

ORDINANCE NO. _____

An ordinance amending Title 7 – Business Licenses, and Title 11 – Health and Safety of the Los Angeles County Code, relating to the regulation of tobacco retailers.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Chapter 7.83 is hereby added to read as follows:

Chapter 7.83 – Tobacco Shops

Chapter 7.83 – Tobacco Shops

7.83.010 – Purpose and Intent

7.83.020 – Definitions

7.83.030 – Tobacco Shop – Business License Required

7.83.040 – Operating Requirements

7.83.050 – Consumption of Alcoholic Beverages Prohibited

7.83.060 – Tobacco Products Prohibited

7.83.070 – Smokers’ Lounges

7.83.080 – Compliance with Other Requirements

7.83.010 – Purpose and Intent

In promoting the health, safety, and general welfare of its residents, the County of Los Angeles has a substantial interest in encouraging compliance with federal, State, and local laws regulating tobacco sales and use; discouraging the purchase and use of tobacco products by anyone under the age of 21; increasing compliance with laws prohibiting the sale of tobacco products to anyone under the age of 21; and in protecting children from being lured into illegal activity through the misconduct of adults. It is the intent of this ordinance to encourage responsible Tobacco Shop practices and to discourage violations of tobacco-related laws, especially those that prohibit the sale or

distribution of tobacco products to anyone under the age of 21, but not to expand or reduce the degree to which the acts regulated by federal or State law are criminally proscribed or otherwise regulated.

7.83.020 – Definitions

For the purpose of this chapter, the following words and terms shall have the following meaning:

A. "Cigarette" is (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, or purchased as a cigarette.

B. "Electronic smoking device" is an electronic device which can be used to deliver an inhaled dose of nicotine or other substances, including any component, part, or accessory of such a device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, electronic cigar or cigarillo, electronic pipe, electronic hookah, vaping device, or any other product name or descriptor.

C. "Little cigar" is 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 three pounds per thousand units. "Little cigar" includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar or cigarillo.

D. "Smokers' Lounge" is any enclosed area in or attached to a retail "Tobacco Shop" dedicated exclusively to the sale and use of tobacco products, including but not limited to cigars, pipes, vaping devices, and hookahs.

E. "Tobacco paraphernalia" is any cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, characterizing flavors in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device, including electronic smoking devices, and any other item designed or used for the smoking or ingestion of tobacco products.

F. "Tobacco product" means the following:

1. Any product containing, made, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and

2. Any electronic smoking device that delivers nicotine or other substances, whether natural or synthetic, to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, electronic hookah, or vaping device.

3. Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately.

4. "Tobacco product" does not include drugs, devices or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Drug and Cosmetic Act.

G. "Tobacco Shop" is any retail business establishment, the main purpose of which is the sale of tobacco, tobacco products, and tobacco paraphernalia, including but not limited to cigars, pipe tobacco, electronic cigarettes, vaping devices, and any components, parts, or accessories.

7.83.030 – Tobacco Shop – Business License Required

A. A business license is required for a Tobacco Shop pursuant to Title 7 Division 1 Chapter 7.04 of this Code.

B. Any person opening or currently operating a Tobacco Shop in the unincorporated areas of the County must within 90 days of the effective date of the ordinance codified in this Chapter; apply for a business license for each location pursuant to Division 1 of this Chapter.

C. The Tobacco Shop business license authorizes tobacco sales for a standard, fixed business location only. No business license may be issued to authorize tobacco retailing at other than a fixed location, including but not limited to tobacco retailing on foot or from vehicles.

D. To operate as a Tobacco Shop in the unincorporated areas of the County, the business must possess a valid business license, and a valid Tobacco Retail License issued pursuant to Division 1 of Title 11 of this Code, in addition to any other required or applicable licenses, permits, or certifications. Revocation, or suspension of the Tobacco Retail License, for any period, automatically revokes or suspends the Business License for the same period.

E. Each day that a person or proprietor of a Tobacco Shop sells or offers for sale, tobacco, tobacco products, or tobacco paraphernalia in the unincorporated areas

of Los Angeles County without a valid County of Los Angeles business license constitutes a separate violation of this ordinance.

7.83.040 – Operating Requirements

Operation and maintenance of a Tobacco Shop must conform to every provision of this Chapter.

A. A recognizable and readable sign clearly identifying the Tobacco Shop shall be posted at the building entrance of the tobacco shop. Signage must meet the requirements of this Code.

