⁸² Gammon DG, Rogers T, Coats EM, et al. *National and state patterns of concept-flavoured cigar sales, USA, 2012-2016*. *Tob Control*. 2019;28(4):394-400. doi: 10.1136/tobaccocontrol-2018-054348.

sales^{83,84} and may significantly reduce cigar use among youth;⁸⁵

WHEREAS, neither federal nor California state laws set a minimum price for tobacco products;

WHEREAS, minimum price markups and related laws in other states have been shown to be effective at increasing the price of cigarettes but may remain vulnerable to price manipulation by the tobacco industry without attention to coupons and discounts;⁸⁶

WHEREAS, 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%;⁸⁷ 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;⁸⁸ 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;⁸⁹

WHEREAS, by selling tobacco products, pharmacies reinforce positive social perceptions of smoking, convey tacit approval of tobacco use, and send a message that it is not so dangerous to smoke;^{90, 91}

WHEREAS, pharmacies sell cigarettes cheaper than other stores⁹² and advertise tobacco product discounts more than other stores in California;⁹³

WHEREAS, tobacco-free pharmacy sales policies decrease the availability of tobacco products by reducing tobacco retailer density by up to three times compared with communities

⁸³ Gammon DG, Loomis BR, Dench DL, King BA, Fulmer EB, Rogers T. *Effect of price changes in little cigars and cigarettes on little cigar sales: USA, Q4 2011-Q4 2013*. *Tob Control*. 2016;25(5):538-544. doi: 10.1136/tobaccocontrol-2015-052343.

⁸⁴ Jawad M, Lee JT, Glantz S, Millett C. *Price elasticity of demand of non-cigarette tobacco products*, 2018.

⁸⁵ Ringel JS, Wasserman J, Andreyeva T. *Effects of public policy on adolescents' cigar use: evidence from the National Youth Tobacco Survey*. *Am J Public Health*. 2005;95(6):995-998. doi: 10.2105/AJPH.2003.030411.178 Katz MH. *Banning tobacco sales in pharmacies: the right prescription*. *JAMA*. 2008;300(12):1451-1453. doi: 10.1001/jama.300.12.1451.

⁸⁶ Huang J, Chriqui JF, DeLong H, Mirza M, Diaz MC, Chaloupka FJ. *Do state minimum markup/price laws work? Evidence from retail scanner data and TUS-CPS*. *Tob Control*. 2016;25(Suppl 1):i52-i59. doi: 10.1136/tobaccocontrol-2016-053093.

⁸⁷ Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. *The impact of retail cigarette marketing practices on youth smoking uptake*. *Arch Pediatr Adolesc Med*. 2007;161(5):440-445. doi: 10.1001/archpedi.161.5.440.

⁸⁸ Doogan NJ, Wewers ME, Berman M. *The Impact of a Federal Cigarette Minimum Pack Price Policy on Cigarette Use in the USA*. *Tob Control*. 2018;27(2):203-208. doi: 10.1136/tobaccocontrol-2016-053457.

⁸⁹ Golden SD, Kim K, Kong A, et al. *Simulating the Impact of a Cigarette Minimum Floor Price Law on Adult Smoking Prevalence in California*. *Nicotine Tob Res*. 2020;ntaa046. doi: 10.1093/ntr/ntaa046.

⁹⁰ Katz MH. *Banning tobacco sales in pharmacies: the right prescription*. *JAMA*. 2008;300(12):1451-1453. doi: 178

⁹¹ Hudmon KS, et al, *Tobacco sales in pharmacies: time to quit*. *Tob Control*. 2006;15(1):35-38. doi: 10.1136/tc.2005.012278.

⁹² Henriksen L, Schleicher et al NC, Barker DC, Liu Y, Chaloupka FJ. *Prices for Tobacco and Nontobacco Products in Pharmacies*.

