**Comprehensive Tobacco**

**Retailer Licensing Ordinance**

**A Model California Ordinance**

**Regulating the Tobacco Retail Environment**

with Annotations

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Developed by ChangeLab Solutions

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# **Introduction and Report**

ChangeLab Solutions developed this *Comprehensive Tobacco Retailer Licensing Ordinance* (“Model Ordinance” or “Ordinance”) to assist California cities and counties interested in establishing or strengthening a local tobacco retailer licensing (“TRL”) program and further regulating the tobacco retail environment. Communities have adopted TRL laws to ensure compliance with local business standards, reduce youth access to tobacco products, limit the negative public health and equity effects associated with tobacco use, and enforce local, state, and federal tobacco control laws.

This Model Ordinance (revised February 2019) takes a comprehensive approach to regulating the sale of tobacco products and the tobacco retail environment. This revised Model Ordinance builds on core provisions such as requiring a local tobacco retailer license by incorporating many of the innovative policies previously maintained as separate “Plug-in” policy options. It also reflects recent changes to state and federal tobacco control laws such as Tobacco 21 and the federal Food and Drug Administration’s (“FDA”) Deeming Rule that expanded the FDA’s regulatory authority to all tobacco products. The Model Ordinance offers cities and counties a variety of options to tailor this policy to meet the needs of their communities.[[1]](#footnote-1) Section II contains additional information about revisions to this Model Ordinance.

In some instances, blanks (eg, [\_\_\_\_\_\_\_\_\_\_ ] ) prompt you to customize the language to fit your community’s needs. In other cases, the ordinance offers you a choice of options (eg, [ choice one / choice two ] ). Some of the options are followed by a comment that describes the legal provisions in more detail. Some degree of customization is always necessary to make sure that the ordinance is consistent with a community’s existing laws. Your city attorney or county counsel will likely be the best person to check this for you.

This Introduction and Report section summarizes our nonpartisan analysis and study of the public health problem surrounding tobacco use. It also provides a rationale for regulations on the sale of tobacco products as one possible policy intervention. It is intended for broad distribution to the public for the purpose of education and dissemination of information. Our presentation of this Model Ordinance, including this Introduction and Report, is based on our independent and objective analysis of the relevant law, evidence, and available data, and should enable readers to draw their own opinions and conclusions about the merits of this Model Ordinance. Readers should consider all the evidence and decide for themselves which approach is appropriate for their local jurisdiction.

## **Tobacco and Public Health**

Tobacco use remains a significant public health problem and impediment to health equity in California and the United States. Each year, tobacco-related diseases cause the deaths of approximately 40,000 Californians[1](#_ENREF_1) and nearly half a million individuals in the United States, making tobacco use the nation’s leading cause of preventable death.[2](#_ENREF_2) For decades, governments at the federal, state, and local levels have advanced various policies intended to address this significant public health crisis.

Under the 2009 federal Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), the FDA regulates the manufacture, marketing, and distribution of tobacco products.[3](#_ENREF_3) States and local governments have developed educational programs and media campaigns on the risks of tobacco use, offered resources to help tobacco users quit, increased excise taxes on cigarettes and other tobacco products, and adopted restrictions on the sale and use of tobacco products. Although these policies have reduced the use of tobacco products, recent estimates suggest that 441,000 Californians under 18 today will die from tobacco-related diseases.[1](#_ENREF_1)

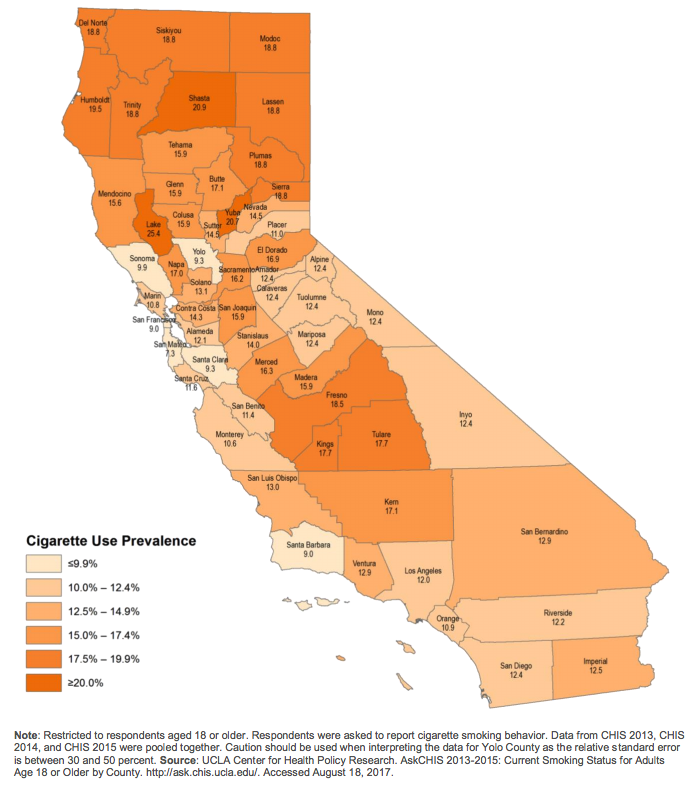
#### **Tobacco-Related Disparities and Health Inequities**

California has made tremendous progress in reducing smoking rates and associated harms.[4](#_ENREF_4) But these gains have not been uniformly distributed across the population. Many underserved communities[[2]](#footnote-2) continue to disproportionately bear the burden of tobacco-related harm,[5](#_ENREF_5) exacerbated by decades of pernicious targeting by the tobacco industry.[6](#_ENREF_6)

**People of Color:** Tobacco use rates are significantly greater among many racial and ethnic populations. For example, a 2014–2015 California survey found that 29.5% of all Native American and Alaska Native adults and nearly half (46.5%) of low-income Native American and Alaska Native adults reported smoking.[7](#_ENREF_7) Almost 18% of all Black and African American adults in California smoke, including nearly 1 in 4 (24.4%) low-income Black or African American adults.[7](#_ENREF_7) Despite decreases in overall smoking prevalence, smoking prevalence among California’s Native American, Alaska Native, and Black populations *increased* between the 2009 and 2014–2015 California Health Information Survey.[8](#_ENREF_8) Tobacco use also differs significantly among other racial and ethnic populations—13.4% of Whites, 11.1% of Hispanics, and 8.9% of Asian, Native Hawaiian, or Pacific Islanders reported smoking in 2014–2015, and within specific subpopulations, 27.8% of Vietnamese males and nearly 1 in 4 (24.3%) Korean males reported smoking, for example.[7](#_ENREF_7)

**Low-Income Populations:** Smoking rates among low-income populations are also higher. Nearly 17% of California adults with incomes below the federal poverty level (“FPL”) smoke compared with 14.4% of adults with incomes between 100% and 184% FPL, 14% for those with incomes between 185% and 299% FPL, and 9.5% for those with incomes of 300% FPL or higher.[7](#_ENREF_7) Low-income communities are also targeted with cheaper cigarettes and flavored little cigars, and they experience the highest density of tobacco retailers.[9](#_ENREF_9)

**LGBTQ+ Populations:** In 2013–2014, nearly a quarter (24%) of California’s lesbian, gay, and bisexual population used any tobacco product (eg, cigarettes, electronic smoking devices, other tobacco products) and 19.1% reported smoking cigarettes. In contrast, in 2013–2014, the general population reported significantly lower rates of any tobacco use (17.4%) and cigarette smoking (12.4%).[9](#_ENREF_9)

**Rural Populations:** Rural counties in California have some of the highest smoking rates.[9](#_ENREF_9) Rural communities also report a lower proportion of smokers who try to quit within the last year than the general population and have a lower proportion of residents protected by a strong TRL law.[9](#_ENREF_9)

**Populations with Mental Health Needs:** Persons with mental health needs have the second highest smoking and tobacco use rates in California at 27.1% and 24.2% respectively.[9](#_ENREF_9) Moreover, fewer smokers with mental health needs have tried to quit smoking within the last year.[9](#_ENREF_9)

Because the harms associated with tobacco use fall disproportionately on these underserved populations, they may also experience greater benefits from policy interventions that reduce tobacco consumption. For more information on tobacco-related health inequities, visit A Story of Inequity at <http://tobaccofreeca.com/story-of-inequity/>.

California Adult Smoking Prevalence, 2011–2012

(Source: California Health Interview Survey, 2011–2012)

#### **State and Federal Laws Regulating the Tobacco Retail Environment**

The California Cigarette and Tobacco Products Licensing Act of 2003 (“CTPLA”) established a statewide licensing program that required tobacco retailers, among others, to obtain a license from the State of California.[10](#_ENREF_10) The CTPLA focuses on decreasing tobacco product tax evasion[11](#_ENREF_11)—not protecting public health—and provides no funding to support enforcement activities by local governments. Importantly, the CTPLA and other state laws do not preempt or supersede local tobacco control laws (except local tobacco taxes),[12](#_ENREF_12) meaning that local jurisdictions can enact TRL and other laws that focus on protecting public health by, for example, providing for the suspension or revocation of a tobacco retailer license for illegal sales to underage individuals.[13](#_ENREF_13)

Other state and federal laws also regulate various aspects related to the retail sale of tobacco products. California Penal Code 308, for example, prohibits the selling, giving, or furnishing of tobacco products and tobacco paraphernalia to most individuals under the age of 21.[14](#_ENREF_14) The Stop Tobacco Access to Kids Enforcement Act (“STAKE Act”) also prohibits tobacco sales to most individuals under the age of 21, restricts tobacco self-service displays and vending machine sales, and requires retailers to post signs at the point of sale about illegal underage tobacco sales.[15](#_ENREF_15) At the federal level, cigarettes must be sold in packages of at least 20,[16](#_ENREF_16) and the FDA requires retailers to check the identification of anyone purchasing tobacco products under the age of 27.[17](#_ENREF_17) Nevertheless, significant regulatory gaps remain and youth continue to access cigarettes and other tobacco products.[7](#_ENREF_7) Local governments may choose to take action to address these gaps by enacting tobacco control policies to further protect public health and advance health equity.

#### **Local Policies Regulating the Tobacco Retail Environment**

Nearly 200 California cities and counties have adopted TRL ordinances.[18](#_ENREF_18) More than 100 of these ordinances meet criteria set by the American Lung Association in California’s Center for Tobacco Policy and Organizing (“The Center”) for TRL best practices:

1. All tobacco retailers are required to obtain a license and renew it annually.
2. The license fee is sufficient to fund the effective administration and enforcement of the licensing program, including compliance checks.
3. A violation of any local, state, or federal tobacco control law constitutes a violation of the local license.
4. Penalties for violations include fines and license suspension and revocation.[19](#_ENREF_19)

Cities and counties have also taken action to further regulate the tobacco retail environment by, for example, prohibiting retailers from locating near schools, reducing the density of tobacco retailers, prohibiting tobacco sales in pharmacies, requiring a minimum package size for little cigars and cigars, and restricting the sale of flavored tobacco products, including menthol.[20](#_ENREF_20) Most of these communities enforce these policies through their local TRL ordinance,[20](#_ENREF_20) underscoring the critical foundation that TRL laws provide for further regulation of the tobacco retail environment.

Evidence suggests that these policies are effective and may reduce tobacco-related health inequities by countering the tobacco industry’s predatory targeting of underserved communities. For example, communities with strong enforcement provisions in their TRL ordinances have significantly lower rates of illegal tobacco sales to youth.[21](#_ENREF_21) And one study found that the odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth access laws.[22](#_ENREF_22) The following sections address the rationale and evidence base for specific policies in greater detail.

#### **Menthol Cigarettes and Other Flavored Tobacco Products**

The 2009 Tobacco Control Act banned flavored cigarettes.[23](#_ENREF_23) However, the law exempts menthol cigarettes and does not restrict flavored non-cigarette tobacco products, such as smokeless tobacco and electronic smoking devices. Moreover, California doesn’t have any state laws that regulate the sale of menthol cigarettes or flavored non-cigarette tobacco products.

