

ORDINANCE NO. 1350

(An Ordinance Adding Chapter 15 to Title 6 of the Yolo County Code, Relating to Tobacco Retailers, and Amending Chapter 1 of Title 12, Relating to Business Permits)

The Board of Supervisors of the County of Yolo, State of California, ordains as follows:

SECTION 1. PURPOSE AND FINDINGS.

1. More than 440,000 people die annually in the United States from tobacco-related diseases every year, making it the nation's leading cause of preventable death. The World Health Organization (WHO) estimates that by 2030 tobacco will account for 10 million deaths per year, making it the greatest cause of death worldwide.

2. The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Health & Safety Code §118950).

State law requires all tobacco retailers to be licensed by the Board of Equalization in order to curb the illegal sale and distribution of cigarettes that deprive the State yearly of hundreds of millions of tax dollars that fund State and local programs such as health services, anti-smoking campaigns, cancer research, and education programs (Bus. & Prof. Code §§22970.1, 22972).

State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Penal Code §308).

State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Bus. & Prof. Code §22956), and provides procedures for using persons under 18 years of age to conduct onsite compliance checks of tobacco retailers (Bus. & Prof. Code §22952). State law also requires that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under 18 years of age is illegal (Bus. & Prof. Code §22952; Penal Code §308).

State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than 0.60 ounces of tobacco (Penal Code §308.3). State law also prohibits the sale of "bidis" (hand-rolled filter-less cigarettes imported primarily from India and Southeast Asian countries) except in adult-only establishments (Pen. Code §308.1).

3. State and County laws prohibit the sale or display of tobacco products and paraphernalia through a self-service display and prohibit public access to cigarettes without the assistance of a clerk except in adult-only establishments (Bus. & Prof. Code §22962; Yolo County Code Section 6-14.05).

4. Each year, an estimated 924 million packs of cigarettes are consumed by minors 12 to 17 years of age, yielding the tobacco industry \$480 million in profits from underage smokers. Nearly

half of all youth smokers nationwide buy the cigarettes they smoke, either directly from retailers or vending machines, or by giving money to others to purchase the cigarettes for them. Most adults who have ever smoked tried their first cigarette by the age of 18 and the average age at which smokers tried their first cigarette is 14.

5. California retailers continue to sell tobacco to underage consumers, evidenced by the following: (a) 14% of all tobacco retailers unlawfully sold to minors in 2004; (b) 31.5 % of non-traditional tobacco retailers such as deli, meat, and produce markets sold tobacco products to minors in 2004; (c) teens surveyed in 2002 say they bought their cigarettes at: gas stations (58%), liquor stores (45%), and supermarkets and small grocery stores (25%); and (d) 29.2% of tobacco retailers in the County of Yolo and 28% of tobacco retailers in the unincorporated areas of the County of Yolo unlawfully sold to minors between 2002 and 2004.

6. Research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes, as evidenced by the following: (a) a study of several states found that youth sales of tobacco moved from a baseline of 70% of retailers selling to minors before the adoption of the ordinance to less than 5% in the year and a half after enactment; (b) a study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85% in 1994 to 43% in 1998; and (c) a study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8% to 4.9% in the number of youth able to purchase tobacco.

7. The California courts have affirmed the power of cities and counties to regulate business activities in order to discourage violations of law (Cohen v. San Francisco (1985) 40 C.3d 277; Bravo Vending v. Rancho Mirage (1993) 16 C.A.4th 383; EWAP v. Los Angeles (1979) 97 Cal. App. 3d 179).

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

9. Hundreds of communities in the United States require a license or permit to sell tobacco products and provide penalties such as suspension or revocation of the license or permit for illegal conduct (e.g., selling tobacco to minors). Numerous cities and counties in California have passed tobacco retailer licensing or permitting ordinances in an effort to stop minors from smoking.

10. The implementation of tobacco permitting or licensing requirements is supported by most Californians, as evidenced by the following: (a) 73% of California adults think tobacco retailers should be licensed or permitted; (b) 65% of California's key opinion leaders surveyed support implementation of tobacco-licensing requirements; and (c) over 90% of enforcement agencies surveyed in 2000 rated Permit suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco.