⁹³ Schleicher NC, Johnson T, Vishwakarma M, et al. *California Tobacco Retail Surveillance Study 2018*. Available at: <https://www.cdph.ca.gov/Programs/CCDC/DCDC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/CaliforniaTobaccoRetailSurveillanceStudyReport-2018.pdf>.

that do not have such policies,⁹⁴ and immediately after the nationwide CVS policy change to not sell tobacco products, cigarette purchases declined and smokers who had previously purchased their cigarettes exclusively at CVS were up to twice as likely to stop buying cigarettes entirely;⁹⁵

WHEREAS, the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day,⁹⁶ particularly in neighborhoods experiencing poverty;⁹⁷⁻⁹⁸

WHEREAS, the density of tobacco retailers near adolescents' homes has been associated with increased youth smoking rates⁹⁹ smoking and initiation of non-cigarette tobacco use;¹⁰⁰

WHEREAS, adults who smoke are likely to have a harder time quitting when residential proximity to tobacco retailers is closer¹⁰¹ and density is higher;¹⁰²⁻¹⁰³

WHEREAS, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;¹⁰⁴⁻¹⁰⁵

WHEREAS, tobacco retailer density is higher in urban compared to rural areas, except for

⁹⁴ Jin Y, Lu B, Klein EG, Berman M, Foraker RE, Ferketich AK. *Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts*. Am J Public Health. 2016;106(4):679-685. doi: 10.2105/AJPH.2015.303040

⁹⁵ Polinski JM, Howell B, Gagnon MA, Kymes SM, Brennan TA, Shrank WH. *Impact of CVS Pharmacy's Discontinuance of Tobacco Sales on Cigarette Purchasing (2012-2014)*. Am J Public Health. 2017;107(4):556-562. doi: 10.2105/AJPH.2016.303612

⁹⁶ Chuang YC, Cubbin C, Ahn D, Winkleby MA. *Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking*. J Epidemiol Community Health. 2005;59(7):568-573. doi: 10.1136/jech.2004.029041.

⁹⁷ Ibid.

⁹⁸ Huang J, Chriqui JF, DeLong H, Mirza M, Diaz MC, Chaloupka FJ. *Do state minimum markup/price laws work? Evidence from retail scanner data and TUS-CPS*. Tob Control. 2016;25(Suppl 1):i52-i59. doi: 10.1136/tobaccocontrol-2016-053093.

⁹⁹ Finan LJ, Lipperman-Kreda S, Abadi M, et al. *Tobacco Outlet Density and Adolescents' Cigarette Smoking: A Meta-Analysis*. Tob Control. 2019;28(1):27-33. doi: 10.1136/tobaccocontrol-2017-054065.

¹⁰⁰ Abdel Magid HS, Halpern-Felsher B, Ling PM, et al. *Tobacco Retail Density and Initiation of Alternative Tobacco Product Use Among Teens*. J Adolesc Health. 2020;66(4):423-430. doi: 10.1016/j.jadohealth.2019.09.004.

¹⁰¹ Reitzel LR, Cromley EK, Li Y, et al. *The effect of tobacco outlet density and proximity on smoking cessation*. Am J Public Health. 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.

¹⁰² Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. *The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty*. Addiction. 2015;110(1):152-161. doi: 10.1111/add.12718.

¹⁰³ Shareck M, Datta GD, Vallee J, Kestens Y, Frohlick KL. *Is Smoking Cessation in Young Adults Associated With Tobacco Retailer Availability in Their Activity Space?* Nicotine Tob Res. 2020;22(4):512-521. doi: 10.1093/ntr/nty242.

¹⁰⁴ Siahpush M, Jones PR, Singh GK, Timsina LR, Martin J. *Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods*. Public Health. 2010;124(9):525-529. doi: 10.1016/j.puhe.2010.04.010.