Flavored tobacco products are considered “starter” products that help establish long-term tobacco use, and they are particularly appealing to youth and young adults.[22](#_ENREF_22) These products also pose significant barriers to achieving health equity. Thanks to tobacco companies’ marketing efforts, youth, communities of color, low-income populations, and members of LGBTQ+ communities are significantly more likely to use flavored tobacco products, particularly menthol cigarettes, and disproportionately bear the burden of tobacco-related harm.[9](#_ENREF_9)

Menthol cigarettes are of particular concern because despite decreases in overall cigarette use, the proportion of cigarette smokers who use menthol cigarettes continues to rise.[24](#_ENREF_24) Tobacco companies add menthol to their products because the crisp, minty flavor masks the natural harshness and taste of tobacco, making the products milder and therefore easier to use and more appealing to youth and new users.[25](#_ENREF_25),[26](#_ENREF_26) Smoking menthol cigarettes is also associated with being more likely to use cigars[24](#_ENREF_24) and reduced likelihood of successfully quitting smoking.[26-28](#_ENREF_26)

Moreover, menthol cigarettes present significant equity concerns. The tobacco industry has a well-documented history of developing and marketing menthol tobacco products to underserved communities, including communities of color and youth.[6](#_ENREF_6) Comprehensive scientific reviews by the FDA Tobacco Products Scientific Advisory Committee (TPSAC) found that the marketing of menthol cigarettes likely increases the prevalence of smoking among the entire U.S. population, especially among youth, African Americans, and possibly Hispanic and Latino populations.[26](#_ENREF_26),[27](#_ENREF_27) These groups, as well as members of LGBTQ+ communities and young adults with mental health conditions, bear the greatest burden of menthol cigarette use.[24](#_ENREF_24),[29](#_ENREF_29),[30](#_ENREF_30)

Tobacco companies have also developed other flavored tobacco products that have the same youth-friendly characteristics as banned flavored cigarettes. For example, many of the cigar brands that are popular among teens are available in flavors such as apple, chocolate, grape, and peach.[22](#_ENREF_22) Smokeless tobacco products, including chewing tobacco, snuff, and snus, also come in flavors such as mint, wintergreen, berry, cherry, and apple.[31](#_ENREF_31) Hookah tobacco (shisha) is available in an array of fruit, herbal, and alcoholic beverage flavors, and there is a strong—and false—perception among young people that smoking hookah is safer than smoking cigarettes.[32](#_ENREF_32) Nicotine solutions, which are also known as e-liquids and are used with e-cigarettes, are sold in dozens of flavors that are attractive to youth, such as cotton candy and bubble gum.[33](#_ENREF_33) In fact, among middle and high school e-cigarette users, the availability of flavors was the second most common reason for using the product (31%).[34](#_ENREF_34) Like menthol, these flavorings help mask the naturally harsh taste of tobacco, making it easier for young people to start and continue using tobacco products.[25](#_ENREF_25)

Consumption of flavored tobacco products has grown in recent years. Between 1995 and 2008, sales of little cigars increased by 316%.[35](#_ENREF_35) Between 2008 and 2015, sales of flavored cigars increased by nearly 50% and in 2015, made up more than half of all cigar sales.”[36](#_ENREF_36) A 2013–2014 survey found that “80.8 percent of 12-17 year olds who had ever used a tobacco product initiated tobacco use with a flavored product.”[37](#_ENREF_37),[38](#_ENREF_38) In 2014, nearly two-thirds of U.S. middle school and high school cigar smokers reported using flavored cigars, and more than 1.5 million students reported using a flavored e-cigarette within the past 30 days.[39](#_ENREF_39) Moreover, a 2013–2014 survey found higher rates of flavored cigar use among underserved populations, including “cigar smokers with lower income, with less education and those who were lesbian, gay or bisexual.”[40](#_ENREF_40)

Young people, people of color, low-income populations, and LGBTQ+ communities are much more likely to use menthol-, candy-, and fruit-flavored tobacco products. These products are considered “starter” products that help establish long-term tobacco use. Menthol cigarettes in particular pose a significant barrier to achieving health equity given the disproportionate use and related burden among underserved communities. Policy interventions designed to regulate products that get people hooked on tobacco, such as restrictions on the sale of flavored tobacco products, can directly address the public health and equity consequences associated with tobacco use.

#### **Tobacco Product Pricing**

The link between the price of tobacco products and consumption is well established, especially among youth.[2](#_ENREF_2),[22](#_ENREF_22),[41-46](#_ENREF_41) When tobacco products cost more, fewer people use tobacco because fewer start and more quit.[2](#_ENREF_2),[41-44](#_ENREF_41),[46](#_ENREF_46) In fact, it is estimated that a 20% price increase on a pack of cigarettes reduces demand by 10.4%, decreases the prevalence of adult tobacco use by 3.6%, and decreases initiation of tobacco use among young people by 8.6%.[42](#_ENREF_42) There is also sufficient evidence that increases in the price of non-cigarette tobacco products reduces consumption for those products and that unequal price increases across products can lead to substitution from one product to another.[47-49](#_ENREF_47)

Excise taxes are one of the most common methods to increase the price of tobacco products and raise revenue while also realizing the public health benefits associated with such increases such as decreased consumption.[46](#_ENREF_46) The federal government, all 50 states, and Washington, D.C., currently impose excise taxes on cigarettes.[50](#_ENREF_50) Many jurisdictions also tax other tobacco products.[51](#_ENREF_51) However, California state law preempts (ie, prohibits) cities and counties from imposing additional taxes on tobacco products.[52](#_ENREF_52)

The tobacco industry also spends millions of dollars each year to heavily promote and strategically price their products, often to counteract cigarette and other tobacco product tax increases.[53](#_ENREF_53) Indeed, in 2016, despite a decrease in the number of cigarettes sold from 2015 by 3.7 billion units, the amount the tobacco industry spent on cigarette advertising and promotion increased from $8.3 billion to over $8.7 billion.[54](#_ENREF_54) Of that amount, the industry spent $380 million on coupons for consumers and another almost $7.9 billion on price discounts and promotional allowances for retailers and wholesalers.[54](#_ENREF_54) This includes off-invoice discounts, “buy downs,”[[3]](#footnote-3) “master type” programs,[[4]](#footnote-4) voluntary price reductions, volume rebates, value-added services, and incentive payments.[54](#_ENREF_54) And their efforts result in price-discounted sales accounting for a substantial proportion of all tobacco sales.[55](#_ENREF_55)

Evidence suggests that tobacco companies deliberately target youth and underserved communities with price discounts and coupons,[44](#_ENREF_44),[56-58](#_ENREF_56) undermining the effects of tax increases on youth smoking initiation, especially among youth aged 14 to 17 years.[57](#_ENREF_57),[59](#_ENREF_59) Tobacco industry price reduction strategies also appeal to adult tobacco users, with nearly 20% of adult cigarette smokers using coupons and other price discounts to purchase cigarettes.[60](#_ENREF_60) Other studies have found that more than half of U.S. adult cigarette smokers use price minimization strategies.[61](#_ENREF_61)

Non-tax policy interventions can counter these industry price-discounting strategies and have the potential to produce significant public health and equity benefits. For example, one study estimated the number of smokers would decrease by more than 13% if price discounts were prohibited across the country.[59](#_ENREF_59) Another study modeling the potential effects of a nationwide minimum price for cigarettes found that “a $10 minimum price could reduce sales by over 5 billion packs per year and induce cessation by over 10 million smokers.”[62](#_ENREF_62) Examples of non-tax policy interventions to address tobacco product pricing include

1. prohibiting the redemption of tobacco product discounts, coupons, and promotions;
2. establishing a minimum package size for little cigars and cigars; and
3. establishing minimum prices (ie, price floors) for tobacco products such as cigarettes, little cigars, and cigars.

##### **Prohibit the Redemption of Tobacco Product Discounts, Coupons, and Promotions**

Prohibiting the redemption of tobacco product discounts, coupons, and promotions presents one strategy for addressing tobacco product pricing. For example, this policy could prohibit retailers from accepting coupons allowing the purchase of tobacco products below a base price, selling tobacco products via any type of discount or promotion that drops the price below a base price, and giving away anything for free or at a discount with the purchase of any tobacco product. The purpose of this policy option is to prohibit price discrimination[[5]](#footnote-5) and increase the cost of low-cost tobacco products. A uniform pricing policy (ie, a prohibition on price discrimination) diminishes the tobacco industry’s ability to capture more price-sensitive consumers, including youth and lower-income individuals. This approach is most likely to impact the behavior of populations particularly affected by price increases and may not have as significant an impact on higher-income individuals who may not rely on coupons or discounts.

The California state law prohibiting those engaged in the sale or distribution of cigarettes or smokeless tobacco from distributing coupons to obtain those products for free or a nominal cost applies only to certain locations, includes several exemptions, and does not address other tobacco products like cigars and electronic smoking devices.[63](#_ENREF_63) Given these limitations and the state law’s focus on coupon *distribution*, more recent policies have taken a different approach.

Local governments in Oakland, California; Providence, Rhode Island; New York City, New York; and Chicago, Illinois have laws that prohibit coupon redemption and tobacco discounts.[64-67](#_ENREF_64) Focusing on the redemption of coupons rather than their distribution provides a more comprehensive approach to eliminating tobacco industry price discounting schemes and may help communities avoid legal challenges. These laws, however, reference a base price (defined in this Model Ordinance as “Full Retail Price”) that, without a minimum price provision in place, could still be manipulated. Nonetheless, these laws present a valuable policy option for increasing the cost of tobacco products, and multiple federal courts have upheld the authority for local governments to enact such policies.[68](#_ENREF_68),[69](#_ENREF_69)

##### **Establish a Minimum Package Size for Little Cigars and Cigars**

Federal law requires that cigarettes be sold in packages containing at least 20 cigarettes,[70](#_ENREF_70) but there are no minimum package size requirements for other tobacco products. This is especially concerning given the rising popularity of little cigars and cigars. From 1995 to 2008, annual sales of cigarillos increased by 255%, and sales of little cigars increased by 316%.[35](#_ENREF_35) Additionally, while federal law prohibits the sale of most flavored cigarettes and individual cigarettes, these types of sales are not prohibited for other tobacco products. Thus, many retailers currently sell flavored cigars, little cigars, and cigarillos individually, making them more affordable to youth.[71](#_ENREF_71)

Requiring little cigars and cigars to be sold in packs of a certain size raises the *overall* cost to purchase these products, even if the price *per* little cigar or cigar does not change. Increasing the amount of tobacco products purchased in a single transaction may seem counterintuitive, but raising the cost barrier is expected to improve public health and protect price-sensitive youth.[22](#_ENREF_22),[45](#_ENREF_45) However, minimum package size requirements are most effective when paired with minimum price policies.

##### **Establish Minimum Price Floors for Tobacco Products**

Neither California state nor federal law establishes a minimum price for tobacco products, resulting in 84% of assessed licensed tobacco retailers across California in 2013 selling cigarettes for less than $5 and 74% of stores selling a Swisher Sweet cigarillo for less than $1.[72](#_ENREF_72) The same study found that “the cheapest [cigarette] pack price was significantly lower in [communities] with higher proportions of African American and Hispanic residents, in neighborhoods with higher proportions of school-age youth and young adults, and in neighborhoods with lower median household income.”[72](#_ENREF_72) Establishing a minimum price floor is one way to address these disparities.

At least 25 states (including DC) have enacted minimum markup and related laws, but these laws have historically focused on prohibiting unfair competition rather than protecting public health and typically require a minimum percentage markup to be added to the wholesale and/or retail price.[43](#_ENREF_43) These minimum markup laws remain vulnerable to price manipulation by the tobacco industry[73](#_ENREF_73) and may be more difficult for local jurisdictions to enforce.

Local jurisdictions can take a different approach by establishing a minimum price floor for the sale of certain tobacco products (eg, cigarettes, little cigars, and cigars). For example, a local jurisdiction can specify that cigarettes and little cigars must not be sold for less than $7. Minimum price floors have become increasingly popular, and New York City recently became the first jurisdiction to enact price floors for many non-cigarette tobacco products such as smokeless tobacco, snus, loose tobacco, and tobacco-containing hookah shisha.[65](#_ENREF_65) A number of local California jurisdictions have enacted similar policies, setting a floor price for cigarettes,[74](#_ENREF_74),[75](#_ENREF_75) little cigars, and cigars,[74-76](#_ENREF_74) with at least one also establishing minimum prices for other tobacco products.[75](#_ENREF_75) Because these types of policies are relatively new, only limited research is available on their effects. However, preliminary evidence suggests that establishing a minimum price for tobacco products is a promising strategy to reduce tobacco use and tobacco-related health disparities.[77-79](#_ENREF_77)

#### **Tobacco Retailer Location and Density**

In 2012, there were approximately 36,700 licensed tobacco retailers in California.[80](#_ENREF_80) Where tobacco retailers are located, the total number of tobacco retailers and the concentration of tobacco retailers in particular communities affect the availability of tobacco products and exposure to tobacco advertising and marketing, all of which affect tobacco use rates. A greater availability of tobacco products is associated with both youth and adult smoking,[81](#_ENREF_81),[82](#_ENREF_82) even when other neighborhood factors are taken into consideration.[83](#_ENREF_83) Tobacco retailer location and density also heavily contribute to social inequities as retailers are more prevalent in lower-income areas[84](#_ENREF_84),[85](#_ENREF_85) and communities in which a greater percentage of residents identify as African American[84](#_ENREF_84),[85](#_ENREF_85) or Hispanic,[84](#_ENREF_84) which perpetuates disparities in tobacco use and associated negative health effects. Reducing the availability of tobacco products by regulating the location and density of tobacco retailers is expected to improve public health and health equity.

Local governments set density and location restrictions for a variety of buildings and uses based on their community plans and development goals. Land use tools such as zoning ordinances and conditional use permits are common for such restrictions. With respect to tobacco retailers, communities are increasingly using TRL to achieve similar results while providing for more robust enforcement of both the density and location restrictions as well as other tobacco control laws. ChangeLab Solutions’ resource [*Licensing & Zoning: Tools for Public Health*](https://changelabsolutions.org/publications/licensing-zoning) includes additional information on the differences between licensing and zoning, including the benefits and drawbacks to each approach.

Communities can take a variety of approaches to regulate where tobacco retailers may locate and can limit the number of available tobacco retailer licenses. The right approach for a particular community will depend on the existing landscape of tobacco retailer locations, population demographics, a community’s current land use practices, and other policy adoption, implementation, and enforcement considerations. The following sections provide examples of potential strategies for regulating the location and density of tobacco retailers, as well as the evidence base for each strategy.