11. The County of Yolo has a substantial interest in promoting compliance with Federal, State and local laws that regulate the sales and use of tobacco products; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws

prohibiting sales of cigarettes and tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults.

12. A permitting requirement for a tobacco retailer will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the County of Yolo to regulate the operation of lawful businesses to discourage violations of Federal, State, and local tobacco-related laws.

13. It is the intent of the Board of Supervisors in enacting this ordinance to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, particularly those which prohibit or discourage the sale or distribution of tobacco products to minors, 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.

SECTION 2. Chapter 15 is hereby added to Title 6 of the Yolo County Code, to read as follows: **Chapter 15. Tobacco Retailer Permit.**

Section 6-15.01. Purpose.

The purpose of this Chapter is to discourage violations of tobacco-related laws, particularly those which prohibit or discourage the sale or distribution of tobacco products to minors, by requiring a tobacco retailing permit in the unincorporated areas of the County of Yolo as set forth in this Chapter.

Section 6-15.02. Definitions.

As used herein:

- (a) “Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this Chapter, is not an Arm’s Length Transaction.
- (b) “Department” means the Yolo County Health Department.
- (c) “Director” shall mean the Director of the Yolo County Health Department or her/his written designee.
- (d) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

- (e) “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.
- (f) “Self-Service Display” means the open display of Tobacco Products or Tobacco Paraphernalia in a manner that is accessible to the general public without the assistance of the retailer or employee of the retailer. A Vending Machine is a form of Self-Service Display.
- (g) “Significant Tobacco Retailer” means any Tobacco Retailer whose principal or core business is selling Tobacco Products, Tobacco Paraphernalia, or both, as evidenced by any of the following: (i) twenty percent (20%) or more of floor area and display area is devoted to the sale or exchange of Tobacco products, Tobacco Paraphernalia, or both; (ii) fifty percent (50%) or more of completed sales transactions include a Tobacco Product or Tobacco Paraphernalia; or (iii) sixty-seven percent (67%) or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, Tobacco Paraphernalia, or both.
- (h) “Smoking” means possessing a lighted Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind), or the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).
- (i) “Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette-rolling machines, and any other item designed for the smoking, preparation, storing, consumption or ingestion of Tobacco Products.
- (j) “Tobacco Product” means: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and (2) any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.
- (k) “Tobacco Retailer” means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products, or Tobacco Paraphernalia, or who distributes free or low cost samples of Tobacco Products or Tobacco Paraphernalia, without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold or offered for sale, exchanged or offered for exchange, or distributed or offered for distribution. “Tobacco Retailing” means the doing of any of these things.

- (l) “Tobacco Retailing Permit Hearing Authority “ or “Hearing Authority” means one or more persons assigned by the County Administrative Officer the responsibility of conducting a hearing pursuant to this Chapter, and may hereafter be referred to as the Hearing Authority. The County Administrative Officer shall assign hearing responsibility to any of the following: (1) County management personnel whom the County Administrative Officer finds to be qualified by training and experience to conduct such hearings; (2) Any person(s) qualified by training or experience whom the County Administrative Officer may employ or who are retained by contract to conduct such hearings; or (3) Administrative Law Judges assigned by the State Office of Administrative Hearings. The County Administrative Officer is hereby authorized to contract in the name of the County for the retention of hearing services at rates that do not exceed the financial limitations established by the County’s annual budget and contracting rules, regulations and policies.
- (m) “Vending Machine” means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

Section 6-15.03. Tobacco Retailer Permit Required.

- (a) It shall be unlawful for any Person to act as a Tobacco Retailer without first obtaining and maintaining a valid Tobacco Retailer's Permit pursuant to this Chapter for each location at which that activity is to occur. A Tobacco Retailer Permit is invalid unless the appropriate fee has been paid in full and the term of the Permit has not expired.
- (b) A Tobacco Retailer or Proprietor without a valid Tobacco Retailer Permit, including but not limited to a person whose Permit has been revoked:
 - (1) Shall keep all Tobacco Products and Tobacco Paraphernalia out of public view.
 - (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.