¹⁰⁵ Fakunle DO, Curriero FC, Leaf PJ, Furr-Holden DM, Thorpe RJ. *Black, White, or Green? The Effects of Racial Composition and Socioeconomic Status on Neighborhood-Level Tobacco Outlet Density*. Ethn Health. 2019;1-16. doi: 10.1080/13557858.2019.1620178.

low-income communities, which have higher tobacco retailer densities regardless of geography, and Hispanic communities, which are associated with variable retailer densities across geography;¹⁰⁶⁻¹⁰⁷

WHEREAS, policies to reduce tobacco retailer density have been shown to be effective^{108, 109} and may reduce or eliminate inequities in the location and distribution of tobacco retailers;

WHEREAS, strict enforcement of policies prohibiting retail sales of cigarettes to youth, sales of cigarettes via vending machines, and other means through which youth gain access to tobacco in the commercial settings can limit their opportunities to obtain these products;^{110,111}

WHEREAS, 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;^{112,113}

WHEREAS, the Institute of Medicine recognizes that retailers are not likely to comply with youth tobacco access laws unless such laws are actively enforced through retailer compliance check paired with meaningful penalties on business owners for violations.¹¹⁴

WHEREAS, state law California Health and Safety Code section 11364 prohibits possession of and California Health and Safety Code section 11014.5 prohibits sales of “drug paraphernalia”; and

WHEREAS, many retailers nevertheless sell items that are commonly known to be “drug paraphernalia,” including bongs and pipes used to smoke methamphetamine and other illicit drugs, claiming that such items are intended for tobacco use; and

WHEREAS, several California cities require compliance with state drug paraphernalia laws

¹⁰⁶ Rodriguez D, Predictors of tobacco outlet density nationwide:2011.

¹⁰⁷ Rodriguez D, Carlos HA, Adachi-Mejia AM, Berke EM, Sargent J. *Retail tobacco exposure: using geographic analysis to identify areas with excessively high retail density*. Nicotine Tob Res. 2014;16(2):155-165. doi: 10.1093/ntr/ntt126.

¹⁰⁸ Ribisl KM, Luke DA, Bohannon DL, Sorg AA, Moreland-Russell S. *Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools*. Nicotine Tob Res. 2017;19(2):239-244. doi: 10.1093/ntr/ntw185.

¹⁰⁹ Luke DA, Hammond RA, Combs T, et al. *Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density*. Am J Public Health. 2017;107(5):740-746. doi: 10.2105/AJPH.2017.303685.

¹¹⁰ U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, 2012*.

¹¹¹ DiFranza JR. *Which interventions against the sale of tobacco to minors can be expected to reduce smoking?* Tob Control. 2012;21:436-442. doi: 10.1136/tobaccocontrol-2011-050145.

¹¹² DiFranza JR. *Best Practices for Enforcing State Laws Prohibiting the Sale of Tobacco to Minors*. J Public Health Manag Pract. 2005;11(6):559-565. doi: 10.1097/00124784-200511000-00014.

¹¹³ Macinko J, Silver D. Impact of New York City’s 2014 *Increased Minimum Legal Purchase Age on Youth Tobacco Use*. Am J Public Health. 2018;108(5):669-675. doi: 10.2105/AJPH.2018.304340.

¹¹⁴ Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington, DC: National Academies Press. 2015.

as a condition of obtaining and maintaining a local tobacco retailer license;¹¹⁵

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3);

WHEREAS, California courts have affirmed the power of the City Council 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);

WHEREAS, over 180 cities and counties in California have passed tobacco retailer licensing ordinances as of 2018 in an effort to stop youth from using tobacco;¹¹⁶

WHEREAS, the City has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

WHEREAS, the City 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 in order to protect the health, safety, and welfare of our residents; and

NOW THEREFORE, it is the intent of the City, in enacting this ordinance, to ensure compliance with the business standards and practices of the City 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 and nicotine 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.

¹¹⁵ Family Smoking Prevention and Tobacco Control Act § 3(1), Pub. L. No. 111-31, 123 Stat. 1776-1858 (2009).

¹¹⁶CDPH, *California Tobacco Facts and Figures* 2019, 22.

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

“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 Sebastopol.

“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.

“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 Sebastopol Police Department and any agency or person designated by the Department to enforce or administer the provisions of this Chapter, such as Sonoma County Department of Health Services, City of Sebastopol Administration, City of Sebastopol Administrative Services Department and City of Sebastopol Planning Department, and the Sebastopol Building Department.