* 1. **Restrict Tobacco Retailers Near Residential and Youth Areas**

Research shows that children are more likely to experiment with, and use, tobacco products when tobacco retailers are located near homes.[86](#_ENREF_86),[87](#_ENREF_87) Studies have also found positive associations between student smoking and the number and density of tobacco retailers near schools[88](#_ENREF_88),[89](#_ENREF_89) Tobacco retailers near schools with high smoking rates have also been shown to have lower cigarette prices and more in-store promotions.[90](#_ENREF_90)

Adult smoking rates are also positively associated with higher tobacco retailer density near their home,[91](#_ENREF_91) and individuals with mental health needs may also be particularly vulnerable.[92](#_ENREF_92) Living near tobacco retailers also appears to negatively affect the ability for smokers to quit smoking.[93](#_ENREF_93) Given this evidence, restricting tobacco sales within residential zones and within certain distances from areas where youth often gather such as schools, playgrounds, libraries, and child care centers may help reduce both youth and adult smoking rates. Various studies that have mapped the location of tobacco retailers have shown that communities can eliminate a substantial amount of tobacco product access and exposure by creating, for example, a 1,000-foot buffer zone around schools.[94](#_ENREF_94)

* 1. **Regulate the Proximity of Tobacco Retailers to Other Tobacco Retailers and Cannabis Retailers**

In addition to its effects on youth tobacco use, excessive tobacco retailer density may exacerbate disparities in tobacco use and tobacco-related harm. Evidence consistently demonstrates that high tobacco retailer density in lower-income neighborhoods is associated with greater access to tobacco.[83](#_ENREF_83),[95](#_ENREF_95),[96](#_ENREF_96) More recent research has also linked high tobacco retailer density to lower life expectancy, underscoring the importance of policies that reduce tobacco retailer density to advancing more equitable public health outcomes.[96](#_ENREF_96) Research has also found social inequities in the location and density of alcohol outlets and medical cannabis dispensaries, with these outlets and dispensaries disproportionately located in underserved communities.[97](#_ENREF_97)

Market conditions resulting from the concentration of tobacco retailers in a particular geographic area may also impact community health. For example, competition among retailers can lead to special promotions such as sales or discounts that drive additional demand and increase smoking by youth, who are particularly sensitive to the cost of tobacco products.[44](#_ENREF_44),[45](#_ENREF_45),[98](#_ENREF_98)

Regulating how closely tobacco retailers may locate near other tobacco retailers and cannabis retailers is one strategy for addressing the overconcentration of these businesses in particular communities. For example, a community can prohibit new tobacco retailers from operating within 500 feet of an existing tobacco retailer, which would limit increases in density and potentially even reduce density through attrition as existing retailers close or relocate.

* 1. **Limit the Number of Tobacco Retailer Licenses Available**

Communities looking to address tobacco retailer density may also consider limiting the number of available tobacco retailer licenses. This approach is common in the alcohol context, where it is scientifically accepted that limiting alcohol outlet density will lead to less underage drinking, excessive drinking, and alcohol-related harm.[99](#_ENREF_99) California state law limits the number of retailers in a city or county that may sell alcohol for consumption off premises to one license per 2,500 inhabitants.[100](#_ENREF_100) State law does not include any similar restrictions for tobacco retailers, but cities and counties can adopt local laws limiting the number of available tobacco retailer licenses.

Importantly, with tobacco retailer density often being highest in underserved communities,[84](#_ENREF_84),[101-103](#_ENREF_101) a single limit on the number of licenses using the overall population size or even capping the total number of licenses to be issued will not necessarily prevent stores from clustering in certain areas. Instead, a combination of strategies or more localized limitations are necessary.

For example, San Francisco’s density reduction ordinance, which went into effect in 2015, combines multiple strategies to address excessive tobacco retailer density in many underserved communities. It establishes a cap on the total number of tobacco retailer licenses (45) for *each district* within the city. Significant disparities in the number of licensed tobacco retailers in each district existed when the city adopted the policy, ranging from 37 licensed retailers in a district with a median household income of over $94,000 to 180 licensed retailers in a district whose median income was just below $37,500. Given these preexisting disparities, the added geographical element to San Francisco’s density reduction policy has and is expected to continue to reduce tobacco retailer density most significantly in those districts disproportionately affected by an overconcentration of tobacco retailers.[104](#_ENREF_104)

#### **Types of Retailers and Delivery**

Restricting the types of businesses eligible for tobacco retailer licenses and requiring on-site sales of tobacco products are additional approaches to reduce the availability and accessibility of tobacco products.

* 1. **Prohibit Tobacco Sales in Pharmacies and Other Health Facilities**

In 2015, 14.3% of tobacco retailers in the country had a pharmacy counter.[105](#_ENREF_105) This was despite CVS, one of the largest pharmacy chains in the country, voluntarily stopping selling tobacco products and more than half of state attorneys general encouraging five of the nation’s largest retail pharmacies to cease selling tobacco products in their stores.[106](#_ENREF_106)

Sales of harmful tobacco products in pharmacies and other health-promoting organizations like hospitals and behavioral health facilities present an inherent conflict of interest and send mixed messages about the health risks posed by tobacco. Notably, research has also found that cigarettes are significantly cheaper in pharmacies despite other common consumer goods such as bottled water costing more in pharmacies than in other stores.[107](#_ENREF_107) Thus, prohibiting tobacco sales in pharmacies and other health-promoting organizations not only decreases the availability of tobacco products, but also removes a source of discounted cigarettes.

Communities that have adopted policies prohibiting tobacco sales in pharmacies have seen up to three times greater reduction in tobacco retailer density compared with communities that have not adopted such policies.[108](#_ENREF_108) Additional evidence from the nationwide CVS policy change also showed that cigarette purchases declined and that smokers who had previously purchased their cigarettes exclusively at CVS were up to twice as likely to stop buying cigarettes entirely.[109](#_ENREF_109)

* 1. **Prohibit Mobile Tobacco Product Sales and Delivery**

The California Department of Tax and Fee Administration has interpreted state law, the CTPLA, as prohibiting the licensure of mobile tobacco vendors.[10](#_ENREF_10) Prohibiting mobile sales ensures that enforcement agencies can conduct regular compliance checks at a tobacco retailer’s permanent place of business. If a retailer sells tobacco products from a vehicle or on foot, it is difficult to conduct decoy operations or other inspections, since the retailer doesn’t remain in the same location on a consistent basis.

The STAKE Act places restrictions on mail order and internet sales of tobacco products, including electronic smoking devices, but exempts the U.S. Postal Service and other common carriers from penalties when they deliver a package without any reason for knowing the package’s content.[110](#_ENREF_110) The federal Prevent All Cigarette Trafficking Act of 2009 (“PACT Act”) also places restrictions on mail order and internet sales of cigarettes and smokeless tobacco but exempts other tobacco products, does not clearly address delivery carriers, and limits state and local authority to fill in the gaps.[111](#_ENREF_111) Additionally, while the Tobacco Control Act directed the FDA to issue regulations on mail order/internet sales of tobacco products,[112](#_ENREF_112) given the PACT Act’s passage, the FDA has not yet issued those regulations.[113](#_ENREF_113) Finally, portions of the PACT Act and other states’ efforts to regulate internet tobacco sales have faced legal challenges, leaving much uncertainty about how to proceed at all levels of policymaking and enforcement on this issue.

Still, mail order and internet sales and delivery of tobacco products, especially electronic smoking devices, remain problematic.[114](#_ENREF_114),[115](#_ENREF_115) Local governments can take some limited steps by prohibiting retailers within their jurisdiction from selling products except at the licensed place of business (ie, strictly requiring on-site sales of tobacco products).

## **Comprehensive Tobacco Retailer Licensing Model Ordinance**

This version of the Model Ordinance (revised in February 2019) includes five major revisions:

1. **Incorporates “plug-in” policies:** The prior version of the Model Ordinance included only core provisions related to TRL, such as requiring an annual license to sell tobacco products; establishing a license fee sufficient to cover implementation and enforcement costs; specifying that it is a violation of a license to violate any local, state, or federal tobacco control law; and establishing meaningful penalties for violations including license suspension or revocation. As more communities throughout California have adopted TRL, it has become evident that a more comprehensive approach to regulating the tobacco retail environment is necessary to further reduce tobacco-related harm and inequities. This version of the Model Ordinance reflects this by incorporating certain “plug-in” policies with well-established evidence bases. This includes prohibiting the sale of menthol cigarettes and other flavored tobacco products, requiring minimum package sizes and prices for certain tobacco products, prohibiting tobacco retailers from locating near youth-populated areas or in pharmacies, and regulating the density of tobacco retailers.
2. **Updated the definition of *Tobacco Product*:** This version of the Model Ordinance includes an updated definition of *Tobacco Product.* The revised tobacco product definition (1) incorporates the previously separate definition of electronic smoking device; (2) specifies that components, parts, and accessories qualify as tobacco products if they are intended or reasonably expected to be used with a Tobacco Product; and (3) clarifies the exemption for products approved by the FDA for medical use.
3. **Alignment with new state and federal laws:** In 2016, the state of California enacted several new tobacco control laws, including raising the minimum legal sales age for tobacco products to 21. Also in 2016, the FDA exercised its authority under the Tobacco Control Act to regulate all tobacco products, including electronic smoking devices. This version of the Model Ordinance makes various technical amendments to conform to these changes in the state and federal tobacco control regulatory landscape.
4. **Require on-site sales:** Both California state law and previous versions of this Model Ordinance prohibit mobile tobacco vending. Nevertheless, the online sale and delivery of tobacco products to underage youth continues to present challenges for jurisdictions seeking to enforce youth access laws. This version of the Model Ordinance takes an additional step to address this issue by limiting the sale and delivery of tobacco products and tobacco paraphernalia within a jurisdiction to locations with a valid tobacco retailer license. It also prohibits a tobacco retailer from knowingly or recklessly selling tobacco products or tobacco paraphernalia to any person who intends to deliver those products to a consumer at a non-licensed location, such as a courier service delivering a tobacco product to a consumer’s residence.
5. **Youth purchase, use, and possession penalties:** This version of the Model Ordinance clarifies that it does *not* penalize underage youth who purchase, use, or possess tobacco products or tobacco paraphernalia.Rather, the Model Ordinance penalizes only tobacco retailers who sell tobacco products or tobacco paraphernalia to individuals under 21 years old. A comment on pages 43 and 44 provides additional information on why penalizing the purchase, use, and possession of tobacco products by underage youth is not an evidence-based strategy and how such penalties may contribute to health inequities.

## **Additional Considerations**

Policies that regulate the sale of tobacco products can raise tensions between the government’s duty to protect individual liberty and its duty to promote and protect public health and well-being. Government efforts to regulate any product or industry are often met with resistance and assertions that the market should be allowed to operate free of government intrusion. This stems from the theory that free markets are most effective and government intervention creates inefficiencies. Some question whether it is appropriate for government to discourage the use of a legal product by devising a regulatory scheme with the specific intent of decreasing sales. But the government does this in many industries. For example, liquor taxes discourage alcohol consumption, grocery bag fees discourage the purchase of disposable plastic bags, and public transit subsidies encourage transit use.

The issue then may be one of degree. The extent to which government seeks to curb tobacco sales may seem excessive compared with other goods and services, but tobacco is unique: There are significant public health risks caused directly by tobacco use. Indeed, tobacco is the only legal consumer product that is deadly when used as intended.[2](#_ENREF_2),[116](#_ENREF_116),[117](#_ENREF_117) Moreover, while tobacco industry representatives and retailer associations have argued that there are already laws that prohibit the sale of tobacco products to youth, young people continue to buy and use tobacco products. Overall youth tobacco use did not change significantly between 2011 and 2016. In a 2016 survey, more than 1 in 5 (20.2%) high school students reporting current tobacco use.[118](#_ENREF_118) And a jurisdiction’s demographics may dictate which policies are most effective at reducing youth tobacco use. For example, while electronic smoking devices are the most common form of tobacco use by non-Hispanic white and Hispanic high school students, non-Hispanic black high school students most commonly use cigars.[118](#_ENREF_118)

Retailer associations have also asserted that laws restricting tobacco product sales will result in lost revenues for local businesses. Local policymakers have discretion to assess whether the public health risks presented by tobacco products are significant enough that the sale of these products should be regulated, even if such a regulation results in reduced tobacco sales for local retailers. Local governments can also use a variety of strategies such as robust engagement, outreach, and education with retailers to understand their concerns, explain the rationale for specific policies, and inform the retailers about any applicable laws. Local governments may also consider programs that help retailers reduce their reliance on revenue from tobacco product sales. For example, Healthy Retail SF, a program of the City and County of San Francisco, helps retailers sell healthier products.[119](#_ENREF_119) ChangeLab Solutions also offers [resources](http://changelabsolutions.org/healthy-retail-tools) on creating healthier retail environments.

In addition to these more general considerations, specific policies such as increasing the cost of tobacco products and regulating the location and density of tobacco retailers raise additional considerations. Strategies that increase the cost of tobacco products may be considered regressive, meaning that low- to moderate-income individuals pay a higher percentage of their income toward the increased prices than high-income individuals. This can impose a significant financial burden on low-income smokers. And to the extent that low-income smokers continue to smoke, higher tobacco prices decrease their purchasing power for other goods and services (eg, daily needs).

However, any conversation about equity or regressivity should frame the issue in the broader equity context of tobacco use—that is, the tobacco industry has consistently targeted its products disproportionately to underserved communities and youth through predatory marketing. This contributes to the impacts of chronic disease associated with tobacco use being experienced regressively, or disproportionately, by underserved communities. Increasing the price of tobacco products has been shown to have significant effects on consumption, providing disproportionate health *benefits* to low-income communities. Emerging evidence suggests policies that increase the cost of tobacco products such as establishing minimum prices may *decrease* tobacco-related health inequities.[77](#_ENREF_77),[79](#_ENREF_79)

A criticism of minimum pricing is that it does not necessarily achieve the benefits of a tobacco excise tax. Unlike a tax on an entire class of products (e.g., cigarettes), an established minimum price arguably affects only low-cost brands. Cigarette brands that are more expensive may not be directly affected by the minimum price. Local governments concerned about this outcome can pair a minimum floor price law that affects low-cost brands with a minimum mark-up requirement that affects all brands. An effective minimum pricing policy may also mean that tobacco retailers and manufacturers make more money from tobacco sales. This may sound counterintuitive to policymakers, but it nevertheless may simply be a side effect of increasing tobacco prices through minimum pricing. Moreover, tobacco retailers and manufacturers may be less likely to oppose minimum pricing policies if the policy will increase their revenues.

Evidence suggests increasing prices for tobacco products can encourage an illicit market for these products.[120](#_ENREF_120),[121](#_ENREF_121) An illicit market of cheap tobacco products negates, at least to some degree, the beneficial public health impact of increased prices. Ultimately, this is a balancing act. Local governments are responsible for weighing the public health benefits of higher tobacco prices against the unintended consequences of a potential illicit market for tobacco products. Local governments may address illicit market issues by tailoring pricing policies to raise prices enough to reduce consumption but at levels insufficient to incentivize the creation of an illicit market. They can also address illicit market issues with appropriate, equitable enforcement, though this requires adequate resources.