B. Signs advertising tobacco products inside the surface of an exterior storefront window or on clear doors facing outward, may not occupy an area larger than 14 square feet. Such advertising may not be placed next to any other outward facing advertisement so as to create a single mosaic type advertisement larger than 14 square feet. It is a violation of this Chapter to violate any local, State, or federal law regulating exterior storefront window or door advertising.

C. No one under the age of 21 unless United States Military with valid identification of active service is allowed in or on the premises of a Tobacco Shop. A sign stating, "No one under the age of 21 unless United States Military with valid identification of active service is allowed on these premises" shall be posted at the entrance of the Tobacco Shop.

D. Any sale of tobacco, tobacco products or tobacco paraphernalia to any person under the age of 21 is prohibited. Active United States military with valid identification may purchase tobacco, tobacco products or tobacco paraphernalia at age 18 in accordance with State law.

E. All areas of the entire exterior grounds of the Tobacco Shop, including the parking lot, require lighting such that all areas are clearly visible at all times.

F. All cash registers and credit/debit card point of sale equipment must produce a receipt with a receipt number generated automatically and recorded with each transaction. After the collection of funds, the cashier shall offer a copy of the receipt to the customer. Prior to leaving the cash register or work area for any reason, the cashier will lock the cash drawer and remove the key, keeping it in their possession. All cash registers and point of sale equipment must produce end of day report totals for verification of the cash and cash equivalents collected and deposited into a bank account.

7.83.050 – Consumption of Alcoholic Beverages Prohibited

A. Consuming food or alcoholic beverages, or providing food or alcoholic beverages for consumption on the premises of a Tobacco Shop is prohibited.

B. A permanent sign or signs in a place clearly visible to patrons of the Tobacco Shop stating, "No open alcoholic beverage containers are allowed on these premises" is required pursuant to requirements of this Code.

7.83.060 – Use of Tobacco Products Prohibited

A. Tobacco, Tobacco products, and Tobacco paraphernalia may not be used inside the Tobacco Shop premises, except as permitted in a Smokers' Lounge pursuant to Section 7.83.070 of this Chapter.

B. A permanent sign or signs posted at the building entrance and in a place clearly visible to patrons inside the Tobacco Shop stating, "No use of Tobacco, Tobacco

products, or Tobacco paraphernalia is allowed on these premises" is required. The permanent signs must meet any additional requirements of this Code.

7.83.070 – Smokers' Lounges

A. Smokers' Lounges are only permitted as an enclosed area in or attached to a retail Tobacco Shop. A separate business license is not required for operation of a Smokers' Lounge in accordance with State law.

B. Smoking, use of tobacco, tobacco products, or tobacco paraphernalia is permitted only in a Smokers' Lounge.

C. Sales or consumption of any food or beverages, including alcohol, on the premises of a Smokers' Lounge is prohibited.

D. A permanent sign or signs posted in a place clearly visible to patrons of the Smokers' Lounge stating, "Sales or consumption of any food or beverages, including alcohol, is prohibited in the Smokers' Lounge" is required. The permanent signs must meet any additional requirements of this Code.

E. No one under the age of 21 unless United States Military with valid identification of active service is allowed in or on the premises of a Smokers' Lounge.

F. A permanent sign or signs posted at the entrance to the building or structure and in a place clearly visible to patrons inside the Tobacco Shop stating, "Smoking is prohibited except in designated areas" is required for establishments with a qualifying Smokers' Lounge. The permanent signs must meet any additional requirements of this Code.

7.83.080 – Loitering Prohibited

A. Loitering or lingering without a lawful purpose in or around the Tobacco Shop is prohibited. Tobacco Shops must ensure the absence of loitering, consistent with State law.

B. A permanent sign or signs posted at the entrance to the building or structure and in a place clearly visible to patrons on the exterior areas the Tobacco Shop stating, "No loitering is allowed" is required. The permanent signs must meet any additional requirements of this Code.

7.83.090 – Compliance with Other Requirements

The Tobacco Shop must comply with all applicable federal and State laws, and all requirements of this Code. Failure to comply with any provision of this Title shall constitute a violation of the title and may serve as grounds for denial of an Application, revocation or suspension of a business license, or modifications to a business license pursuant to Title 7 Division 1.

SECTION 2. Section 11.35.010 is hereby amended to read as follows:

11.35.010 - Purpose and aApplication.