Section 6-15.04. Limits on Tobacco Retailer Permits.

- (a) No permit may issue to authorize Tobacco Retailing at other than a single, fixed location.
- (b) No permit may issue to authorize Tobacco Retailing at any location that is permitted by State law to serve alcoholic beverages for consumption on the premises (e.g., an "on-sale" permit issued by the California Department of Alcoholic Beverage Control).
- (c) No permit may issue to authorize Tobacco Retailing by a Significant Tobacco Retailer; provided however that a Significant Tobacco Retailer operating legally on the date that the ordinance enacting this Chapter was first introduced, and that would otherwise have been entitled to receive a permit pursuant to this Chapter, may receive a permit and may continue to operate so long as (1) the permit is renewed continually without lapse; (2) the Significant Tobacco Retailer is not closed for business for more than sixty (60) consecutive days; (3) the Significant Tobacco Retailer does not substantially change the business premises or business operation; and (4) the Significant Tobacco Retailer's maintains the right to operate under the terms of all other applicable laws.

Section 6-15.05. Application Procedure.

- (a) An application for a Tobacco Retailer's Permit 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 Permit.

- (b) All applications shall be submitted on a form supplied by the Department, shall be accompanied by the application and permit fee established pursuant to this Chapter, and shall contain the following information:
 - (1) The name, address, and telephone number of each Proprietor of the business that is seeking the Permit.
 - (2) The business name, address, and telephone number of the single fixed location for which the Permit is sought.
 - (3) The name and mailing address authorized by each Proprietor to receive all permit-related communications and notices (the Authorized Address). If an Authorized Address is not supplied, each Proprietor shall be understood and deemed 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 Permit is sought has been issued a valid State tobacco retailer's license by the California Board of Equalization.
 - (5) Whether or not any Proprietor has admitted violating, or has been found to have violated, this Chapter, or whose proprietorship has admitted violating, or has been found to have violated, this Chapter, and, if so, the dates and locations of all such violations within the previous six years.
 - (6) Such other information as the Department deems necessary for the administration or enforcement of this Chapter.
- (c) Each Tobacco Retailer who has been issued a Permit shall update with the Department all information required to be submitted in order to apply for the Permit whenever the information changes. A Tobacco Retailer shall provide the Department with all such updates within ten (10) business days of a change.
- (d) The information specified in subparagraphs (b)(1), (2) and (3) shall be available to the public.

Section 6-15.06. Fees.

The fee to apply for and obtain or renew a Tobacco Retailer's Permit shall be established by resolution of the Board of Supervisors. The fee shall be calculated so as to recover no more than the total cost of permit administration and enforcement, including but not limited to receiving, reviewing and processing the application and the information contained therein, issuing the permit, administering the permit program, retailer education, retailer inspection and compliance checks, documentation of violations, and sanction and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees shall be used exclusively to fund the regulatory program authorized by

this Chapter. Fees are nonrefundable except as may otherwise be required by law.

Section 6-15.07. Issuance; Denial; Effect.

- (a) Upon the receipt of an application for a Tobacco Retailer's Permit and the application and permit fee, the Department shall issue a permit unless substantial evidence in the record demonstrates one or more of the following bases for denial:
 - (1) The application is incomplete or inaccurate.
 - (2) The application seeks authorization for Tobacco Retailing by a Proprietor or other Person to whom this Chapter prohibits a Permit to be issued.
 - (3) The application seeks authorization for Tobacco Retailing at a location for which this Chapter prohibits a Permit to be issued.
 - (4) The application seeks authorization for Tobacco Retailing by a Proprietor or other Person for whom, or at a location for which, a Permit revocation is in effect pursuant to this Chapter.
 - (5) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this Chapter (e.g., mobile vending), that is unlawful pursuant to this Code (e.g., the zoning code), or that is unlawful pursuant to any other law.
- (b) If the Department denies a Permit application, the Department shall notify the applicant in writing of the denial. A notice of denial shall be personally served on, or sent by certified mail to, the Permit holder. The notice shall state the basis of the Department's determination(s) and denial, and shall include an advisement of the right to appeal as set forth in Section 6-15.13.
- (c) Nothing in this Chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's Permit any status or right other than the right to act as a Tobacco Retailer at the location in the County identified on the face of the Permit. For example, nothing in this Chapter shall be construed to render inapplicable, supercede, or apply in lieu of, any other provision of applicable law, including but not limited to County zoning ordinances, building codes, and business Permit requirements, and any condition or limitation on smoking in enclosed places of employment made applicable to business establishments by California Labor Code Section 6404.5 or any other law or regulation. Obtaining a Tobacco Retailer Permit also does not make the Retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code Section 6404.5.
- (d) The issuance of a Permit does not constitute a determination by the County that the Tobacco Retailer or Proprietor has complied with all laws applicable to Tobacco Retailing. Nothing in this Chapter shall be construed to vest in any Person obtaining and maintaining a Permit any status or right to act as a Tobacco Retailer in contravention of any provision of law.