Additional considerations are also relevant to policies regulating the location and density of tobacco retailers, particularly with respect to avoiding unintended consequences. Jurisdictions pursuing location and density restrictions should carefully consider pre-existing inequities in the location and distribution of tobacco retailers. A policy establishing a single cap on the number of available tobacco retailer licenses may be less likely to reduce an overconcentration of retailers in underserved communities compared with policies that incorporate more granular geographic restrictions. Instituting a minimum distance requirement between tobacco retailers may also inadvertently increase tobacco retailer density in other parts of a community. Finally, jurisdictions may consider which retailers will be most affected by any location and density restrictions and take steps to mitigate any negative effects on those retailers. For example, many tobacco retailers are owned and/or operated by members of underserved communities, and policies affecting the tobacco retail environment may affect economic inequities. Given these considerations, jurisdictions should evaluate which combination of location and density restrictions are best suited to address their communities’ unique characteristics and how best to balance the strongest public health protections with any secondary effects.

This Introduction and Report does not include a comprehensive summary or analysis of relevant legal authorities. This information is available in ChangeLab Solutions’ stand-alone model ordinances and associated resources. If you have questions related to legal authority, please contact ChangeLab Solutions via our website at [www.changelabsolutions.org/tobaccoquestions](http://www.changelabsolutions.org/tobaccoquestions).

## **Conclusion**

A combination of strategies can protect youth from using tobacco and reduce industry-driven health inequities. Many communities are exploring programmatic and policy approaches to address the chronic health conditions associated with tobacco use. Some viable approaches are requiring local tobacco retailer licenses, limiting tobacco retailer density, setting minimum package sizes and prices, and restricting the sale of menthol cigarettes and other flavored tobacco products. ChangeLab Solutions has developed this Model Ordinance as one tool to help communities reduce tobacco use, particularly among young people and underserved populations.

# **Optional Plug-in Provisions**

ChangeLab Solutions has developed a number of supplementary plug-in provisions to accompany the Model Ordinance, any of which can be incorporated into a new ordinance or added to an existing tobacco retailer licensing law. Each plug-in addresses a different concern and provides a policy option. For example, plug-ins can be used to prohibit certain types of retailers from selling tobacco and to restrict the sales of certain products.

Currently, ChangeLab Solutions has a number of plug-in provisions that (1) prohibit tobacco sales at restaurants and bars, (2) prohibit tobacco sales at businesses that allow smoking, (3) prohibit tobacco retailers from selling drug paraphernalia, and (4) provide additional enforcement options for licensing laws. Other plug-in policies previously maintained in a separate document such as tobacco-free pharmacies, limiting the location and density of tobacco retailers, and establishing minimum package size and prices for certain tobacco products have been integrated into this Model Ordinance.

Although the plug-in provisions are intended to be incorporated into the Model Ordinance, some of them can be enacted independently, with revisions. Adopting a plug-in provision both as part of a licensing ordinance *and* as a separate ordinance may provide additional enforcement options. Please consult your local government attorney and/or ChangeLab Solutions if you want to incorporate any of the plug-in provisions into your existing licensing ordinance and/or adopt the provisions as a separate ordinance.

The provisions regarding “No Tobacco Product Sampling” have been removed from this version of the Model Ordinance because state and federal law now prohibit almost all free tobacco product sampling. The plug-in provisions limiting tobacco sales to off-sale alcohol retailers and prohibiting significant tobacco retailers have also been removed, but are available upon request. Please contact ChangeLab Solutions if you have questions regarding these plug-in policies.

# **Questions?**

If you have questions about the Model Ordinance, please contact ChangeLab Solutions via our website at [www.changelabsolutions.org/tobaccoquestions](http://www.changelabsolutions.org/tobaccoquestions).

# **AN ORDINANCE OF THE [ CITY / COUNTY ] OF [ *Insert Jurisdiction Name* ] REGULATING TOBACCO PRODUCT SALES, REQUIRING THE LICENSURE OF TOBACCO RETAILERS, AND AMENDING THE [ *Insert Jurisdiction Name* ] MUNICIPAL CODE**

The [ City Council of the City / Board of Supervisors of the County ] of [ *Insert Jurisdiction Name* ] does ordain as follows:

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| **COMMENT:** This is introductory boilerplate language that should be adapted to the conventional form used in the jurisdiction. |

**SECTION I.** [ See **Appendix A: Findings** ]

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| **COMMENT:** The findings section is part of the ordinance and legislative record, but it usually does not become codified in the municipal code. An ordinance based on this Model Ordinance should include findings of fact—data, statistics, relevant epidemiological information, for instance—that support the purposes of this ordinance, as well as any legal precedent that directly supports the ordinance. In addition to serving an educational purpose and building support for the ordinance, the findings can also serve a legal purpose. If the ordinance is challenged in court, the findings are an admissible record of the factual determinations made by the legislative body when considering the ordinance. Courts will generally defer to legislative determinations of factual issues, which often influence legal conclusions. A list of findings supporting this Model Ordinance appears in “Appendix A: Findings” on page 50. Jurisdictions may select findings from that list to insert here, along with additional findings on local or regional conditions, outcomes, and issues that help make the case for the law. |

**SECTION II.** [ Article / Section ] of the [ *Insert Jurisdiction Name* ] Municipal Code is hereby amended to read as follows:

**Sec. [ \_\_\_\_ (\*1) ]. DEFINITIONS.** The following words and phrases, whenever used in this [ article / chapter ], shall have the meanings defined in this section unless the context clearly requires otherwise:

1. “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. 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 [ article / chapter ] is not an Arm’s Length Transaction.
2. “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
3. “Cannabis Product” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

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| **COMMENT:** California state law prohibits the sale of Tobacco Products or alcoholic beverages at premises licensed to engage in Commercial Cannabis Activity (eg, Cannabis retailers, cultivators, manufacturers, and distributors). Although this Model Ordinance does not directly regulate Cannabis, it does include several Cannabis-related limitations on Tobacco Retailers. For example, this Model Ordinance prohibits new Tobacco Retailers from opening within a specified distance from businesses engaged in the retail Sale of Cannabis and Cannabis Products. |

1. “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 three pounds per thousand.
2. “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.
3. “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; provided, however, that a Tobacco Product shall not be determined to have a Characterizing Flavor solely because of the use of additives or flavorings or the provision of ingredient information.
4. “Commercial Cannabis Activity” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.

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| **COMMENT:** This term refers to conduct that requires a California state commercial Cannabis license, including “the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis products as provided for in [Cal. Bus. & Prof. Code Division 10].” |

1. “Consumer” means a Person who purchases a Tobacco Product for consumption and not for Sale to another.
2. “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.
3. “Department” means [ *Insert Department Name* ] and any agency or Person designated by the Department to enforce or administer the provisions of this [ article / chapter ].

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| **COMMENT:** This term is used in the Model Ordinance to refer to the city or county agency charged with issuing licenses and enforcing the Ordinance. The primary enforcing agency may designate additional agencies to assist in administering and/or enforcing the Ordinance. |

1. “Flavored Tobacco Product” means any Tobacco Product that imparts a Characterizing Flavor.

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| **COMMENT:** This definition of Flavored Tobacco Product includes Cigarettes. Although federal law prohibits the manufacture of flavored Cigarettes, it contains an exemption for menthol Cigarettes. Moreover, neither federal nor California state law regulates the sale of flavored non-Cigarette Tobacco Products such as Little Cigars, smokeless tobacco, and e-cigarettes. This Model Ordinance is more restrictive than federal and state law because it prohibits the sale of all Flavored Tobacco Products, including menthol Cigarettes and flavored non-Cigarette Tobacco Products. |

1. “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.
2. “Labeling” means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.
3. “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. “Little Cigar” includes, but is not limited to, Tobacco Products known or labeled as small cigar, little cigar, or cigarillo.
4. “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.
5. “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.
6. “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

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| **COMMENT:** The Municipal Code likely contains a definition of “person” and, if so, the definition provided here can be omitted. |

1. “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.

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| **COMMENT:** This term is defined to help prevent sham ownership changes made to evade the license penalty provisions. |

1. “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.
2. “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.
3. “Tobacco Paraphernalia” means any item designed or marketed for the consumption, use, or preparation of Tobacco Products.
4. “Tobacco Product” means:
   1. any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
   2. any electronic device that delivers nicotine or other substances to the Person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
   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. “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.

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| **COMMENT:** This definition of Tobacco Product is designed to cover a wide variety of products, including Cigarettes, Cigars, Little Cigars, smokeless tobacco, shisha (hookah tobacco), nicotine gel, nicotine lollipops, other nonconventional tobacco and nicotine products, electronic smoking devices, and the solutions and component parts that are used in these devices. The definition includes electronic smoking devices with or without nicotine. The definition also includes any component, part, or accessory normally used with a Tobacco Product (eg, rolling papers). There is an exception for FDA-approved products intended for medical use (eg, nicotine patches and other nicotine cessation products). |

1. “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. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for Sale, exchanged, or offered for exchange.
2. “Youth-Populated Area” means a parcel [ in the [ City / County ] ] that is occupied by:
   1. a private or public kindergarten, elementary, middle, junior high, or high school;
   2. [ a library open to the public; ]
   3. [ a playground open to the public; ]
   4. [ a youth center, defined as a facility where children, ages 6 to 17, inclusive, come together for programs and activities; ]
   5. [ a recreation facility open to the public, defined as an area, place, structure, or other facility that is used either permanently or temporarily for community recreation, even though it may be used for other purposes. “Recreation facility” includes, but is not limited to, a gymnasium, playing court, playing field, and swimming pool;]
   6. [ an arcade open to the public; ]
   7. [ a park open to the public or to all the residents of a private community; ]
   8. [ a licensed child-care facility or preschool [ other than a small-family day care facility [ or a large-family day care facility ] as defined in California Health & Safety Code § 1596.78 ]; ]
   9. [ \_\_\_\_\_\_\_\_\_\_ ].

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| **COMMENT:** This term is used to prevent Tobacco Retailers from locating near areas frequented by youth and young adults. Research shows that youth are more likely to experiment with Tobacco Products when Tobacco Retailers are located near schools and other areas where youth frequently gather. Restricting Tobacco Product Sales within a certain distance of these “Youth-Populated Areas” may help reduce youth tobacco use.  Small-family day care facilities are allowed on residentially zoned property and are limited to 8 or fewer children under age 10. Large-family day care facilities with up to 14 children under age 10 are also allowed on residentially zoned property. Depending on the number and location of these facilities, some communities might consider excluding them from the limitations where Tobacco Retailers may locate. |

**Sec. [ \_\_\_\_ (****\*2) ]. GENERAL REQUIREMENTS AND PROHIBITIONS.**

1. TOBACCO RETAILER’S LICENSE REQUIRED. It shall be unlawful for any Person to act as a Tobacco Retailer in the [ City / County ] without first obtaining and maintaining a valid Tobacco Retailer’s license pursuant to this [ article / chapter ] 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.

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| **COMMENT:** This is the primary operative section of the Model Ordinance. It requires a license for each retail location. So, for example, a supermarket chain would need a Tobacco Retailer license for each store. Note that this Ordinance uses the term “license,” but a city or county could choose to label the requirement a “permit,” as the two terms are generally interchangeable. The term used should be consistent with other provisions of the city or county code to which this Ordinance is added. |

1. LAWFUL BUSINESS OPERATION. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [ article / 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 Paraphernalia, or Tobacco Retailing.

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| **COMMENT:** This provision makes licensing an effective tool for comprehensively enforcing tobacco control laws. A city or county can use the license suspension provisions to encourage compliance with all tobacco-related laws. This provision also gives a city or county additional enforcement options. The local jurisdiction may enforce the underlying tobacco law—such as the prohibition on selling tobacco to youth (Penal Code section 308 or the STAKE Act). It may also discourage illegal behavior by suspending or revoking a license. Losing the right to sell Tobacco Products for a period of time will likely be a bigger financial deterrent than an occasional fine imposed under other laws. |

1. DISPLAY OF LICENSE. Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.
2. POSITIVE IDENTIFICATION REQUIRED. No Person engaged in Tobacco Retailing shall Sell a Tobacco Product or Tobacco Paraphernalia 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.

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| **COMMENT:** This provision deliberately omits stating a specific age, such as 21, so the Ordinance will not need to be amended if state law changes the minimum legal sales age for Tobacco Products and/or Tobacco Paraphernalia. |

1. SELF-SERVICE DISPLAYS PROHIBITED. Tobacco Retailing by means of a Self-Service Display is prohibited.

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| **COMMENT:** This provision goes beyond state law because it does not provide an exception for tobacco stores that restrict access to minors. As a result, this provision would prohibit Self-Service Displays of Tobacco Products by all Tobacco Retailers. |

1. ON-SITE SALES. All Sales of Tobacco Products and Tobacco Paraphernalia to Consumers shall be conducted in-person at the licensed location. It shall be a violation of this [ article / chapter ] for any Tobacco Retailer or any of the Tobacco Retailer’s agents or employees to Deliver Tobacco Products or Tobacco Paraphernalia or to knowingly or recklessly Sell Tobacco Products or Tobacco Paraphernalia to any Person that intends to Deliver the Tobacco Product or Tobacco Paraphernalia to a Consumer in the [ City / County ]. For purposes of this subsection, “Deliver” means the commercial transfer of Tobacco Products or Tobacco Paraphernalia to a Consumer at a location not licensed pursuant to this [ article / chapter ].