In promoting the health, safety, and general welfare of its residents, the County of Los Angeles has a substantial interest in encouraging compliance with federal, ~~s~~State, and local laws regulating tobacco sales and use; ~~in~~discouraging the purchase and use of tobacco products by ~~minors~~anyone under the age of 21; ~~in~~increasing compliance with laws prohibiting the sale of tobacco products to ~~minors~~anyone under the age of 21; and in protecting children from being lured into illegal activity through the misconduct of adults. It is the intent of this ordinance to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that

prohibit the sale or distribution of tobacco products to ~~minors~~anyone under the age of 21, but not to expand or reduce the degree to which the acts regulated by federal or ~~s~~State law are criminally proscribed or otherwise regulated.

SECTION 3. Section 11.35.020 is hereby amended to read as follows:

11.35.020 - Definitions.

For the purpose of this chapter, the following words and terms shall have the following meaning:

A. "Accessory" means equipment, products, or materials that are used, intended for use, or designed for use in smoking, vaping, ingesting, inhaling, or otherwise introducing tobacco or tobacco products into the human body and can be an object or device that is not essential in itself but adds to the beauty, convenience, or effectiveness of something else.

B. "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, when neither is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this Chapter that occurred at the location, is presumed not to be an arm's length transaction.

C. "Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice. Characterizing flavor includes flavor

in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device, including electronic smoking devices.

D. "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 as a cigarette.

DE. "Cigarillo" (see little cigar).

F. "Component" means any item intended or reasonably expected to be used with or for the human consumption of a tobacco product.

BG. "Department" means the Los Angeles County Department of Public Health.

GH. "Director" means the Director of the Los Angeles County Department of Public Health or his/her designee.

I. "Electronic smoking device" means an electronic device, including but not limited to an electronic cigarette, electronic cigar or cigarillo, electronic pipe, electronic hookah, vaping device, or any other product name or descriptor, which can be used to deliver an inhaled dose of nicotine or other substances, including any component, part, or accessory of such a device, whether manufactured, distributed, marketed, or sold as such.

J. "Flavored tobacco product" means any tobacco product, as defined in this Chapter, which imparts a characterizing flavor.

~~D. "Itinerant tobacco retailing" means engaging in tobacco sale or distribution at other than a fixed location.~~

EK. "License" means a tobacco retailer license issued by the eCounty pursuant to this section.

FL. "Licensee" means any proprietor holding a license issued by the eCounty pursuant to this eChapter.

GM. "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 three pounds per thousand units. "Little cigar" includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.

N. "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.

O. "Part" means a piece or segment of something, which combined with other pieces makes up the whole.

P. "Person" means any individual, entity, firm, partnership, joint venture, limited liability company, association, social or professional club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or other group or combination of the above acting as a single unit.

HQ. "Pharmacy" means any retail establishment, including any location with an on-site pharmacy, 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.

R. "Proprietor" means a person with an ownership interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt.

†S. "Self-service display" means the open display or storage of tobacco products or tobacco paraphernalia 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 person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

T. "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation which includes any tobacco product. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, characterizing flavors in any form, mixed with or otherwise added to any tobacco product or nicotine delivery device, including electronic smoking devices, and any other item designed or used for the smoking or ingestion of tobacco products.

JU. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed or used for the smoking or ingestion of tobacco products. "Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation which includes any tobacco product.the following:

1. Any product containing, made, or derived from tobacco or nicotine, whether natural or synthetic, that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and

2. Any electronic smoking device that delivers nicotine or other substances, whether natural or synthetic, to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, electronic hookah, or vaping device.

3. Notwithstanding any provision of subsections (1) and (2) to the contrary, "tobacco product" includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately.

4. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.

KV. "Tobacco retailer" means any person who sells, offers for sale or distribution, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, distributed, exchanged, or offered for exchange.

LW. "Tobacco retailing" means selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or

tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

SECTION 4. Section 11.35.030 is hereby amended to read as follows:

11.35.030 - Mandatory ~~€~~Tobacco ~~€~~Retail ~~€~~License.

A. Any person intending to act as a tobacco retailer, who does not currently hold a Tobacco Retail License, shall, within ~~ninety~~90 days of the effective date of the ordinance codified in this ~~€~~Chapter, obtain a tobacco retailing license for each location at which tobacco retailing is to occur. ~~No license may be issued to authorize tobacco retailing at other than a fixed location. Itinerant tobacco retailing is prohibited.~~

B. Nothing in this ~~€~~Chapter shall be construed to grant any licensee any status or right other than to act as a tobacco retailer at the location identified on the face of the tobacco retail license, subject to compliance with all other applicable laws, regulations, or ordinances. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law.