- (e) A Permit issued in error, contrary to this Chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor may be revoked pursuant to Section 6-15.12.

Section 6-15.08. Permit Nontransferable.

- (a) A Tobacco Retailer's Permit may not be transferred from one Person to another or from one location to another. Whenever a Tobacco Retailing location has a change in Proprietors, a new Tobacco Retailer's Permit is required.
- (b) Notwithstanding any other provision of this Chapter, prior violations at a location shall continue to be counted against a location and Permit ineligibility periods shall continue to apply to a location unless:
 - (1) The location has been fully transferred to a new Proprietor or entirely new Proprietors; and
 - (2) The new Proprietor(s) provide the Department with clear and convincing evidence that the new Proprietor(s) have acquired or is acquiring the location in an Arm's Length Transaction.

Section 6-15.09. Permit Term, Renewal and Expiration.

- (a) The term of a Tobacco Retailer Permit is one (1) year.
- (b) Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's Permit and submit the Permit fee no later than thirty (30) days prior to expiration of the term.
- (c) A Tobacco Retailer's Permit that is not timely renewed as set forth above shall expire at the end of its term.
- (d) To reinstate a Permit that has expired, or to renew a Permit not timely renewed as set forth above, the Proprietor(s) must:
 - (1) Submit the Permit fee plus a reinstatement fee of ten percent (10%) of the Permit fee.
 - (2) Submit a signed affidavit affirming that the Proprietor:
 - (A) Has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the Permit expiration date and before the Permit is renewed; or
 - (B) Has waited the appropriate ineligibility period established for Tobacco Retailing without a Permit, as set forth in Section 6-15.14(a) of this Chapter, before seeking renewal of the Permit.

Section 6-15.10. Other Tobacco Retailing Requirements and Prohibitions.

- (a) Each Proprietor shall prominently display each Permit at the location where Tobacco-Retailing is permitted by the Permit.
- (b) In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a Permit issued, it shall be a violation of this Chapter for a Proprietor or Tobacco Retailer, or any of the Proprietor's or Tobacco Retailer's agents or employees, to:
 - (1) Violate any Federal, State or local law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.
 - (2) Violate any Federal, State or local law regulating exterior, storefront, window, or door signage.
- (c) No Person who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.
- (d) No Tobacco Retailer shall display Tobacco Products or Tobacco Paraphernalia by means of a Self-Service Display or engage in Tobacco Retailing by means of a Self-Service Display.

Section 6-15.11. Compliance Monitoring.

- (a) Compliance with this Chapter shall be monitored by the Yolo County District Attorney.
- (b) The District Attorney shall check the compliance of each Tobacco Retailer an average of at least three (3) times per twelve (12) month period. The District Attorney may check the compliance of Tobacco Retailers previously found to be in compliance with the laws regulating access to Tobacco and Tobacco Paraphernalia of persons under the age of eighteen (18) years of age a fewer number of times, so that they may check the compliance of Tobacco Retailers previously found in violation of this Chapter a greater number of times. Nothing in this subSection shall create a right of action in any Tobacco Retailer, Permittee or other Person against the County or its agents if the number of compliance checks varies from the foregoing.
- (c) Compliance checks shall determine, at a minimum, if the Tobacco Retailer is conducting business in a manner that complies with Federal, State and local laws regulating access to Tobacco and Tobacco Paraphernalia of persons under the age of eighteen (18) years of age. When deemed appropriate by the District Attorney, the compliance checks shall determine compliance with other laws applicable to Tobacco Retailing.
- (d) The County shall not enforce any law establishing a minimum age for tobacco purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Youth Decoy") if the potential violation occurs when either of the following conditions exist:

- (1) The Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the County; or
- (2) The Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Yolo County Health Department or the California Department of Health Services.

Section 6-15.12. Revocation of Permit.

- (a) In addition to any other penalty authorized by law, a Tobacco Retailer's Permit shall be revoked if any court of competent jurisdiction determines, or if the Director finds after the Tobacco Retailer or Permittee is afforded notice and an opportunity to be heard, that the Tobacco Retailer or Permittee, or any of the Tobacco Retailer's or Permittee's officers, agents or employees, has violated any of the requirements, conditions, or prohibitions of this Chapter or, in a different legal proceeding, has pleaded guilty, "no contest" or its equivalent, or admitted to, a violation of any law designated in Section 6-15.10.
- (b) A Tobacco Retailer's Permit shall be revoked if the Department finds, after the Permittee is afforded reasonable notice and an opportunity to be heard, that one or more of the bases for denial of a Permit under Section 6-15.07 existed at the time the Permit application was submitted or at any time thereafter and before the Permit issued. The revocation shall be without prejudice to the filing of a new Permit application.
- (c) A decision to revoke a Permit is appealable to the Tobacco Retailing Permit Hearing Authority pursuant to Section 6-15.13. If such an appeal is made within the time provided in that Section, it shall stay enforcement of the appealed action.
- (d) A notice of revocation shall be personally served on, or sent by certified mail to, the Permit holder. The notice shall state the basis of the Department's determination(s) and the revocation, and shall include an advisement of the right to appeal as set forth in Section 6-15.13.
- (e) During the period that any permit is revoked, the Proprietor shall prominently display a notice advising the public of the revocation, in the form and in the manner designated by the Department.
- (f) After revocation pursuant to subSection (a) above, a new permit may be issued only in accordance with the following:
 - (1) After revocation for a first violation of this Chapter at any location within any sixty- (60) month period, no new Permit may issue for that location, or that Proprietor or other Person, until not less than ten (10) days have passed from the date of revocation.
 - (2) After revocation for a second violation of this Chapter at any location within any sixty- (60) month period, no new Permit may issue for that location, or that

Proprietor or other Person, until not less than ninety (90) days have passed from the date of revocation.

- (3) After revocation for a third violation of this Chapter at any location within any sixty- (60) month period, no new Permit may issue for that location, or that Proprietor or other Person, until not less than one (1) year has passed from the date of revocation.
- (4) After revocation for four or more violations of this Chapter at any location within any sixty- (60) month period, no new Permit may issue for that location, or that Proprietor or other Person, until not less than five (5) years have passed from the date of revocation.

Section 6-15.13. Appeal; Judicial Review.

- (a) Except as otherwise provided by law, any decision made appealable to the Hearing Authority pursuant to this Chapter shall be subject to the following requirements and procedures.
- (b) Any appeal must be in writing, shall state the specific reasons therefor and the grounds asserted for relief and the specific relief requested, and shall be filed with the County Administrative Officer within ten (10) calendar days of personal service of the notice of the action being appealed, or within fifteen (15) calendar days of mailing if the notice is only served by mail. If any Person to whom the notice of violation was given does not file a written appeal within the time and in the manner set forth above, the right to review of the Department's determination shall be deemed to have been waived, and the Department's decision shall be final.

If a written appeal is filed within the time and in the manner set forth above, the matter shall be heard by the Hearing Authority.