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| **COMMENT:** Prohibiting the delivery of Tobacco Products to Consumers aids in enforcement by ensuring that communities can conduct regular inspections at a Tobacco Retailer’s licensed place of business. This subsection requires that all Sales of Tobacco Products and Tobacco Paraphernalia to Consumers occur at a business location licensed to engage in Tobacco Retailing under this Ordinance.  This subsection also makes it a violation of a Tobacco Retailer’s license to *knowingly* or *recklessly* Sell a Tobacco Product or Tobacco Paraphernalia to a Person who intends to deliver the Tobacco Product or Tobacco Paraphernalia to a Consumer at a location not licensed to engage in Tobacco Retailing. The “knowingly or recklessly” requirement prevents a Tobacco Retailer from being penalized unless the retailer actually knew or reasonably should have known that the Person purchasing the Tobacco Product or Tobacco Paraphernalia intended to deliver it to a Consumer at a non-licensed location.  Importantly, this subsection does *not* penalize a Tobacco Retailer for selling a Tobacco Product or Tobacco Paraphernalia to a Person who intends to transfer such products for non-commercial purposes, such as an individual purchasing these products for a family member or friend. |

1. FALSE AND MISLEADING ADVERTISING PROHIBITED. A Tobacco Retailer without a valid Tobacco Retailer license or a Proprietor without a valid Tobacco Retailer license, including, for example, a Person whose license 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 Section [ \_\_\_\_(\*14) ]; 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’s location or that could lead a reasonable Consumer to believe that such products can be obtained at that location.

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| **COMMENT:** This subsection provides that a retailer who cannot legally Sell Tobacco Products or Tobacco Paraphernalia may not display or advertise such products. To do so would be misleading to Consumers (see California Business & Professions Code Section 17500) and could invite illegal Sales. The First Amendment does not protect false commercial speech. |

1. [ (The City or County may wish to add other desired requirements that, if violated, will constitute a violation of the license.) ]

**Sec. [ \_\_\_\_ (\*3) ]. SALE OF FLAVORED TOBACCO PRODUCTS PROHIBITED.**

1. It shall be a violation of this [ article / chapter ] for any Tobacco Retailer or any of the Tobacco Retailer’s agents or employees to Sell or offer for Sale, or to possess with intent to Sell or offer for Sale, any Flavored Tobacco Product.

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| **COMMENT:** Some communities have taken other, less comprehensive approaches to restricting the Sale of Flavored Tobacco Products, such as “buffer zones” and limiting the Sale of these products to adult-only tobacco stores. These approaches are important interventions, but they’re not comprehensive prohibitions on Flavored Tobacco Product Sales. Communities should weigh the benefits and drawbacks of each approach.  “Buffer zones” prohibit the Sale of Flavored Tobacco Products within a specific distance of Youth-Populated Areas, such as schools. An adult-only tobacco store approach limits the Sale of Flavored Tobacco Products to stores that primarily Sell Tobacco Products, derive a specified percentage of their annual revenue from Tobacco Products and Tobacco Paraphernalia, and prohibit Persons under the age of 18 from entering without a parent or legal guardian. Some jurisdictions also impose additional requirements on these stores, such as prohibiting them from selling alcohol or food for consumption on the premises.  These approaches may not provide the same public health benefits as a comprehensive, communitywide restriction on the Sale of Flavored Tobacco Products, and they are more complicated to implement and enforce. For example, buffer zones require the creation and maintenance of mapping surveys to determine the location of Tobacco Retailers, Youth-Populated Areas, and the distances between them. Buffer zones may also require more extensive education efforts and the development of tools and resources for Tobacco Retailers to determine whether their store is within a buffer zone. Similarly, restricting Flavored Tobacco Product Sales to adult-only tobacco stores requires tracking Tobacco Retailers’ annual sales receipts to ensure they meet the specified requirements.  Despite these considerations, buffer zones and adult-only tobacco stores remain viable policy options for communities that wish to pursue less comprehensive restrictions on the Sale of Flavored Tobacco Products. If your community is interested in adopting one or more of these approaches, please contact ChangeLab Solutions for assistance. |

1. There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including, but not limited to, individual Flavored Tobacco Products, Packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to Sell or offer for Sale.
2. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has:
   1. made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
   2. used text and/or images on the Tobacco Product’s Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor; or
   3. taken action directed to Consumers that would be reasonably expected to cause Consumers to believe the Tobacco Product imparts a Characterizing Flavor.

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| **COMMENT:** This Model Ordinance penalizes only Tobacco Retailers who Sell or offer to Sell Flavored Tobacco Products, *not* individuals who purchase, attempt to purchase, possess, or use Flavored Tobacco Products.  Some communities face challenges in enforcing their restrictions on the Sale of Flavored Tobacco Products. For example, enforcement officials may have trouble determining whether a Tobacco Product qualifies as a Flavored Tobacco Product, particularly when the Packaging and marketing materials do not explicitly identify a Characterizing Flavor (e.g., Tobacco Products using “concept flavors” like “Arctic” and “Lightning”). Communities should consider potential challenges and develop guidelines for staff enforcement. If your community is concerned about enforcement, please contact ChangeLab Solutions for assistance. |

**Sec. [ \_\_\_\_ (\*4) ]. TOBACCO PRODUCT PRICING AND PACKAGING.**

1. PACKAGING AND LABELING. No Tobacco Retailer shall Sell any Tobacco Product to any Consumer unless such product: (1) is sold in the original Manufacturer’s Packaging intended for Sale to Consumers; and (2) conforms to all applicable federal Labeling requirements.
2. DISPLAY OF PRICE. The price of each Tobacco Product offered for Sale shall be clearly and conspicuously displayed to indicate the price of the product.
3. 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.

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| **COMMENT:** This subsection prohibits the following types of discounts:   1. Redemption of any Coupons, whether the Consumer obtains the Coupon in the store or elsewhere (eg, magazine, online printout, mailer, or phone app); 2. Discounts to reward Consumers for buying more than one Tobacco Product (eg, “Buy two packs of cigarettes, get one free,” “buy five Cigars, get a pack of Cigarettes for half price”); and 3. Discounts for other items (eg, “Buy a pack of Cigarettes and get a free lighter”). |

1. 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 [ twenty ] Little Cigars; or
   2. any Cigar unless it is sold in a Package of at least at least [ six ] Cigars [ ; provided, however, that this subsection shall not apply to a Cigar that has a price of at least [ $X.00 ] per Cigar, including all applicable taxes and fees ].

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| **COMMENT:** This subsection requires a minimum pack size for Little Cigars and Cigars. Requiring Little Cigars and Cigars to be sold in packs of a certain size raises the cost barrier to purchase these products. The purpose of this subsection is not to directly raise the price of Little Cigars and Cigars; rather, the purpose is to raise the cost of any single transaction. Section \*4(e) directly establishes a price floor for these products.  The minimum Package size of twenty (20) Little Cigars is consistent with the minimum Package size for Cigarettes established by federal law. An option is provided to set a different minimum Package size for Little Cigars; however, because Little Cigars and Cigarettes are very similar, establishing different minimum Package sizes may simply encourage the substitution of one product for the other.  Subsection (2) provides an option to exempt Cigars that meet a certain price threshold. Because the policy goal of a minimum Package size requirement is to raise the cost barrier for any single transaction, the requirement may not be necessary for products that are already expensive enough to deter Sales to youth. For example, a single Cigar that costs $10 may not need to be sold in a pack of six to deter youth Sales. |

1. 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 [ $X.00 ] per Package of 20 Cigarettes, including all applicable taxes and fees;
   2. Little Cigars at a price that is less than [ $X.00 ] per Package of Little Cigars, including all applicable taxes and fees; or
   3. Cigars at a price that is less [ $X.00 ] per Cigar, including all applicable taxes and fees.

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| **COMMENT:** This section directly sets a price floor for the Sale of Cigarettes, Little Cigars, and Cigars. For Cigarettes and Little Cigars, the price floor is set as a minimum price required (eg, $7) for a *Package* of Cigarettes or Little Cigars. The price floor is set differently for Cigars (*per Cigar* vs. *per Package*) because the number of Cigars in a Package varies greatly.  An option is provided to set different price floors for Cigarettes and Little Cigars; however, because these products are very similar, different price floors may simply encourage purchase of the cheaper alternative. Importantly, subsection (2) is intended to be adopted alongside Section \*4(d)(1), which establishes a minimum Package size for Little Cigars. Local jurisdictions interested in adopting a minimum price for Little Cigars without a corresponding minimum Package size should contact ChangeLab Solutions for assistance.  Setting a minimum price for other types of Tobacco Products such as smokeless tobacco, pipe tobacco, and electronic smoking devices requires more careful deliberation due to the manner in which these other products are packaged and sold. Local jurisdictions interested in additional minimum pricing options should contact ChangeLab Solutions for assistance. |

* 1. The minimum prices established in this section shall be adjusted annually (percent change in the annual average, not seasonally adjusted) by the Department in proportion with the Consumer Price Index: all urban consumers for all items for the [ *Insert Statistical Area* ] statistical area as reported by the United States Bureau of Labor Statistics or any successor to that index.

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| **COMMENT:** This subsection specifies that the minimum price for Cigarettes, Little Cigars, and Cigars established by subsections (1) through (3) will be adjusted annually in proportion with the Consumer Price Index. This annual adjustment occurs automatically without further action by the city council or board of supervisors and ensures that the effectiveness of the minimum prices do not diminish over time due to inflation.  The federal Bureau of Labor Statistics releases CPI data specific to particular regions or metropolitan areas, referred to as “statistical areas.” For California, these statistical areas include: (1) Los Angeles–Long Beach-Anaheim, (2) Pacific Division (includes all Pacific states), (3) Riverside–San Bernardino–Ontario, (4) San Diego–Carlsbad, and (5) San Francisco–Oakland–Hayward. Local jurisdictions should choose the nearest statistical area and insert it into the subsection above. More information on regional resources for the Consumer Price Index are available at <https://www.bls.gov/cpi/regional-resources.htm>. If your community has questions about selecting the appropriate statistical area, please contact ChangeLab Solutions for assistance. |

**Sec. [ \_\_\_\_ (\*5) ]. LIMITS ON ELIGIBILITY FOR A TOBACCO RETAILER LICENSE.**

1. MOBILE VENDING. No license may issue to authorize Tobacco Retailing at other than a fixed location, including, but not limited to, Tobacco Retailing by Persons on foot or from vehicles.

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| **COMMENT:** Prohibiting mobile vending aids in enforcement by ensuring that communities can conduct regular inspections at the Tobacco Retailer’s permanent place of business. |

1. LICENSED CANNABIS BUSINESSES. No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing at a location licensed for Commercial Cannabis Activity by the State of California in accordance with the Business and Professions Code Division 10. In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this [ article / chapter ] for a licensee, or any of the licensee’s agents or employees, to engage in Commercial Cannabis Activity.

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| **COMMENT:** California state law prohibits the Sale of Tobacco Products at any location licensed to engage in Commercial Cannabis Activity (*see* California Business and Professions Code Section 26054(a)). This subsection incorporates this restriction by prohibiting the issuance or renewal of a Tobacco Retailer license for a location licensed to engage in Commercial Cannabis Activity. |

1. PHARMACIES. No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing in a Pharmacy. For the purposes of this subsection, “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.

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| **COMMENT:** The Sale of Tobacco Products at stores containing pharmacies may convey a mixed message to Consumers, who rely on these businesses for health-related services. Because stores containing pharmacies provide health-related information to the public, communities may be concerned that the Sale of Tobacco Products at these stores conveys a tacit approval of these products. Further, stores containing pharmacies often stock Tobacco Products near cessation aids, compromising the efforts of people who are trying to quit. This subsection addresses these concerns by prohibiting businesses that contain pharmacies from obtaining or renewing a Tobacco Retailer License. Existing pharmacies that lawfully Sell Tobacco Products at the time this Ordinance is adopted may apply for a one-time, non-renewable Tobacco Retailer license for the location (*see* Section \*5(h)). |

1. PROXIMITY TO YOUTH-SENSITIVE AREAS. No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within [ one thousand (1,000) ] feet of a Youth-Populated Area as measured by a straight line from the nearest point of the property line of the parcel on which the Youth-Populated Area is located to the nearest point of the property line of the parcel on which the applicant’s business is located.

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| **COMMENT:** This subsection limits the proximity of Tobacco Retailers to areas frequented by youth. Research shows that children are more likely to experiment with Tobacco Products when Tobacco Retailers are located near schools. Restricting Tobacco Product Sales within a certain distance of schools, playgrounds, libraries, and similar venues may help reduce youth initiation.  This subsection applies to both new and existing Tobacco Retailers. Existing Tobacco Retailers located within the specified distance of an existing Youth-Populated Area or that become ineligible to renew a license due to the creation of a new Youth-Populated Area may apply for a one-time, non-renewable license for the location (*see* Section \*5(h)). |

1. PROXIMITY TO OTHER TOBACCO RETAILERS. No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within [ five hundred (500) ] feet of a Tobacco Retailer location already licensed pursuant to this [ article / chapter ] as measured by a straight line from the nearest point of the property line of the parcel on which the applicant’s business is located to the nearest point of the property line of the parcel on which an existing licensee’s business is located.

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| **COMMENT:** A high density of Tobacco Retailers has been associated with increased smoking rates, particularly among youth, and studies show that the number of Tobacco Retailers in underserved areas is disproportionately high. This subsection limits the proximity of new Tobacco Retailers to existing Tobacco Retailers. Under Section \*5(i), existing Tobacco Retailers are “grandfathered” regardless of their distance from other Tobacco Retailers. However, a Tobacco Retailer will lose their grandfathered status if they fail to meet the conditions enumerated in Section \*5(i).  The distance between Tobacco Retailers should be determined based on the needs of your community and the location of existing Tobacco Retailers. For example, a community that wants no more than one Tobacco Retailer per city block could examine whether a 500-foot buffer zone between retailers would sufficiently control the density of retailers. The density of existing Tobacco Retailers may vary significantly throughout a city or county. This provision could be further tailored to your community’s needs by restricting Tobacco Retailer density in specified areas or neighborhoods. |

1. PROXIMITY TO CANNABIS RETAILERS. No license may issue, and no existing license may be renewed, to authorize Tobacco Retailing within [ five hundred (500) ] feet of a Cannabis Retailer as measured by a straight line from the nearest point of the property line of the parcel on which the applicant’s business is located to the nearest point of the property line of the parcel on which an existing Cannabis Retailer is located. For the purposes of this subsection, “Cannabis Retailer” means any retail establishment in which Cannabis or Cannabis Products are Sold or offered for Sale to Persons that do not hold a license to engage in Commercial Cannabis Activity issued by the State of California in accordance with the Business and Professions Code.

