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Chapter 15  
TOBACCO RETAILER PERMIT

Sections:

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**Sec. 6-15.02. Definitions. Add (c), re-letter, amend (n) "Tobacco Product"**

As used herein:

(a) "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, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this Chapter, is not an Arm's Length Transaction.

(b) "Cigar" means (1) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (2) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, "cigar" includes, but is not limited to, tobacco products known or labeled as "cigar," "cigarillo," "tiparillo," or "little cigar."

(c) "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.

(d) "Department" means the Department of Health and Human Services.

(e) "Director" shall mean the Director of the Department of Health and Human Services or the Health Officer of the Department of Health and Human Services or their written designee.

(f) "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.

(g) "Flavored Tobacco Product" means any Tobacco Product that contains a constituent that imparts a characterizing flavor to the tobacco product or smoke produced by the tobacco product, either by the addition of artificial or natural flavors or an herb or spice, including, but not limited to, menthol, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee.

(h) "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(i) "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.

(j) "Self-Service Display" means the open display of Tobacco Products or Tobacco Paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A Vending Machine is a form of Self-Service Display.

(k) "Significant Tobacco Retailer" means any Tobacco Retailer whose principal or core business is selling Tobacco Products, Tobacco Paraphernalia, or both, as evidenced by any of the following: (i) twenty percent (20%) or more of floor area and display area is devoted to the sale or exchange of Tobacco products, Tobacco Paraphernalia, or both; (ii) fifty percent (50%) or more of completed sales transactions include a Tobacco Product or Tobacco Paraphernalia; or (iii) sixty-seven percent (67%) or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, Tobacco Paraphernalia, or both.

(l) "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. "Smoking" includes using an electronic smoking device.

(m) "Tobacco Paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette-rolling machines, and any other item designed for the smoking, preparation, storing, consumption or ingestion of Tobacco Products.

(n) "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.

(o) "Tobacco Retailer" means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia, or who distributes free or low cost samples of Tobacco Products or Tobacco Paraphernalia, without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold or offered for sale, exchanged or offered for exchange, or distributed or offered for distribution. "Tobacco Retailing" means the doing of any of these things.

(p) "Tobacco Retailing Permit Hearing Authority" or "Hearing Authority" means one or more persons assigned by the County Administrative Officer the responsibility of conducting a hearing pursuant to this Chapter, and may hereafter be referred to as the Hearing Authority. The County Administrative Officer shall assign hearing responsibility to any of the following: (1) County management personnel whom the County Administrative Officer finds to be qualified by training and experience to conduct such hearings; (2) any person(s) qualified by training or experience whom the County Administrative Officer may employ or who are retained by contract to conduct such hearings; or (3) Administrative Law Judges assigned by the State Office of Administrative Hearings. The County Administrative Officer is hereby authorized to contract in the name of the County for the retention of hearing services at rates that do not exceed the financial limitations established by the County's annual budget and contracting rules, regulations and policies.

(q) "Vending Machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

(r) "Youth Decoy" means persons aged 20 and younger used as decoys to purchase Tobacco Products or Tobacco Paraphernalia from licensed Tobacco Retailers.

### **Sec. 6-15.03. Tobacco Retailer Permit Required. *Amend***

(a) Tobacco Retailer's Permit Required. It shall be unlawful for any person to act as a Tobacco Retailer or a Proprietor in the county without first obtaining and maintaining a valid Tobacco Retailer's Permit pursuant to this Chapter. Tobacco retailing without a valid Tobacco Retailer's Permit is a nuisance as a matter of law.

(b) False and Misleading Advertising Prohibited. A Tobacco Retailer or Proprietor without a valid Tobacco Retailer Permit, including, for example, a person whose permit has been suspended or revoked:

1. Shall keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia in violation of this provision shall constitute tobacco retailing without a license under Paragraph (a) above; and
2. Shall not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of such products from the Tobacco Retailer or Proprietor's location or that could

lead a reasonable consumer to believe that such products can be obtained at that location.

- (c) Drug Paraphernalia. It shall be a violation of this Chapter for any Tobacco Retailer or Proprietor or any of the Tobacco Retailer or Proprietor's agents or employees to violate any local, state, or federal law regulating controlled substances or drug paraphernalia, such as, California Health and Safety Code Section 11364.7.

**Sec. 6-15.12. Compliance Monitoring. *Amend***

- (a) Compliance with this Chapter shall be monitored by the HHSA Tobacco Prevention Staff. Any number of persons may be designated to monitor compliance with this Chapter.
- (b) HHSA Tobacco Prevention Staff, or other person designated to enforce the provisions of this Chapter shall inspect each Tobacco Retailer at least once every twelve (12) months. The Yolo County Sheriff's Office and Yolo County Health and Human Services agency shall also have authority to assist in the enforcement of the provisions of this Chapter. Nothing in this Paragraph shall create a right of action in any Tobacco Retailer, Proprietor or other person against the county or its agents.
- (c) Compliance checks shall determine, at a minimum, if the Tobacco Retailer is conducting business in a manner that complies with Federal, State and local laws regulating access to Tobacco and Tobacco Paraphernalia.
- (c) The County shall not enforce any law establishing a minimum age for tobacco purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Youth Decoy") if the potential violation occurs when:
  - (1) The youth decoy is acting as an agent of a person designated to monitor compliance with this Chapter; or
  - (2) The youth decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Department or the California Department of Health Services.