- (c) Not later than fifteen (15) days after receipt of the appeal, the County Administrative Officer shall provide written notice to the parties of the date, time, and place of the hearing, in the manner specified above for a notice of revocation.
- (d) The provisions of the Administration Procedure Act (commencing with Section 11500 of the Government Code of the State) shall not be applicable to such hearing, nor shall formal rules of evidence in civil or criminal judicial proceedings be so applicable.

A record of the hearing shall be made by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made. Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

A decision of the Hearing Authority shall be supported by substantial evidence. The Hearing Authority shall sustain the Department's decision if the Hearing Authority finds that any lawful basis for the Department's action exists.

- (e) Following the conclusion of the hearing, the Hearing Authority shall prepare a written decision that either grants or denies the appeal, contains findings of facts and conclusions of law, and includes notification that the time limit within which a judicial review shall be sought is governed by Code of Civil Procedure Section 1094.6. Notice of the written decision, including a copy thereof, shall be filed with the County Administrative Officer and served upon all parties not later than seven (7) days following the date on which the hearing is closed.

The Hearing Authority's written decision shall be the final decision of the County, and shall become final upon the date that notice thereof is mailed to the appellant by certified mail.

- (f) Any determination of the Hearing Authority shall be subject to judicial review pursuant to Code of Civil Procedure Section 1094.5.

Section 6-15.14. Enforcement: Tobacco Retailing Without a Permit; Tobacco Retailing in Violation of Chapter.

- (a) In addition to any other penalty authorized by law, if the Department finds or any court of competent jurisdiction determines, after notice and an opportunity to be heard, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for or be issued a Tobacco Retailing license for that location as follows:
 - (1) After a first violation of this Chapter at a location within any sixty- (60) month period, no license may issue for the Person at the location until not less than thirty (30) days have passed from the date of the violation.
 - (2) After a second violation of this Chapter at a location within any sixty- (60) month period, no license may issue for the Person at the location until not less than ninety (90) days have passed from the date of the violation.
 - (3) After of a third or subsequent violation of this Chapter at a location within any sixty- (60) month period, no license may issue for the Person at the location until not less than five (5) years have passed from the date of the violation.
- (b) Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in violation of this Chapter 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 by the Department and an opportunity to demonstrate that the Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of this Chapter. The decision by the Department may be

appealed pursuant to the procedures set forth in Section 6-15.13. Forfeited Tobacco Products and Tobacco Paraphernalia shall be destroyed.

- (c) Each day after the effective date of this Chapter on which Tobacco Products or Tobacco Paraphernalia are offered for sale in violation of this Chapter shall constitute a violation of this Chapter separate and apart from any other violation of this Chapter.
- (d) For a first or second alleged violation of this Chapter within any sixty- (60) month period, the Director may engage in settlement negotiations and, with the County Counsel's concurrence, may enter into a settlement agreement with a Tobacco Retailer alleged to have violated this Chapter without approval from the Board of Supervisors. Notice of any settlement shall be provided to the Board, and no hearing shall be held. Settlements shall not be confidential and shall contain the following minimum terms:
 - (1) After a first alleged violation of this Chapter at a location within any sixty- (60) month period:
 - (A) An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations;
 - (B) An agreement to stop acting as a Tobacco Retailer for at least one (1) day; and
 - (C) A settlement payment to the County of at least one thousand dollars (\$1,000).
 - (2) After a second alleged violation of this Chapter at a location within any sixty- (60) month period:
 - (A) An admission that the violation occurred and a stipulation that the violation will be counted when considering what penalty will be assessed for any future violations;
 - (B) An agreement to stop acting as a Tobacco Retailer for at least ten (10) days; and
 - (C) A settlement payment to the County of at least five thousand dollars (\$5,000).

Section 6-15.15. Additional Enforcement.