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| **COMMENT:** This subsection requires that Tobacco Retailers be located a specified minimum distance from existing businesses that Sell Cannabis or Cannabis Products to Consumers (“Cannabis Retailers”). Under Section \*5(i), existing Tobacco Retailers are “grandfathered” regardless of their distance from a Cannabis Retailer. However, a Tobacco Retailer will lose their grandfathered status if they fail to meet the conditions enumerated in Section \*5(i). |

1. POPULATION AND DENSITY. The issuing of Tobacco Retailer licenses is limited as follows:
   1. The total number of Tobacco Retailer licenses within the [ City / County ] shall be limited to one for each [ 2,500 ], or fraction thereof, inhabitants of the [ City / County ].

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| **COMMENT:** Statewide, there is approximately one Tobacco Retailer for every 1,000 people. This provision provides a default of one Tobacco Retailer for every 2,500 people to reduce retailer density below the current statewide average. Setting the benchmark at 2,500 also makes the number of Tobacco Retailers in a community consistent with the number of off-sale alcohol retailers. A community will need to compare its population with the current number of Tobacco Retailers to determine whether the suggested benchmark will result in a reduction in retailers. |

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

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| **COMMENT:** This subsection is similar to California Business and Professions Code Section 23817.9, which dictates how the population will be measured to assist in determining the number of off-sale beer and wine retailers in a community. |

* 1. 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).

1. 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 subsections (c) or (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-Populated Area, may apply for and receive a one-time, non-renewable license for the location pursuant to the standard licensing application procedure.

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| **COMMENT:** This subsection addresses the status of existing Tobacco Retailers that contain a pharmacy or are located too close to a Youth-Populated Area. A Tobacco Retailer lawfully operating on the date this ordinance is adopted that becomes ineligible to renew their Tobacco Retailer license because the store contains a pharmacy or is located too close to a Youth-Populated Area may receive a one-time, non-renewable Tobacco Retailer license. |

1. Notwithstanding subsections (e) through (g), 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:
   1. The license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
   2. The Tobacco Retailer is not closed for business or otherwise suspends Tobacco Retailing for more than sixty (60) consecutive days;
   3. 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:
      1. to a new Proprietor(s) in an Arm’s Length Transaction; or
      2. for which a significant purpose is avoiding the effect of violations of this [ article / chapter ]; and
   4. The Tobacco Retailer retains the right to operate under all other applicable laws.
   5. If the [ City / County ] 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.

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| **COMMENT:** A Tobacco Retailer lawfully operating on the date this ordinance is adopted and who meets the conditions enumerated in this subsection may continue to renew their Tobacco Retailer license regardless of their proximity to other Tobacco Retailers, proximity to Cannabis Retailers, or the total number of Tobacco Retailers licensed in the jurisdiction.  A Tobacco Retailer will lose this “grandfathered” status if they, for example, close their business or suspend Tobacco Retailing for more than sixty (60) consecutive days. They will also lose their grandfathering status if they substantially change the business premises or operations. For these purposes, a substantial change to the business operation includes the transfer of the business in an Arms-Length Transaction. However, so long as the transfer is not intended to avoid the effects of violations of this Ordinance, a Tobacco Retailer will not lose their grandfathered status for transferring the business to a relative or related companies or partners. |

1. [ (The City or County may wish to add other desired limits.) ]

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| **COMMENT:** Please see the optional [Plug-in provisions](http://changelabsolutions.org/publications/model-TRL-Ordinance) available from ChangeLab Solutions for further limits on eligibility for a Tobacco Retailer license. |

**Sec. [ \_\_\_\_ (\*6) ]. APPLICATION PROCEDURE.**

1. 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.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer’s license. No Proprietor may rely on the issuance of a license as a determination by the [ City / County ] that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this [ article / chapter ], contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Section [ \_\_\_\_(\*13)(c) ] of this [ article / chapter ]. Nothing in this [ article / 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.

All applications shall be submitted on a form supplied by the Department and shall contain the following information:

* 1. The name, address, and telephone number of each Proprietor of the business seeking a license.
  2. The business name, address, and telephone number of the single fixed location for which a license is sought.
  3. A single name and mailing address authorized by each Proprietor to receive all communications and notices (the “Authorized Address”) required by, authorized by, or convenient to the enforcement of this [ article / chapter ]. If an Authorized Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.
  4. Proof that the location for which a Tobacco Retailer’s license is sought has been issued a valid state license for the Sale of Tobacco Products, if the Tobacco Retailer Sells products that require such license.
  5. Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this [ article / chapter ] and, if so, the dates and locations of all such violations within the previous five years.

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| **COMMENT:** This is an important provision because it requires a Tobacco Retailer to disclose past violations, which will make it easier for administrative and enforcement staff to determine if the application requires closer scrutiny. If the retailer does not disclose past violations and a license is issued, the license can be revoked as soon as the past violations are discovered pursuant to Section \*11(c) below. |

* 1. Such other information as the Department deems necessary for the administration or enforcement of this [ article / chapter ] as specified on the application form required by this section.

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| **COMMENT:** This requirement authorizes administrative and enforcement staff to establish application forms that require various types of information to aid effective operation and enforcement of the ordinance. For example, it may be useful to include in the application a statement, perhaps made under penalty of perjury, that the applicant has familiarized himself or herself with the legal requirements applicable to Tobacco Retailing. It would, of course, be helpful to provide written information about those requirements to those who apply for a license. |

1. 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 [ ten (10) ] business days of a change.
2. All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (California Government Code section 6250 *et seq*.) or any other applicable law.

**Sec. [ \_\_\_\_ (\*7) ]. ISSUANCE OF LICENSE.** Upon the receipt of a complete application for a Tobacco Retailer’s license and the license fee required by this [ article / chapter ], the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this [ article / chapter ];
2. The application seeks authorization for Tobacco Retailing at a location for which this [ article / chapter ] prohibits a licensed to be issued;
3. The application seeks authorization for Tobacco Retailing for a Proprietor to whom this [ article / chapter ] prohibits a license to be issued; and/or
4. The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this [ article / chapter (eg, mobile vending)], that is unlawful pursuant to this Code [ including without limitation the [ eg, zoning ordinance, building code, and business license tax ordinance ] ], or that is unlawful pursuant to any other law.

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| **COMMENT:** This section makes issuance of licenses a mandatory, ministerial duty of staff unless substantial evidence can be shown supporting one of the four justifications for denial of the license. “Substantial evidence” referred to in this section is oral or written evidence within the city’s or county’s records that is sufficiently reliable and persuasive that a court will accept it. The usual test is that it must be the kind of evidence upon which responsible people rely in making important business, personal, and other decisions. The technical rules of evidence used for court proceedings do not apply.  Providing evidence of the bases for denial under subsections (b) and (c) should be simple and can take the form of a memo from Department staff or from staff members who maintain the records of suspensions and revocations. Proving that an application contains false information will be more difficult and require greater attention to the quality of evidence (ie, its persuasiveness and reliability). If oral evidence is to be relied upon, such as citizen complaints, it should be reduced to writing, as by a staff memo to the file.  Although a license technically should not be issued if prohibited elsewhere in the city or county code, it is valuable to make note of the other ordinances staff should consider under subsection (d). For example, if the code contains a zoning or conditional use permit ordinance affecting Tobacco Retailers, the licensing ordinance should refer to it directly to assist staff in implementing the ordinance. It is also helpful to cite building codes (to ensure the structure has been permitted) and any business license tax (to ensure that these taxes are also paid). |

**Sec. [ \_\_\_\_ (\*8) ]. LICENSE RENEWAL AND EXPIRATION.**

1. 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 [ one year ]. Each Tobacco Retailer shall apply for the renewal of their Tobacco Retailer’s license and submit the license fee no later than [ thirty (30) ] days prior to expiration of the term.

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| **COMMENT:** The payment term of licenses is a matter for local policy. If this Ordinance is adopted as an amendment to a local business license ordinance, many administrative details, such as the term of licenses, may be covered by the existing license ordinance. |

1. EXPIRATION OF LICENSE. A Tobacco Retailer’s license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subparagraph (a), the Proprietor must:
   1. submit the license fee and application renewal form; and
   2. submit a signed affidavit affirming that the Proprietor:
      1. has not sold and will not Sell any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed; or
      2. has waited the period of time required by Section [ \_\_\_\_(\*14)(a) ] of this [ article / chapter ] for Tobacco Retailing without a valid license before seeking renewal of the license.

**Sec. [ \_\_\_\_ (\*9) ]. LICENSES NONTRANSFERABLE.**

1. 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).

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| **COMMENT:** This subsection requires a new Tobacco Retailer license for any change in ownership. For example, if a Proprietor to whom a license has been issued changes business locations, that Proprietor must apply for a new license prior to acting as a Tobacco Retailer at the new location. Or, if the business is sold or otherwise transferred to a new owner, the new owner must apply for a license for that location before acting as a Tobacco Retailer. |

1. Notwithstanding any other provision of this [ article / 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 / County ] with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an Arm’s Length Transaction.

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| **COMMENT:** This subsection prevents sham transfers of ownership from defeating the effect of past violations. For example, if a Tobacco Retailer found in violation of the licensing law subsequently transfers ownership to a family member, and if the family member also violates the Ordinance, it would be counted as the second violation, not the first. |

**Sec. [ \_\_\_\_ (\*10) ]. LICENSE CONVEYS A LIMITED, CONDITIONAL PRIVILEGE.**

Nothing in this [ article / 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 / County ] identified on the face of the permit. Nothing in this [ article / chapter ] shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including, but not limited to:

1. any provision of this code [ including without limitation the [ eg, zoning ordinance, building codes, and business license tax ordinance ] ]; and/or
2. any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. Obtaining a Tobacco Retailer’s license does not make the retailer a “retail or wholesale tobacco shop” for the purposes of California Labor Code section 6404.5.

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| **COMMENT:** This section makes clear that granting a Tobacco Retailer license does not affect a Tobacco Retailer’s status under other local, state, or federal law. For example, obtaining a local license does not transform a business into a “retail or wholesale tobacco shop” in which smoking is allowed pursuant to California Labor Code Section 6404.5. The reference to zoning, building, and business tax licensing ordinances is intended to allow each community to enforce all of its local regulations and to not allow a Tobacco Retailer to claim that they reasonably believed that a Tobacco Retailer’s license was all that was needed to do business in a given location. Tailor the list as appropriate. |

**Sec. [ \_\_\_\_ (****\*11) ]. 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 Council / Board of Supervisors ]. The fee shall be calculated so as to recover the cost of administration and enforcement of this [article / chapter], including, for example, 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 [ article / 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.

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| **COMMENT:** It is lawful to impose a fee on applicants in an amount sufficient to offset the cost of the entire Tobacco Retailer enforcement program of the locality. *Sinclair Paint Co. v. Board of Equalization*, 15 Cal. 4th 866 (1997); *Griffith v. City of Santa Cruz*, 207 Cal. App. 4th 982 (2012).  The license fee can incorporate the cost of enforcing all tobacco laws related to Tobacco Retailing because a violation of any tobacco-related law is a basis for suspension of a license. For example, if the enforcing agency is the police department, a new police officer could be hired for Tobacco Retailer enforcement activities and a percentage of the cost of the hire could be included in the fee so long as the same percentage of the officer’s efforts are used to monitor and enforce license-related tobacco laws.  One approach to setting the fee is to estimate the cost of administration and enforcement of the licensing program. For example, estimate the number of stores in the city or county and how much time it will take a government employee to review applications and issue licenses. The fraction of that employee’s time can then be used to calculate the annual cost of license administration, based on the cost of that employee’s salary, benefits, and his or her share of administrative overhead, such as rent, insurance, legal advice, etc. As for enforcement costs, calculate, for example, how many yearly inspections are necessary (ideally one to four per retailer) and how much staff time each inspection demands.  It is important to document these calculations for two reasons: to provide support for the fee amount and to refute a legal challenge claiming the fee exceeds the cost of administration and enforcement. Budgeting for a Local Tobacco Retailer License Fee in California, available at [*www.changelabsolutions.org/publications/trl-fee-calculator-checklist*](http://www.changelabsolutions.org/publications/trl-fee-calculator-checklist), is a checklist designed to help jurisdictions think through all the costs of implementing and enforcing a Tobacco Retailer licensing ordinance. ChangeLab Solutions has also developed an online Tobacco Retailer license fee calculator, available at [*www.changelabsolutions.org/tobacco-control/trl-fee-calculator*](http://www.changelabsolutions.org/tobacco-control/trl-fee-calculator). Additional guidance on calculating a fee can also be found in the Griffith case cited above.  Note that the city or county can avoid having to calculate staff time by mandating that a set amount of time, eg, 15 hours a week, shall be spent on license enforcement activity (including enforcing the tobacco laws that give rise to a license violation). New staff could be hired to meet this mandate and the cost could be incorporated into the license fee. |

**Sec. [ \_\_\_\_ (\*12) ]. COMPLIANCE MONITORING.**

1. Compliance with this [ article / chapter ] shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this [ article / chapter ]. The [ City / County ] may designate additional Persons to monitor compliance with this [ article / chapter ].

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| **COMMENT:** It is important to designate who will monitor Tobacco Retailers’ compliance with this Ordinance. Explicitly naming the Department responsible for inspections helps ensure that the Ordinance will be enforced. Historically, many communities have focused their inspections on youth access laws intended to reduce the Sale of Tobacco Products to youth. Communities can also conduct inspections to determine compliance with a range of laws relating to the point-of-sale. For example, a community that has adopted this Model Ordinance could inspect Tobacco Retailers for compliance with restrictions on the Sale of Flavored Tobacco Products, minimum Package size and price requirements, and restrictions on the off-site Sale of Tobacco Products and Tobacco Paraphernalia (ie, Sales at a location that does not have a valid Tobacco Retailer license issued pursuant to this Ordinance). |

1. The Department shall [ (\*see note on counties below) ] inspect each Tobacco Retailer at least [ three (3) ] times per twelve (12) month period. Nothing in this paragraph shall create a right of action in any licensee or other Person against the [ City / County ] or its agents.