“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, 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 contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.

“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.

“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.

“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, personal representative, receiver, trustee, assignee, or any other legal entity.

“Pharmacy” means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

“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 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 Paraphernalia, 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 Paraphernalia, or both; or 60 percent (60%) or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, Tobacco Paraphernalia, or both; or fifty (50%) percent or more of completed sales transactions include Tobacco Products or Tobacco Paraphernalia.

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

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

“Tobacco product” means:

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

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

“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.

“Youth-Oriented Area” means a parcel in the city of Sebastopol that is occupied by:

1. a private or public preschool, kindergarten, elementary, middle, junior high, or high school;
 - a. A preschool is 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
2. a park or playground open to the public or to all the residents of a private community

8.06.040 GENERAL REQUIREMENTS AND PROHIBITIONS.

- A. *Tobacco Retailer’s License Required.* It shall be unlawful for any person to engage in tobacco retailing in the City 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 Chapter 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 of any retail establishment licensed under this chapter. Smoking also prohibited outdoors within 25 feet of any retail establishment licensed under this chapter.
- D. *Minimum Legal Sales Age.* No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.
- E. *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 or tobacco accessories to another Person who is under the age of twenty-seven (27) years without first examining the identification of the recipient to confirm that the recipient is at least the minimum age for sale of tobacco products as established by state law.
- 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 shall be conducted in-person in the licensed location. It shall be a violation of this chapter for any tobacco retailer or any of the tobacco retailer’s agents or employees to engage in the delivery sale of tobacco products or to knowingly or recklessly sell or provide tobacco products to any person that intends

to engage in the delivery sale of the tobacco product in the City.

- I. *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.
- J. *Minimum Employee Age.* Individuals employed by a person licensed under this ordinance must be at least eighteen (18) years of age to sell tobacco, tobacco-related devices, electronic delivery devices, or other nicotine delivery products.

8.06.050 SALE OF FLAVORED TOBACCO PRODUCTS & ELECTRONIC SMOKING DEVICES.

- 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.* 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.
- B. *Electronic Smoking Device Sales Prohibited.* It shall be unlawful for any tobacco retailer to sell any electronic smoking device.

8.06.060 TOBACCO PRODUCT PRICING AND PACKAGING.

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

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

E. *Minimum Package Size for Little Cigars and Cigars.* No tobacco retailer shall sell to a consumer:

1. any little cigar unless it is sold in a package of at least five (5) little cigars minimum pack size; or
2. any cigar unless it is sold in a package of at least two (2) cigars minimum pack size, however, that this subsection shall not apply to a cigar that has a price of at least \$10.00 per cigar, including all applicable taxes and fees.

F. *Minimum Prices for Cigarettes, Little Cigars, and Cigars.* No tobacco retailer shall sell to a consumer:

1. Cigarettes at a price that is less than \$10.00 per package of 20 cigarettes, including all applicable taxes and fees;
2. Little cigars at a price that is less than \$2.00 each per little cigar, including all applicable taxes and fees;
3. Cigars at a price that is less than \$5.00 per cigar, including all applicable taxes and fees.

The minimum prices established in this section shall be adjusted annually by the Department in proportion with the Consumer Price Index, using a system established by the Department.

8.06.070 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 Business.* No license may issue, and no existing license may be renewed, to authorize tobacco retailing at a location licensed for commercial cannabis activity by the State of California under Business and Professions Code Division 10.
- C. *Pharmacies.* No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.
- D. *Proximity to Youth-Oriented 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.