SECTION 5. Section 11.35.040 is hereby amended to read as follows:

11.35.040 - Application ~~€~~Procedure for ~~€~~Tobacco ~~€~~Retail ~~€~~License.

All applications for a tobacco retail license shall be submitted in the name of each proprietor proposing to conduct tobacco retailing and signed by each prospective proprietor or an authorized agent. Each tobacco retail license application must be accompanied by the required tobacco retail license fee pursuant to section 8.04.720 of this ~~€~~Code. A proprietor proposing to conduct tobacco retailing at more than one location shall submit a separate application for each location. Every application shall contain the following information:

A. The name, address, and telephone number of each proprietor;

B. The business name, address, and telephone number of the fixed location for which the tobacco retail license is sought; No tobacco retail license may be issued to authorize tobacco retailing at other than a fixed location, including but not limited to tobacco retailing on foot or from vehicles;

C. Whether ~~or not~~ any proprietor has previously been issued a tobacco retail license pursuant to this ~~e~~Chapter that is, or was at any time, suspended or revoked and, if so, the date of the suspension or revocation;

D. Proof that the location for which a tobacco retailing license is sought has been issued a valid ~~s~~State tobacco retailer's license by the California Board of ~~Equalization~~Department of Tax and Fee Administration;

E. A signed affirmation by each proprietor that each proprietor is informed of the laws affecting tobacco retailing licenses; and

F. Such other information as the ~~e~~County deems necessary for the administration of this ~~e~~Chapter.

SECTION 6. Section 11.35.050 is hereby amended to read as follows:

11.35.050 - Issuance and ~~r~~Renewal of Tobacco Retail ~~l~~License.

A. Upon receipt of an application for a new tobacco retail license and applicable fee, as set forth in section 8.04.720, the applicant(s) shall be issued a tobacco retail license unless:

1. The application is incomplete or inaccurate;
2. The ~~e~~Department has information that the applicant, or his/~~her~~the applicant's agents or employees, has violated any local, ~~s~~State, or federal tobacco control law at the location for which the tobacco retail license or renewal ~~license~~ is sought within the preceding sixty (60) days; or

3. The application seeks authorization for tobacco retailing at an address where a previous tobacco retail license has been suspended, revoked, or is subject to suspension or revocation proceedings for any violation of any of the provisions of this chapter. However, this shall not constitute a basis for denial of a tobacco retail license if either or both of the following apply:

a. The applicant provides documentation which clearly demonstrates that the applicant has acquired or is in the process of acquiring the premises or business in an arm's length transaction; or

b. It has been more than five years since the most recent tobacco retail license for that location was revoked.

B. Renewal of tobacco retailing license. A tobacco retail license shall be valid for one year and must be renewed between thirty and sixty days prior to the expiration of the tobacco retail license. A tobacco retail license may be renewed for additional one year periods by submission of a renewal application and the applicable fee. Any tobacco retail license that is suspended, has been revoked within the previous five years, or is subject to suspension or revocation proceedings shall not be renewed until suspension or revocation proceedings are complete and the suspension or revocation period, if any, is over.

SECTION 7. Section 11.35.055 is hereby added to read as follows:

11.35.055 – Business License Required.

A. In addition to the tobacco retail license, any tobacco shop in the unincorporated areas of the County whose main purpose is the sale of tobacco, tobacco products, and tobacco paraphernalia must have a valid business license as required by Title 7 of the Los Angeles County Code.

B. If the business license is revoked or suspended for any period of time, the tobacco retail license shall be automatically revoked or suspended for the same period.

SECTION 8. Section 11.35.060 is hereby amended to read as follows:

11.35.060 – Tobacco Retail License ~~n~~Nontransferable.

A tobacco retailing license is nontransferable. If a licensee changes business location, that licensee must obtain a new tobacco retail license prior to acting as a tobacco retailer at the new location. If a business licensed to conduct tobacco retailing as a tobacco retailer is sold or transferred, the new proprietor must obtain a tobacco retail license for that location before acting as a tobacco retailer.

SECTION 9. Section 11.35.070 is hereby amended to read as follows:

11.35.070 - ~~License v~~Violations.

A. It shall be a violation of this ~~e~~Chapter for a tobacco retailer/licensee, or his/her agents or employees, to violate any federal, ~~s~~State, or local tobacco law or regulation, including any provision of this ~~e~~Chapter.

B. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall constitute a violation.