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| **COMMENT:** Providing a minimum number of inspections helps ensure some level of enforcement. One to four inspections per year may be appropriate depending on the number of Tobacco Retailers in a community and the level of funding established through the license fee. Communities with a large number of retailers may wish to inspect a subset of retailers that are selected either randomly or based on past violations and complaints.  \*Note that counties likely may not directly mandate that the county sheriff conduct inspections. However, a county can provide dedicated funding to the sheriff that can be used only to conduct inspections. If this is desired, replace the first sentence in subsection (b) with:  “The Department shall be funded to inspect each Tobacco Retailer at least [ three (3) ] times per twelve (12) month period.”  Alternatively, the county could contract for enforcement and inspections. Cities, on the other hand, can directly mandate that a certain city law enforcement agency conduct inspections. |

1. The [ City Council / Board of Supervisors ] of the [ City / County ] of [ \_\_\_\_\_\_\_\_\_\_ ] does not intend and nothing in this [ article / chapter ] shall be interpreted to penalize the purchase, use, possession, or attempted purchase, use, or possession of Tobacco Products or Tobacco Paraphernalia by Persons under twenty-one years of age; provided, however, that Persons under twenty-one years of age remain subject to generally applicable laws regulating such conduct without respect to the Person’s age.

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| **COMMENT ON YOUTH PENALTIES AND DECOYS:** This provision clarifies that this Model Ordinance does not penalize youth who purchase, use, or possess Tobacco Products or Tobacco Paraphernalia. Rather, the Model Ordinance penalizes only Tobacco Retailers who sell Tobacco Products or Tobacco Paraphernalia to individuals under 21 years old. Individuals under the age of 21 must, however, continue to abide by all generally applicable laws, such as local smokefree ordinances, that apply to everyone regardless of age.  **Any jurisdiction that currently penalizes underage youth who purchase, use, or possess Tobacco Products or Tobacco Paraphernalia should repeal such penalties.** ChangeLab Solutions and other leading [tobacco control organizations](https://www.tobaccofreekids.org/assets/factsheets/0074.pdf) strongly recommend against the adoption or enforcement of laws penalizing youth who purchase, use, or possess Tobacco Products or Tobacco Paraphernalia (commonly referred to as “Youth PUP Laws”). Evidence demonstrates that well-enforced laws targeting Tobacco Retailers provide greater public health benefits than Youth PUP Laws. Moreover, studies show that Youth PUP Laws only minimally affect tobacco use, and prioritizing enforcement of other tobacco control laws can more effectively reduce youth access to Tobacco Products. Finally, Youth PUP Laws raise significant equity concerns because their enforcement often disproportionately affects youth of color.  Previous versions of this Model Ordinance included a section granting immunity to youth that participated in youth decoy (“sting”) operations. In 2016, California increased the minimum legal sales age for Tobacco Products and Tobacco Paraphernalia to 21 and repealed the state law that penalized youth who purchase or possess such products. In other words, current California state law penalizes only individuals or businesses that sell, give, or furnish Tobacco Products or Tobacco Paraphernalia to youth, not the youth who receive or possess such products.  Because there are no state law restrictions or penalties for youth who purchase or possess Tobacco Products or Tobacco Paraphernalia, local jurisdictions generally do not need to provide immunity to youth participating in enforcement operations. However, an exception applies to communities that have adopted local laws prohibiting youth from purchasing or possessing Tobacco Products or Tobacco Paraphernalia. Local communities with laws penalizing youth for purchasing or possessing Tobacco Products or Tobacco Paraphernalia should continue to include provisions granting immunity to youth who participate in enforcement operations. **Alternatively, the local community could align with evidence-based best practices by repealing youth purchase and possession penalties.**  Please contact ChangeLab Solutions for assistance if your community has questions about Youth PUP Laws, including questions about how to repeal existing Youth PUP laws, or questions about granting immunity to youth who participate in enforcement operations |

**Sec. [ \_\_\_\_ (\*13) ]. SUSPENSION OR REVOCATION OF LICENSE.**

1. 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 [ article / chapter ] or has pleaded guilty, “no contest” or its equivalent, or admitted to a violation of any law designated in Section [ \_\_\_\_(\*2) ] above.

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| **COMMENT:** The entire procedure for suspension of a license is not set forth in this Model Ordinance. The administrative procedure, civil proceeding, or combination of both should be tailored to the needs of your community and must comply with the basic requirements of due process (notice to retailer and an opportunity to be heard). ChangeLab Solutions can assist in creating a procedure for suspension of licenses that is appropriate for your community.  A plea of “no contest” or “nolo contendere” is usually used by a defendant to prevent having a “guilty” plea used against them in a subsequent civil suit. This provision puts a Tobacco Retailer on notice that even a “no contest” plea can still be used to establish a licensing violation and will result in the suspension of the retailer’s Tobacco Retailer license. Precedent exists in California state law for considering a “no contest” plea in relation to a license (*see, eg,* California Business and Professions Code Section 5063 regarding CPA licenses). Note that a “no contest” plea can be used only to suspend a license, not to impose any other enforcement provisions provided in this Ordinance. If imposing additional enforcement provisions is desired (eg, imposing a civil fine), the city or county will need to prove that the underlying violation occurred and not rely on the “no contest” plea as conclusive evidence of a violation. |

* 1. Upon a finding by the Department of a first violation of this [ article / 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 [ article / chapter ] at a location within any [ five-year (5) ] period, the license shall be suspended for [ ninety (90) ] days.
  3. Upon a finding by the Department of a third violation of this [ article / chapter ] at a location within any [ five-year (5) ] period, the license shall be suspended for [ one (1) ] year.
  4. Upon a finding by the Department of four or more violations of this [ article / chapter ] at a location within any [ five-year (5) ] period, the license shall be revoked.

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| **COMMENT:** This is the primary provision designating the length of time a Tobacco Retailer is ineligible to Sell Tobacco Products once the retailer’s license is suspended pursuant to subsection (a). Stronger or more lenient penalties may be provided as a matter of local policy. For example, some local ordinances permit first-time offenders to “settle” their way out of a first suspension by instead paying a fine ($1,000, for example). ChangeLab Solutions has prepared an optional Plug-in provision, which, if incorporated into the Model Ordinance, would establish guidelines for this policy alternative.  By providing mandatory penalties, this Model Ordinance does not provide any discretion to enforcement staff. This lack of discretion makes for a simple ordinance and standardized, even-handed enforcement. If discretion with respect to penalties is desired, the Ordinance must state the standard by which that discretion is to be exercised (eg, financial hardship, history of compliance, etc.). Note, too, that these penalty provisions do not prevent the use of other legal tools, such as criminal prosecution under Penal Code section 308, enforcement of the Stop Tobacco Access to Kids Enforcement Act (“STAKE Act,” California Business and Professions Code sections 22950-22962), or the several judicial remedies discussed below. |

1. APPEAL OF SUSPENSION OR REVOCATION. A decision of the Department to suspend or revoke a license is appealable to [ the name of appellate agency, panel, or person (eg, police permit board, Board of Supervisors, city manager, or director of the health department) ] and any appeal must be filed in writing with [ the name of the agency, panel, or person to *receive the notice* (eg, City Clerk or Clerk of the Board of Supervisors) ] 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 name of appellate agency, panel, or person ] is not available for a revocation made pursuant to subsection (c) below.

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| **COMMENT:** Some right to appeal should be provided to ensure due process and to permit the city or county to correct any errors that may occur in the administrative process. How many levels of appeal to permit, which officer or body should hear the appeal, which officer should receive the notice of appeal, the time limits to set, etc. are local policy questions. |

1. REVOCATION OF LICENSE WRONGLY ISSUED. A Tobacco Retailer’s license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section [ \_\_\_\_(\*7) ] 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 / County ]. Such a revocation shall be without prejudice to the filing of a new license application.

**Sec. [ \_\_\_\_ (\*14) ]. TOBACCO RETAILING WITHOUT A VALID LICENSE.**

1. 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.

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| **COMMENT:** This provision prohibits a Person who Sells Tobacco Products or Tobacco Paraphernalia without a valid license from obtaining a license for a set amount of time. It does not apply to a wholly new business at the same site. This ineligibility period is in addition to any other penalty the city or county might pursue.  If a Tobacco Retailing location is sold in an Arm’s Length Transaction, then the violations will not count against the location under the new owner’s license pursuant to Section \*7(b). |

1. Tobacco Products and Tobacco Paraphernalia 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 Paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products and Tobacco Paraphernalia were not offered for Sale or exchange in violation of this [ article / chapter ]. The decision by the Department may be appealed pursuant to the procedures set forth in Section [ \_\_\_\_(\*13)(b) ]. Forfeited Tobacco Products and Tobacco Paraphernalia 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.

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| **COMMENT:** Seizing and destroying illegally offered products requires additional procedures beyond the normal hearing for license suspension. This is, in part, because the licensee may not be the true owner of the seized products (eg, a store owner could sell cigarettes on a consignment basis and share a portion of the sales price with the actual owner of the products). Such owners must be provided due process before destroying their property. We recommend an independent administrative hearing on the forfeiture of any seized products. |

1. For the purposes of the civil remedies provided in this [ article / chapter ]:
   1. Each day on which a Tobacco Product or Tobacco Paraphernalia is offered for Sale in violation of this [ article / chapter ] shall constitute a separate violation of this [ article / chapter ]; and
   2. Each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for Sale in violation of this [ article / chapter ] shall constitute a separate violation of this [ article / chapter ].

**Sec. [ \_\_\_\_ (\*15) ]. ADDITIONAL REMEDIES.**

1. The remedies provided by this [ article / chapter ] are cumulative and in addition to any other remedies available at law or in equity.

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| **COMMENT:** The following subsections are designed to offer a variety of options to the jurisdiction and the enforcing agency. Jurisdictions may choose to include some or all of these options. Once the ordinance is enacted, the enforcing agency will have the discretion to choose which enforcement tools to use in all cases or from case to case. For example, an agency may want to use these alternative enforcement options to address violations that do not directly involve Sales to youth, such as self-service displays or failure to post STAKE Act signs. As a practical matter, these enforcement options would not be applied simultaneously, although multiple remedies might be used against a particularly egregious violator over time. |

1. Whenever evidence of a violation of this [ article / 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 [ article / chapter ] and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

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| **COMMENT:** This provision is designed to eliminate any legal right a defendant might otherwise have to compel a youth decoy to testify or be deposed. If criminal remedies are pursued, constitutional rights of criminal defendants to confront witnesses against them may require a youth decoy to testify. |

1. Violations of this [ article / chapter ] are subject to a civil action brought by the [ City Prosecutor / District Attorney ] or the [ City Attorney / County Counsel ], punishable by a civil fine not less than [ two hundred fifty dollars ($250) ] and not exceeding [ one thousand dollars ($1,000) ] per violation.

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| **COMMENT:** This provision provides civil fines for violating the licensing ordinance. It requires that the city or county file a traditional civil suit. The fine amounts can be adjusted but cannot exceed $1,000 per violation. California Government Code Section 36901. |

1. Violations of this [ article / chapter ] may, in the discretion of the [ City Prosecutor / District Attorney ], be prosecuted as infractions or misdemeanors when the interests of justice so require.

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| **COMMENT:** Sometimes called a “wobbler,” this provision affords the prosecuting attorney discretion whether to pursue a violation as an infraction (like a parking ticket) or a misdemeanor (a crime punishable by up to a $1,000 fine and/or six months in county jail). Alternatively, violations can be set as either an infraction or a misdemeanor in all circumstances. Fines and other criminal penalties are established by the Penal Code and are typically reflected in the general punishments provision of a local code. |

1. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this [ article / chapter ] shall also constitute a violation of this [ article / chapter ].

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| **COMMENT:** This is standard language that is typically included in a city or county code and may be omitted if duplicative of existing code provisions. |

1. Violations of this [ article / chapter ] are hereby declared to be public nuisances.

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| **COMMENT:** By expressly stating that violations are public nuisances, this provision allows enforcement of the ordinance via the administrative nuisance abatement procedures commonly found in municipal codes. Such a declaration also facilitates injunctive relief, where a court orders that a defendant do certain things or refrain from doing certain things, such as selling Tobacco Products to youth. |

1. In addition to other remedies provided by this [ article / chapter ] or by other law, any violation of this [ article / chapter ] may be remedied by a civil action brought by the [ City Attorney / County Counsel ], including, for example, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief.

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| **COMMENT:** It is common to provide that local government lawyers may go to court to seek injunctions and other penalties in addition to fines. The express provision for injunctive relief lowers the showing required to obtain a preliminary or permanent injunction as described in *IT Corp. v. County of Imperial*, 35 Cal. 3d 63 (1983).  Jurisdictions should carefully consider the appropriate nuisance abatement procedure. A nuisance abatement ordinance adopted pursuant to California Government Code Section 38773.5 may provide for treble damages for the second or subsequent nuisance abatement judgment within a two-year period (*see* California Government Code Section 38773.7 authorizing treble damages). However, treble damages are not available under the alternative nuisance abatement procedures authorized by California Government Code Section 38773.1 and California Health and Safety Code Section 17980. |

**Sec. [ \_\_\_\_ (\*16) ]. OTHER LAWS.**

This [ article / 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.

**SECTION III. CONSTRUCTION & SEVERABILITY.** It is the intent of the [ City Council / Board of Supervisors ] of the [ City / County ] of [ \_\_\_\_\_\_\_\_\_\_ ] 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 Council / Board of Supervisors ] of the [ City / County ] of [ \_\_\_\_\_\_\_\_\_\_ ] 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.

