

ORDINANCE NO. _____

ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA ROSA AMENDING
CHAPTER 6 OF THE SANTA ROSA MUNICIPAL CODE AND ADDING A NEW
CHAPTER 6-20 ENTITLED “REGULATION OF RETAIL TOBACCO SALES”

THE PEOPLE OF THE CITY OF SANTA ROSA DO ENACT AS FOLLOWS:

Section 1. Chapter 6-20 is hereby added to the Santa Rosa City Code to read as follows:

“CHAPTER 6-20 REGULATION OF RETAIL TOBACCO SALES

6-20.010 Purpose. It is the intent of the City, in enacting this chapter, (1) to ensure compliance with the business standards and practices of the City to encourage responsible tobacco retailing and (2) to discourage violations of tobacco related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to youth; the intent of the City is 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.

6-20.020 Definitions. The following words and phrases shall have the meanings set forth below when used in this Chapter unless the context plainly requires otherwise:

- A. “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 whom is under any compulsion to participate in the transaction. There is a presumption that a sale between family members or companies with related shareholders are not arm’s length transactions.
- B. "Business" means “Business” as that term is defined in Section 6-04.010 of the Santa Rosa City Code.
- C. “Child-Resistant Packaging” means packaging that meets the definition set forth in the Code of Federal Regulations, title 16, section 1700.15(b), as in effect on January 1, 2015, and that was tested in accordance with the method described in Code of Federal Regulations, title 16, section 1700.20, as in effect on January 1, 2015, as this definition may be amended from time to time.
- D. “Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as described herein. Cigarettes as defined herein include cigarettes as defined in California Revenue and Taxation Code Section 30003, as amended from time to time.

- E. “City” means the City of Santa Rosa, either the entity or its territorial limits, as the context requires.
- F. “City Council” or “Council” means the City Council of the City of Santa Rosa.
- G. “Consumer” means a person who purchases a tobacco product for consumption and not for sale to another person.
- H. “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.
- I. “Delivery sale” means the sale of any tobacco product to any person for personal consumption and not for resale when the sale is conducted by any means other than an in-person, over-the-counter sales transaction in a licensed tobacco retail establishment. Delivery sale includes the sale of any tobacco product when the sale is conducted by telephone, other voice transmission, mail, the internet, or app-based service. Delivery sale includes, but is not limited to, delivery by licensees or third parties by any means, including curbside and locker pick-up, pick-up locker, or via shipment by a common carrier.
- J. “Department” means the Sonoma County Department of Health Services, City Code Enforcement Division or as delegated by the City Manager to enforce or administer the provisions of this Chapter.
- K. “Drug paraphernalia” has the meaning set forth in California Health and Safety Code section 11014.5, as that section may be amended from time to time.
- L. “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, e-hookah or other electronic nicotine delivery system. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act, as amended from time to time.
- M. "Employee" means each and every person engaged in the operation or conduct of any tobacco retail business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such cannabis business for a wage, salary, commission, barter or any other form of compensation.
- N. “Flavored Tobacco Product” means any tobacco product that contains:

- a. A taste or odor distinguishable by an ordinary consumer, other than the taste or odor of tobacco, either prior to or during the consumption of such tobacco product, including but not limited to tastes or odors relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, mint, wintergreen, menthol, herb, or spice; or
 - b. A cooling or numbing sensation distinguishable by an ordinary consumer during the consumption of such tobacco product.
- O. “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.
- P. “Full Size Cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than 4.5 pounds per thousand unit.
- Q. “Hearing Officer” means any person or persons appointed by the City Council, or by any person designated by the City Council to make the appointment, to conduct a hearing pursuant to Chapter 1-30.
- R. "License" means a Tobacco Retail License issued by the City pursuant to this Chapter.
- S. "Licensee" means any proprietor holding a license issued by the City pursuant to this Chapter.
- T. “Little cigar” means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than 4.5 pounds per thousand units. “Little cigar” includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.
- U. “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.
- V. “Moveable place of business” means any form of business that is operated out of a kiosk, truck, van, automobile or other type of vehicle or transportable shelter and not a fixed address store front or other permanent type of structure authorized for sales transactions.
- W. “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.
- X. "Person" means “Person” as defined in Section 6-04.010 of the Santa Rosa City Code.