C. Failure to prominently display the tobacco retailing license in a publicly visible location at the licensed premises shall constitute a violation.

D. The failure of the tobacco retailer/licensee, or the applicant's agent(s) or employee(s) to allow any peace officer, the ~~d~~Director, or any authorized ~~e~~County official to conduct unscheduled inspections of the premises of the business for the purpose of ensuring compliance with any federal, ~~s~~State, or local tobacco law or regulation, including any provision of this ~~e~~Chapter, at any time the business is open for business shall constitute a violation.

E. It shall be a violation of this Chapter for a tobacco retailer/licensee or its agent(s) or employee(s) to sell or offer for sale, or to possess with the intent to sell or offer for sale, any flavored tobacco product or any component, part, or accessory intended to impart, or imparting a characterizing flavor in any form, to any tobacco product or nicotine delivery device, including electronic smoking devices.

F. No tobacco retailer/licensee or its agents or employees may sell or offer for sale any little cigar or cigarillo unless it is sold in a package of at least 20 little cigars or cigarillos. Little cigars or cigarillos may not be sold individually or in packages of less than 20.

G. Tobacco retailing by means of a self-service display is prohibited, pursuant to Business and Professions Code section 22962.

H. Tobacco retailing at other than a fixed location, including, but not limited to, tobacco retailing by persons on foot or from vehicles is prohibited and no tobacco retail license may issue for tobacco retailing at other than a fixed location.

I. No tobacco retail license may issue and no existing tobacco retail license may be renewed, to authorize tobacco retailing in a pharmacy, including any location with an on-site pharmacy.

J. Each tobacco retailer/licensee and its agent(s) or employee(s) must be over the age of 21 in order to sell tobacco and/or tobacco products.

SECTION 10. Section 11.35.080 is hereby amended to read as follows:

11.35.080 - Compliance eChecks.

A. Compliance with this eChapter shall be monitored by the dDepartment of Public Health or any law enforcement officer. Any law enforcement officer may conduct

compliance checks, including but not limited to youth decoy operations, and enforce the penal provisions of this eChapter.

B. The eDepartment shall check the compliance of each tobacco retailer a minimum of one time per twelve month period. Compliance checks may be unannounced.

SECTION 11. Section 11.35.090 is hereby amended to read as follows:

11.35.090 - Administrative fFines.

Subject to the requirements of Chapter 1.25 of this eCounty eCode, the eDirector may impose administrative fines on persons violating any provision of this eChapter or any federal, sState, or local law or regulation incorporated into this eChapter. The eDirector may impose a fine upon such violators in an amount determined by the eDirector. The imposition of any such fine shall in no way limit the eDirector's ability or authority to impose other requirements of this eChapter or seek other remedies against violators.

SECTION 12. Section 11.35.100 is hereby amended to read as follows:

11.35.100 - Suspension or rRevocation of Tobacco Retail lLicense.

A. In addition to any other remedy authorized by law, a tobacco retail license may be suspended or revoked as provided in this section if it is discovered that any of the following occurred:

1. The licensee, or the licensee's agents or employees, has violated any provision of this eChapter. Violation by a licensee at one location shall not be construed as a violation at another location of the same licensee, nor shall violations by a prior licensee at the same location be accumulated against a subsequent licensee at the same location;

2. The original or renewal application contained incorrect, false, or misleading information;

3. One or more of the bases for denial listed in section 11.35.050 existed before the tobacco retail license was issued; or

4. A licensee is convicted of a misdemeanor or felony violation of any federal, ~~s~~State, or local tobacco law or regulation, including any provision of this chapter.

B. During any period of suspension or revocation, the licensee shall remove all tobacco products and tobacco paraphernalia from public view, including from displays and behind counter storage areas, whether or not visible to the public. All tobacco products and tobacco paraphernalia must be placed in a room that is separate from the area where point of sale transactions occur, or removed from the tobacco retail location entirely. Failure to do so may be considered a subsequent violation.

C. During any period of suspension or revocation, the tobacco retailer/licensee shall conspicuously post, at each point of sale register and near the entrance door of the tobacco retail location, a notice of a tobacco retail license suspension provided by the Department of Public Health. The notice shall include the suspension or revocation period, reason for suspension or revocation, tobacco retailer/licensee and location information, and Department of Public Health contact information to report violations.