- E. *Significant Tobacco Retailer.* No license may be issued to authorize tobacco retailing by a significant tobacco retailer. Exceptions:
- A. Any existing Significant Tobacco Retailer shall be considered a non-conforming use upon adoption of this Ordinance, and shall be allowed to continue operations in accordance with Section 17.160 Nonconforming Uses.
- F. *Population and Density.* The issuing of tobacco retailer licenses is limited as follows:
1. The total number of tobacco retailer licenses within the City shall be limited to one per two thousand (2,000) inhabitants in the City of Sebastopol.
 2. For the purposes of this subsection, the total population of the City 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.
 3. No new license may be issued to authorize tobacco retailing if the number of tobacco retailer licenses already issued equals or exceeds the total number authorized pursuant to subsection (1).
 4. A tobacco retailer operating lawfully on the date this ordinance is adopted that is ineligible to receive or renew a tobacco retailer's license for a location pursuant to subsection D above, and any tobacco retailer operating lawfully that becomes ineligible to receive or renew a tobacco retailer's license due to the creation of a new youth-oriented area, may apply for and receive a license for the location pursuant to the standard licensing application procedure.
 5. Notwithstanding subsection D, a tobacco retailer operating lawfully on the date this ordinance is adopted that would otherwise be eligible for a tobacco retailer license for the location for which a license is sought may receive or renew a license for that location so long as all of the following conditions are met:
 - a. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
 - b. the tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days;
 - c. the tobacco retailer does not substantially change the business premises or business operation. A substantial change to the business operation includes, but is not limited to, the transferring of a location:

- d. to a new proprietor(s) in an arm's length transaction; or
- e. for which a significant purpose is avoiding the effect of violations of this chapter; and
- f. the tobacco retailer retains the right to operate under all other applicable laws.

If the City of Sebastopol determines that a tobacco retailer has substantially changed their business premises or operation and the tobacco retailer disputes this determination, the tobacco retailer bears the burden of proving by a preponderance of evidence that such change(s) do not constitute a substantial change.

8.06.080 APPLICATION PROCEDURE.

- A. An application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. All applications shall be submitted on a form supplied by the Department.
- B. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to Section 8.06.160 C of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.
- C. Applicant submissions shall contain the following information:
 - 1. The name, address, and telephone number of each proprietor of the business seeking a license.
 - 2. The business name, address, and telephone number of the location for which a license is sought.
 - 3. The name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this chapter.
 - 4. Proof that the location for which a tobacco retailer's license is sought has been issued all necessary state licenses for the sale of tobacco products.
 - 5. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this or any other local, state, or federal law governing the sale of tobacco products and, if so, the dates and locations of all such violations within the previous five years.
 - 6. A signed affidavit affirming that the proprietor has not sold and will not sell any

tobacco product without a license required by this chapter.

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

- D. A licensed tobacco retailer shall inform the Department in writing of any change in the information submitted on an application for a tobacco retailer's license within 10 business days of a change.

8.06.090 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 chapter, the Department may approve or deny the application for a license, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.
- B. *Denial of Application.* The Department may deny an application for a tobacco retailer's license based on any of the following:
 1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter;
 2. The application seeks authorization for tobacco retailing at a location for which this chapter prohibits a license to be issued;
 3. The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued; or
 4. The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this chapter, that is unlawful pursuant to any other chapter of this Code, or that is unlawful pursuant to any other law.
 5. Any other any other suitable reason the granting of a license to the applicant is not consistent with the public health and welfare, including the applicant's history of noncompliance with this chapter and other laws relating to the sale of tobacco products.

8.06.110 LICENSE RENEWAL AND EXPIRATION.

- A. *Renewal of License.* A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is 1 year. Each tobacco retailer shall apply for the renewal of their tobacco retailer's license and submit the license fee no later than 30 days prior to expiration of the

current license. A retailer that fails to timely submit a renewal application and fee is ineligible for license renewal

8.06.120. LICENSES NONTRANSFERABLE.

- A. 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 proprietor(s).
- B. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:
 - 1. the location has been transferred to new proprietor(s) in an arm's length transaction; and
 - 2. the new proprietor(s) provide the City with clear and convincing evidence that the new proprietor(s) have acquired or are acquiring the location in an arm's length transaction.

8.06.130. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.