- Y. "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 California 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.
- Z. "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 shares ultimate control over the day-to-day operations of a business.
- AA. "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.
- BB. "Self-Service Display" means the display or storage of tobacco products in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct face-to-face transfer between the purchaser and the retailer or employee of the retailer. A vending machine or pick-up locker is a form of self-service display.
- CC. "Smokeless tobacco" means any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity, including but not limited to chewing tobacco, snuff, or snus.
- DD. "Smoking" means "Smoking" as defined in Section 9-20.030 of the Santa Rosa City Code.
- EE. "Tobacco paraphernalia" means "Tobacco paraphernalia" as defined in Section 9-20.030 of the Santa Rosa City Code.
- FF. "Tobacco product" means "Tobacco product" as defined in Section 9-20.030 of the Santa Rosa City Code and includes tobacco products as defined in California Revenue and Taxation Code Section 30121(b). "Tobacco product" does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.
- GG. "Tobacco Retailer" means "Tobacco retailer" as defined in Section 9-20.030 of the Santa Rosa City Code "tobacco retailer" does not include "cannabis businesses" as defined in City Code Chapter 20-46.
- HH. "Youth-oriented area" means a parcel in the City of Santa Rosa that is occupied by:
- a. Any public or private school providing instruction in kindergarten or any grades one (1) to twelve (12), inclusive, but does not include any private school in which education is primarily conducted in private homes.

- b. "Parks and Recreational Area" as defined in Section 9-20.030 of the Santa Rosa City Code.

6-20.030 General Requirements and Prohibitions.

- A. License Fee Authorized. It shall be unlawful for any person to engage in tobacco retailing in the City without first obtaining and maintaining a valid tobacco retailer's license, pursuant to this 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.
- B. Lawful Business Operation. In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to tobacco products, tobacco accessories, or tobacco retailing.
- C. Smoking Prohibited. Smoking, including smoking for the purpose of sampling any tobacco product, is prohibited pursuant to Chapter 9-20 of the Santa Rosa City Code.
- D. Minimum Legal Sales Age. No person engaged in tobacco retailing shall sell a tobacco product to a person under 21 years of age.
- E. Signs Specifying Minimum Legal Sales Age. As defined in Section 9-20.110 of the Santa Rosa City Code, any person, business, or other establishment which sells cigarettes and other tobacco products for consumption shall post plainly visible signs pursuant to California Business and Professions Code Section 22952 at the point of purchase of tobacco products which must state:

"THE SALE OF TOBACCO PRODUCTS OR CIGARETTES TO PERSONS UNDER *TWENTY-ONE* YEARS OF AGE IS PROHIBITED BY LAW. VALID ID IS REQUIRED TO PURCHASE TOBACCO."

The letters of these signs shall be at least one-quarter-inch high.

- F. Display of License. Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.
- G. Positive Identification Required. No person engaged in tobacco retailing shall sell a tobacco product without first verifying by means of government-issued photographic identification that the recipient is at least 21 years of age.
- H. Self-Service Displays Prohibited. Tobacco retailing by means of a self-service display is prohibited as defined in Section 9-20.110 of the Santa Rosa City Code.
- I. On-Site Sales. All sales of tobacco products and tobacco accessories to consumers shall be conducted in person in the licensed location. It shall be a violation of this chapter for any tobacco retailer or any of the tobacco retailer's agents or employees to engage in the

delivery or sale of tobacco products or to knowingly or negligently sell or provide tobacco products to any person that intends to engage in the delivery or sale of the tobacco product in the City.

- J. **Drug Paraphernalia.** In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee or any of the licensee's agents or employees to violate any local, state, or federal law regulating controlled substances or drug paraphernalia, such as, for example, California Health and Safety Code section 11364.7, as that section may be amended from time to time.
- K. **Minimum Employee Age.** Individuals employed by a person licensed under this ordinance must be at least eighteen (18) years of age to sell tobacco products, tobacco accessories electronic delivery devices, or other nicotine delivery products.

6-20.040 Sale of Flavored Tobacco Products. It shall be unlawful for any tobacco retailer to sell any flavored tobacco product. Any communication by or on behalf of the manufacturer or retailer of a tobacco product that such tobacco product imparts a taste or odor other than the taste or odor of tobacco, or that imparts a cooling or numbing sensation, constitutes presumptive evidence that the tobacco product is a flavored tobacco product. This includes but is not limited to public statements that a product has a minty or cooling effect, such as describing the product as "chill," "ice," "fresh," "arctic," or "frost."

6-20.045 Sale of Electronic Tobacco Smoking Devices Prohibited. It shall be unlawful for any tobacco retailer to sell any electronic tobacco smoking device.

6-20.050 Tobacco Product Pricing and Packaging.