D. When the ~~e~~Director finds a violation as set forth in ~~section~~ 11.35.100(A) this Chapter, the tobacco retail license may be suspended or revoked as follows:

1. Upon finding by the dDirector of a first tobacco retail license violation within any five-year period, the tobacco retail license may be suspended for up to thirty days;

2. Upon a finding by the dDirector of a second tobacco retail license violation within any five-year period, the tobacco retail license may be suspended for up to ninety days;

3. Upon a finding by the dDirector of a third tobacco retail license violation in any five-year period, the tobacco retail license may be suspended for up to one hundred and twenty days; and

4. Upon a finding by the dDirector of a fourth tobacco retail license violation within a five year period, the tobacco retail license shall be revoked.

SECTION 13. Section 11.35.110 is hereby amended to read as follows:

11.35.110 - Suspension or ~~r~~Revocation ~~p~~Procedure.

A. Before a tobacco retail license is suspended or revoked, the dDirector shall provide written notice to the licensee. Said notice shall include the following:

1. A statement that the proprietor's tobacco retailing license is being suspended or revoked pursuant to this eChapter;

2. The eCode section violated by licensee or licensee's agents or employees;

3. A description of the violation that occurred;

4. The address of the business where the violation occurred; and

5. The procedure for requesting an administrative review.

B. A licensee served with a notice of suspension or revocation may request an administrative review to contest the suspension or revocation. The request must be

made in writing and filed with the dDirector within ten calendar days of service of the notice of suspension or revocation. Failure to timely request an administrative review shall be deemed a waiver of the right to request such a review and a failure to exhaust administrative remedies.

C. After receiving a timely administrative review request, the dDirector shall schedule an administrative review within twenty calendar days of receipt of the written request and designate a reviewing officer. The dDirector may, in their discretion, appoint as a reviewing officer any department or other eCounty employee with expertise in public health who is not directly involved in inspection or enforcement of tobacco retailing establishments.

D. The proprietor shall be given written notice of the date, time, and location of the administrative review and the name of the reviewing officer who will conduct the administrative review at least ten calendar days in advance of the review.

E. The reviewing officer, in their discretion, may grant a reasonable continuance upon the written request and showing of good cause. ~~In no event shall the continuance be longer than thirty calendar days from the originally scheduled review date.~~

F. At the administrative review, the dDepartment has the burden of providing by a preponderance of the evidence that the alleged violation occurred.

G. The failure to appear at the administrative review shall constitute an abandonment of the review request and a failure to exhaust administrative remedies.

H. Within ten calendar days after the close of the administrative review, the reviewing officer shall issue a written decision on the suspension or revocation of the

tobacco retail license, including a statement of the basis for the decision. The reviewing officer's written decision shall constitute the final administrative decision of the eCounty.

I. If the eDirector revokes a tobacco retailing license, no new tobacco retail license may be issued for five years after that revocation.

SECTION 14. Section 11.35.120 is hereby amended to read as follows:

11.35.120 - Violation—Other pPenalties.

A. In addition to any other penalties and remedies provided by law, including the provisions of this eChapter, any violation of the provisions of this eChapter may be charged as a misdemeanor pursuant to eChapter 1.24 of this eCode, or, in the discretion of the prosecutor, as an infraction. Any person who violates any provision of this eChapter is subject to a suit for injunction as well as prosecution for any criminal violation.

B. In addition to any other penalty under this eChapter, a person found to have engaged in tobacco retailing without a valid tobacco retailing license shall be ineligible to apply for or be issued a tobacco retailing license as follows:

1. After a first violation for a person within any five year period, no new tobacco retail license may be issued for the person as a proprietor until thirty days have passed from the date of last violation;

2. After a second violation for a person within any five year period, no new tobacco retail license may be issued for the person as a proprietor until ninety days have passed from the date of last violation;

3. After three or more violations for a person within any five year period, no new tobacco retail license may be issued for the person as a proprietor until five years have passed from the date of last violation;

4. Each day that a person engages in tobacco retailing without a valid tobacco retailing license shall constitute a separate violation; and

5. Any person found by the eDirector to be ineligible to be issued a tobacco retail license pursuant to this section may request an administrative review within ten days of notice of the violation. The request must be made to the eDirector in writing. Any administrative review shall be held pursuant to the provisions of section 11.35.110 of this eChapter.

C. Violations of this eChapter are hereby declared to be public nuisances.

SECTION 15. Section 11.35.130 is hereby amended to read as follows:

11.35.130 - Severability.

If any provision of this eChapter or the application thereof to any person or circumstance is held invalid, the remainder of this eChapter or the application of such provision to other persons or circumstances shall not be affected thereby.

[CH783EICC]