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| **COMMENT:** This is standard language. Often this “boilerplate” is found at the end of an ordinance but its location is irrelevant. |

**SECTION IV. EFFECTIVE DATE.** This Ordinance shall take effect and be in force from and after [ 30 days after date of enactment ]; provided, however, that Section [ \_\_\_\_(\*3)] shall not take effect until [ 6 months after date of enactment ].

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| **COMMENT:** This section specifies the effective date of the Ordinance, and it should be tailored to give the city or county sufficient time to conduct implementation activities such as processing applications, issuing licenses, and educating Tobacco Retailers and the general public about the requirements and restrictions established by this Ordinance. General law cities and counties in California must provide a minimum of 30 days between an ordinance’s adoption and its effective date.  While this section specifies that most provisions go into effect 30 days after final adoption of the ordinance, it provides a six (6) month delay between when a jurisdiction adopts the Ordinance and when the prohibition on the Sale of menthol Cigarettes and other Flavored Tobacco Products goes into effect. This delay provides Tobacco Retailers with a six month period to Sell their remaining inventory of these products, as well as provides additional time for the local government to plan for implementation and enforcement. |

# **Appendix A: Findings.**

The [ City Council of the City / Board of Supervisors of the County ] of [ *Insert Jurisdiction Name* ] hereby finds and declares as follows:

**WHEREAS,** the [ City Council / Board of Supervisors ] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the [ City Council / Board of Supervisors ], 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;[2](#_ENREF_2)

**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;[122](#_ENREF_122)

**WHEREAS,** 5.6 million of today’s Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;[2](#_ENREF_2)

**WHEREAS,** tobacco use is the number one cause of preventable death in California[123](#_ENREF_123) and continues to be an urgent public health issue, as evidenced by the following:

* 40,000 California adults die from their own smoking annually;
* More than 25% of all adult cancer deaths in California are attributable to smoking;[124](#_ENREF_124)
* 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;[125](#_ENREF_125)
* 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;[2](#_ENREF_2)

**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%), Asian (15.6%), Hispanic (15.0%), and American Indian/Alaska Native (36.2%) males all report a higher smoking prevalence than White, Non-Hispanic males (14.8%);[126](#_ENREF_126)
* More than half (53.8%) of low socioeconomic status American Indian/Alaska Native Californians smoke, the highest smoking prevalence among all populations;[126](#_ENREF_126)
* From 2002 to 2012, smoking prevalence increased among African American youth;[126](#_ENREF_126)
* Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence;[126](#_ENREF_126)
* Those who identify as bisexual, compared with heterosexual, gay/lesbian/homosexual, not sexual, celibate, or other, smoke at rates disproportional to their population in California;[126](#_ENREF_126)
* Those who reported experiencing psychological distress over the past year smoke at rates disproportional to their population in California;[126](#_ENREF_126)
* **[ insert local data if available ]**

**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, over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;[126](#_ENREF_126)
* In California, from 2013 to 2015, approximately 15% of 9th and 11th grade students report using electronic smoking devices;[126](#_ENREF_126)
* Unless smoking rates decline, an estimated 5% of all California youth who are alive today will die prematurely from smoking-related diseases;[125](#_ENREF_125),[127](#_ENREF_127)
* In 2017, 22.8% of high school students in California had tried cigarette smoking;[128](#_ENREF_128),[129](#_ENREF_129)
* **[ insert local data if available ]**

**WHEREAS,** the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting,[6](#_ENREF_6) 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;[58](#_ENREF_58)
* 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”;[130](#_ENREF_130)
* The tobacco industry spends an estimated $620 million annually to market tobacco products to California residents;[125](#_ENREF_125)

**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;[128](#_ENREF_128),[129](#_ENREF_129)
* 7.6% of California tobacco retailers unlawfully sold tobacco products to minors in 2015;[126](#_ENREF_126)
* **[ insert local data if available ]**

**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 Council / Board of Supervisors ] 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:

* Cigarettes are the number one product sold in U.S. convenience stores, and in 2012, they generated an average of $622,248 in sales per store;[131](#_ENREF_131)
* A study found that odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth tobacco sales laws;[22](#_ENREF_22),[132](#_ENREF_132)
* 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;[133](#_ENREF_133),[134](#_ENREF_134)
* A review of 33 California communities with strong tobacco retailer licensing ordinances found that youth sales rates declined in 32 of these communities after the ordinances were enacted, with an average decrease of 28% in the youth sales rate;[21](#_ENREF_21)

**WHEREAS,** the federal Family Smoking Prevention and Tobacco Control Act (“Tobacco Control Act”), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,[23](#_ENREF_23) largely because these flavored products are marketed to youth and young adults,[22](#_ENREF_22),[28](#_ENREF_28),[135](#_ENREF_135) and younger smokers were more likely than older smokers to have tried these products;[22](#_ENREF_22)

**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 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarettes, and 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products;[136](#_ENREF_136)

**WHEREAS,** mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco[22](#_ENREF_22),[137](#_ENREF_137),[138](#_ENREF_138) and that these products help establish tobacco habits that can lead to long-term addiction;[22](#_ENREF_22),[139](#_ENREF_139)

**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) and adults (ages 26+);[24](#_ENREF_24)

**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;[6](#_ENREF_6),[22](#_ENREF_22),[140](#_ENREF_140),[141](#_ENREF_141)

**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;[142](#_ENREF_142)

**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,[26](#_ENREF_26) and possibly Hispanic and Latino individuals;[27](#_ENREF_27) 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 menthol smokers;[26](#_ENREF_26)

**WHEREAS,** as a result of the FDA ban on all flavored cigarette products (except menthol), tobacco use by youth decreased by 6% and the likelihood of a youth becoming a cigarette smoker post flavor ban fell by 17%;[143](#_ENREF_143)

**WHEREAS,** an evaluation of New York City’s law, which prohibits the sale of all flavored tobacco, excluding menthol, found 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;[144](#_ENREF_144)

**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 carcinogens;[145-152](#_ENREF_145)

**WHEREAS,** unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has remained statistically unchanged and in some cases actually increased among youth;[22](#_ENREF_22),[153-157](#_ENREF_153)

**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 more people quit tobacco use;[2](#_ENREF_2),[41-44](#_ENREF_41),[46-49](#_ENREF_46)

**WHEREAS,** research has also consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations;[158](#_ENREF_158)

**WHEREAS,** 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%;[42](#_ENREF_42)

**WHEREAS,** unequal price increases across different types of tobacco products lead to substitution from one product to another;[47](#_ENREF_47),[49](#_ENREF_49)

**WHEREAS,** youth are particularly responsive to changes in tobacco prices,[22](#_ENREF_22),[45](#_ENREF_45)and evidence suggests that tobacco companies deliberately target youth with price reductions;[44](#_ENREF_44),[56-58](#_ENREF_56),[159](#_ENREF_159)

**WHEREAS,** evidence also suggests that cigarettes are cheaper in neighborhoods with lower household incomes,[107](#_ENREF_107) Newport menthol cigarettes cost less in areas with higher proportions of African Americans,[107](#_ENREF_107) and underserved communities are targeted with price discounts and coupons;[160](#_ENREF_160),[161](#_ENREF_161)

**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 $8 billion of $8.7 billion advertising and promotional expenditures in 2016;[43](#_ENREF_43),[44](#_ENREF_44),[54](#_ENREF_54)

**WHEREAS,** the tobacco industry’s price discounting strategies, such as coupons and multiple-package discounts, are popular among consumers, with more than half of adults using some price minimization strategy. In California, individuals who use price minimization strategies save an average $1.04 per pack (or 18.6% off the total);[61](#_ENREF_61)

**WHEREAS,** price-discounted sales account for a substantial proportion of overall tobacco product sales;[55](#_ENREF_55)

**WHEREAS,** although federal and state law ban the sale of individual cigarettes,[70](#_ENREF_70),[162](#_ENREF_162)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.[71](#_ENREF_71) For example:

* 87.4% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than $1.00;[136](#_ENREF_136)
* From 1995 to 2008, annual sales of cigarillos increased by 255%, and sales of little cigars increased by 316%;[35](#_ENREF_35)

**WHEREAS,** a 10% increase in cigar prices has been associated with decreased cigar sales[163](#_ENREF_163) and may significantly reduce cigar use among youth;[164](#_ENREF_164)

**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;[73](#_ENREF_73)

**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%;[59](#_ENREF_59) 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 10 million smokers to quit; and that state-level minimum floor price laws designed to raise the average price of cigarette packs by $2.00 could decrease cigarette consumption by 15.9% and reduce income-based smoking disparities more than a comparable excise tax increase;[77](#_ENREF_77)

**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;[165](#_ENREF_165),[166](#_ENREF_166)

**WHEREAS,** pharmacies sell cigarettes cheaper than other stores;[107](#_ENREF_107)

**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 that do not have such policies,[108](#_ENREF_108) 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;[109](#_ENREF_109)

**WHEREAS,** the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day;[81](#_ENREF_81)

**WHEREAS,** the density of tobacco retailers near schools has been associated with increased youth smoking rates;[89](#_ENREF_89)

**WHEREAS,** adults who smoke have a harder time quitting when residential proximity to tobacco retailers is smaller[93](#_ENREF_93) and density is higher;[167](#_ENREF_167)

**WHEREAS,** tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents;[84](#_ENREF_84),[85](#_ENREF_85),[102](#_ENREF_102),[168](#_ENREF_168)

**WHEREAS,** disparities in tobacco retailer location and density differ between rural and urban settings, with higher density in urban locations[169](#_ENREF_169) and variations for Hispanics in rural communities[170](#_ENREF_170) as well as intra-urban differences by income;[170](#_ENREF_170)

**WHEREAS,** policies to reduce tobacco retailer density have been shown to be effective[103](#_ENREF_103),[171](#_ENREF_171),[172](#_ENREF_172) and may reduce or eliminate inequities in the location and distribution of tobacco retailers;

**WHEREAS,** six out of 10 tobacco retailers in California sold cigar products using cannabis-related flavor descriptors and these retailers were more prevalent in school neighborhoods with lower median income;[173](#_ENREF_173)

**WHEREAS,** both youth and adult tobacco users are more likely to also use cannabis;[174](#_ENREF_174)

**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;[22](#_ENREF_22),[175](#_ENREF_175)

**WHEREAS,** strong policy enforcement and monitoring of retailer compliance with tobacco control policies (eg, requiring identification checks) is necessary to achieve reductions in youth tobacco sales;[176](#_ENREF_176)

**WHEREAS,** the National Academy of Medicine recommends imposing penalties on business owners to provide sufficient incentives to comply with the law, and business owners with an economic incentive to avoid violations are more likely to establish company-wide policies and incorporate instruction on tobacco laws into employee training;[177](#_ENREF_177)

**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 / Board of Supervisors ] to regulate business activity to discourage violations of law. See, eg, *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 130 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop youth from using tobacco;[19](#_ENREF_19)

**WHEREAS,** the [ City Council / Board of Supervisors ] has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

**WHEREAS,** the [ City Council / Board of Supervisors ] finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the [ *Insert Jurisdiction Name* ] in order to protect the health, safety, and welfare of our residents;

**NOW THEREFORE**, it is the intent of the [ City Council / Board of Supervisors ], in enacting this ordinance, to ensure compliance with the business standards and practices of the [ City / County ] and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco 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.

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11. Cal. Bus. & Prof. Code § 22970.1 (Finding that state tobacco excise tax revenues “have declined by hundreds of millions of dollars per year due, in part, to unlawful distributions and untaxed sales of cigarettes and tobacco products,” and that “the licensing of … retailers will help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products.”).

12. Cal. Rev. & Tax Code § 30111 (providing that state tobacco taxes “are in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes or tobacco products.”); Cal. Bus. & Prof. Code § 22964 (providing that the Stop Tobacco Access to Kids Act does not “preempt or otherwise prohibit the adoption of a local standard that imposes a more restrictive legal age to purchase or possess tobacco products.”).

13. Cal. Bus. & Prof. Code § 22971.3 (“Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.”).

14. Cal. Penal Code § 308(a)(1)(A).

15. Cal. Bus. & Prof. Code §§ 22950-22964.

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1. This Model Ordinance uses “community” as shorthand for a group of people who will be impacted, either directly or indirectly, by a proposed changemaking strategy. People in a community (1) are in a particular geographic area, like a neighborhood or jurisdiction, and/or (2) share a common identity or characteristic. [↑](#footnote-ref-1)
2. This Model Ordinance uses the term “underserved communities” to refer to those communities that are more likely to experience greater health inequities, political marginalization, and disinvestment. Examples of underserved communities include people of color, low-income communities, LGBTQ+ communities, persons with mental health needs, and rural communities. For more information about the drivers of these inequities, see the California Health in All Policies Task Force’s Equity in Government Practices Action Plan, *available at* <http://sgc.ca.gov/programs/hiap/docs/20180201-HiAP_Equity_in_Government_Practices_Action_Plan_2018-2020.pdf>. [↑](#footnote-ref-2)
3. A “buy down” is a reimbursement program that allows retailers to provide customers an immediate price reduction on certain brands for a specific period of time, eg, 50 cents off each pack of Marlboro cigarettes sold from the store’s inventory for 30 days. The consumer gets an instant price reduction and, at the end of the incentive period, the manufacturer reimburses the retailer for the price reductions on the cigarettes sold at the reimbursed price. [↑](#footnote-ref-3)
4. A “master type” program is a promotional program sponsored by the manufacturer and administered through a cigarette wholesaler. The wholesaler agrees to pay the retailer a rebate and is later reimbursed by the manufacturer. The wholesaler may also be paid a fee to administer the program. The payments are not deducted from the manufacturer’s list price shown on the invoice from the manufacturer but are paid or credited separately after the sale to the retailer. [↑](#footnote-ref-4)
5. Price discrimination is a method by which manufacturers and retailers draw in more consumers by selling the same product at different prices to different consumers. Price discrimination allows retailers to capture sales from consumers at a regular price without losing sales from more price-sensitive consumers. [↑](#footnote-ref-5)