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

8.06.140. FEE FOR LICENSE.

The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the City. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter including, but not limited to, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

8.06.150 COMPLIANCE MONITORING.

- A. Compliance with this chapter shall be monitored by the Department. In addition, the City may designate additional persons to monitor compliance with this chapter. All licensed premises must be open to inspection by City staff or designated persons during regular business hours.
- B. The Department shall inspect each tobacco retailer at least one (1) time per 12 month period to ensure compliance with this chapter.
- C. The City will conduct at least one (1) compliance check per 12-month period that involves the participation of persons between the ages of 18 and 20 to enter licensed premises to attempt to purchase tobacco products.

8.06.160 SUSPENSION OR REVOCATION OF LICENSE

- A. *Suspension or Revocation of License for Violation.* In addition to any other penalty authorized by law, a tobacco retailer’s license shall be suspended or revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee’s agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, “no contest” or its equivalent, or admitted to a violation of any law designated in Section 8.06.040 above.
 - 1. Upon a finding by the Department of a first violation of this chapter at a location within any five-year (5) period, the license shall be suspended for thirty (30) days.
 - 2. Upon a finding by the Department of a second violation of this chapter at a location within any five-year (5) period, the license shall be suspended for sixty (60) days.
 - 3. Upon a finding by the Department of a third violation of this chapter at a location within any five-year (5) period, the license shall be suspended for one year.
 - 4. Upon a finding by the Department of four or more violations of this chapter at a location within any five-year (5) period, the license shall be revoked.
- B. *Appeal of Suspension or revocation.* A decision of the Department to suspend or revoke a license is appealable to the City Manager and any appeal must be filed in writing with the City Clerk within ten days of mailing of the Department’s decision. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to the City Manager is not available for a revocation made pursuant to subsection (c) below.
- C. *Revocation of License wrongly issued.* A tobacco retailer’s license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Sec. 8.06.090 B 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 City.

8.06.170 TOBACCO RETAILING WITHOUT A VALID LICENSE.

- A. *Ineligible for License.* In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows:
1. After a first violation of this section at a location within any five-year (5) period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until thirty (30) days have passed from the date of the violation.
 2. After a second violation of this section at a location within any five-year (5) period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until ninety (90) days have passed from the date of the violation.
 3. After of a third or subsequent violation of this section at a location within any five-year (5) period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until five (5) years have passed from the date of the violation.

8.06.180 ADDITIONAL REMEDIES.

- A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- B. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of twenty-one (21) 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 upon the sufficiency and persuasiveness of the evidence presented.
- C. Violations of this chapter are subject to a civil action brought by the City, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.
- D. Violations of this chapter may, in the discretion of the City Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require.
- E. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the city attorney, including administrative or judicial nuisance abatement proceedings, civil code enforcement

proceedings, and suits for injunctive relief.

- F. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- G. Violations of this chapter are hereby declared to be public nuisances.
- H. Tobacco products and tobacco accessories offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of the tobacco products and tobacco accessories seized is given reasonable notice and an opportunity to demonstrate that the tobacco products and tobacco accessories were not offered for sale or exchange in violation of this chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Sec. 8.06.160 B. Forfeited tobacco products and tobacco accessories shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.
- I. For the purposes of the civil remedies provided in this chapter:
 - Each day on which a tobacco product or tobacco accessories is offered for sale in violation of this chapter shall constitute a separate violation of this chapter; and
 - 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 shall constitute a separate violation of this chapter.
- J. 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.

8.06.190 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.

8.06.200 OTHER LAWS.

This chapter does not intend and shall not be interpreted to regulate any conduct where the regulation of such conduct has been preempted by the United States or the State of California.

8.06.210 CONSTRUCTION & SEVERABILITY. It is the intent of the City 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 ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The City 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 IV.

8.06.220 PUBLIC RECORDS. All information provided to the Department by a licensee or license applicant pursuant to this chapter shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 et seq.) or any other applicable law.

SECTION V. EFFECTIVE DATE.

This ordinance shall take effect and be in force from and after 30 days after date of enactment; provided, however, that Section 8.06.050 shall not take effect until 6 months after date of enactment.