- (a) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- (b) Violations of this Chapter may, in the discretion of the District Attorney, be prosecuted as criminal infractions or misdemeanors.
- (c) Violations of this Chapter are subject to a civil action brought by the District Attorney, punishable as follows:

- (1) A fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) for a first violation in any sixty- (60) month period;
 - (2) A fine not less than one thousand dollars (\$1,000) and not exceeding two thousand five hundred dollars (\$2,500) for a second violation in any sixty- (60) month period; or
 - (3) A fine not less than two thousand five hundred dollars (\$2,500) and not exceeding five thousand dollars (\$5,000) for a third or subsequent violation in any sixty- (60) month period.
- (d) Any violation of this Chapter is hereby declared to be a public nuisance as well as a private nuisance that is presumed to at least nominally damage each and every resident of the community in which the business operates.
- (e) In addition to other remedies provided by this Chapter or by other law, any violation of this Chapter may be remedied by a civil action brought by the District Attorney, including but not limited to, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.
- (f) Any Person, including the County of Yolo, acting for the interests of itself, its members, or the general public (hereinafter “the Private Enforcer”) may bring a civil action to enforce this Chapter.
- (1) Upon proof of a violation, a court shall award to the Private Enforcer the following:
 - (A) Damages in the amount of either:
 - (i) Upon proof, actual damages; or
 - (ii) With insufficient or no proof of the amount of actual damages, five hundred dollars (\$500) for each violation of this Chapter (hereinafter “Statutory Damages”). Unless otherwise specified in this Chapter, each day of a continuing violation shall constitute a separate violation. Notwithstanding any other provision of this Chapter, no Private Enforcer suing on behalf of the general public shall recover Statutory Damages based upon a violation of this Chapter if a previous claim brought on behalf of the general public for Statutory Damages and based upon the same violation has been adjudicated, whether or not the Private Enforcer was a party to that adjudication.
 - (B) Exemplary damages, where it is proven by clear and convincing evidence that the defendant is guilty of oppression, fraud, malice, or a conscious disregard for the public health.
 - (C) Injunctive Relief.

- (3) Notwithstanding any legal or equitable bar against a Private Enforcer seeking relief on his/her/its own behalf, a Private Enforcer may bring an action to enforce this Chapter solely on behalf of the general public. When a Private Enforcer brings an action solely on behalf of the general public, nothing about such an action shall act to preclude or bar the Private Enforcer from bringing a subsequent action based upon the same facts but seeking relief on the Private Enforcer's own behalf.
- (4) Nothing in this Chapter shall prohibit the Private Enforcer from bringing an action in small claims court to enforce this Chapter, so long as the amount in demand and the type of relief sought are within the jurisdictional requirements of small claims court as set forth in California Code of Civil Procedure section 116.220.
- (g) Whenever evidence of a violation of this Chapter is obtained in any part through the participation of a Person under the age of eighteen (18) years old, such a Person shall not be required (but shall be permitted) to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (h) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.
- (i) Any peace officer may enforce the penal provisions of this Chapter.

Section 6-15.16. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, 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 Chapter, or its application to any other person or circumstance. The Board of Supervisors of the County of Yolo hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

SECTION 3. Section 12-1.501 of Article 5 of Chapter 1 of Title 12 of the Yolo County Code is hereby amended to read as follows:

Section 12-1.501. Applications.

Any person required to apply for and obtain a Permit under the provisions of this Chapter shall prepare and submit to the Business Licensing Officer an application for such Permit on forms provided for such purpose by the County. In addition to any other information required by the County, the application shall indicate whether the applicant sells or intends to sell any Tobacco Product or Tobacco Paraphernalia as those terms are defined in Chapter 15 of Title 6 of this Code.

SECTION 4. EFFECTIVE DATE/PUBLICATION.

This ordinance shall take effect and be in force thirty (30) days after its passage and adoption, and prior to the expiration of fifteen (15) days from the passage, this ordinance shall be published once in the Daily Democrat, a newspaper of general circulation, printed and published in the County of Yolo.

PASSED AND ADOPTED by the Board of Supervisors of the County of Yolo, State of California this _16_ day of ___May_____, 2006, by the following vote:

Ayes: 5
Noes: 0
Absent: 0
Abstentions: 0

Frank Sieferman, Jr., Chair
Board of Supervisors
County of Yolo, State of California

Attest:
Ana Morales, Clerk
Board of Supervisors

By _____
Deputy
(Seal)

Approved as to Form:
Robin T. Drivon, County Counsel

By
Stephen B. Nocita, Senior Deputy