- A. *Packaging and Labeling.* No tobacco retailer shall sell any tobacco product to any consumer unless the tobacco product:
 - 1. Is sold in the manufacturer's packaging intended for sale to consumers;
 - 2. Conforms to all applicable federal labeling requirements; and
 - 3. Conforms to all applicable child-resistant packaging requirements.
- B. *Display of Price.* The price of each tobacco product offered for sale shall be clearly and conspicuously displayed on the tobacco product or on any related shelving, posting, advertising, or display at the location where the item is sold or offered for sale.
- C. *Distribution of Tobacco Samples or Promotional Items.* It is unlawful for any person to distribute free or nominally priced tobacco products as defined in Section 9-20.110 of the Santa Rosa City Code.
- D. *Prohibition of Tobacco Coupons and Discounts.* No tobacco retailer shall:

1. Honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;
 2. Sell any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item; or
 3. Provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.
- E. *Minimum Package Size for Little Cigars.* No tobacco retailer shall sell to a consumer any little cigar unless it is sold in a package of at least five (5) little cigars minimum pack size.
- F. *Minimum Prices for Cigarettes, Little Cigars, Full Size Cigars, and Smokeless Tobacco.* No tobacco retailer shall sell to a consumer:
1. Cigarettes at a price that is less than \$10.00 per package of 20 cigarettes;
 2. A package of Little Cigars at the Full Retail Price that is less than two dollars per each little cigar (\$2.00);
 3. A single Full Size Cigar at Full Retail Price that is less than ten dollars (\$10.00) per cigar; or
 4. A package of smokeless tobacco at the Full Retail Price that is less than ten dollars (\$10.00).

1. Subsection (E) shall not become effective on January 1, 2025

6-20.060 Limits on Eligibility for a Tobacco Retailer License.

- A. A tobacco retailer must have a valid business tax certificate, defined as “Tax certificate” in Section 6-4.010 of the Santa Rosa City Code.
- B. If the business tax certificate is revoked or suspended for any period of time, the Tobacco Retail License shall be revoked or suspended for the same period, pursuant to Section 6.20.140.
- C. Population and Density. The issuing of tobacco retailer licenses is limited as follows:
 1. The total number of retailer licenses within the city shall be limited to the lesser of 118, or to one for each two thousand-five hundred, or fraction thereof, of residents of the city, whichever is less.

2. For the purposes of this subsection, the cap shall be determined by the total number of active state tobacco retail licenses issued within the City of Santa Rosa limits on the date of this ordinance.
 3. For the purposes of this subsection, the total population of the city shall be determined by the most current published total available for the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date of license application is filed.
- D. 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 (C)(1) of this Section. Notwithstanding Section C, A tobacco retailer operating lawfully on the date this ordinance is adopted and 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:
 - i. To a new proprietor(s) in an arm's length transaction; or
 - ii. For which a significant purpose is avoiding enforcement of violations of this chapter; and
 4. The tobacco retailer retains the right to operate under all other applicable laws.
- E. Mobile Vending. No license may issue to authorize tobacco retailing at other than a fixed location. No tobacco retail license will be issued to a moveable place of business.
- F. Pharmacies. No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.
- G. Proximity to Youth-Oriented Areas. No new license may be issued to authorize tobacco retailing within 600 feet of a youth-oriented area as measured by a straight line from the nearest point of the property line of the parcel on which the youth-oriented area is located to the nearest point of the property line of the parcel on which the applicant's business is located.

6-20.070 Application Procedure.

- A. An application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct retail tobacco sales and shall be signed by each proprietor or an authorized agent thereof. All applications shall be submitted on a form supplied by the Department. All applicants for a new license must submit applications 60 to 30 days prior to January 1, 2025.
- B. 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 license. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information shall be revoked pursuant to Section 6.20.150 of this Chapter. Nothing in this Chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.
- C. Applicant submissions shall contain the following information:
 - 1. The name, address, and telephone number of each Proprietor of the business seeking a license.
 - 2. The business name, address, and telephone number of the location for which a license is sought.
 - 3. The name and mailing address authorized by each proprietor to receive all communications and notices required by, authorized by, or convenient to the enforcement of this chapter.
 - 4. Proof that the location for which a tobacco retailer's license is sought has been issued all necessary state licenses for the sale of tobacco products.
 - 5. Whether any proprietor has previously been issued a tobacco retail license pursuant to this chapter that is, or was at any time, suspended or revoked and, if so, the date of the suspension or revocation.
 - 6. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this or any other local, state, or federal law governing the sale of tobacco products or California Health and Safety Code Section 11351 as amended from time to time, and, if so, the dates and locations of all such violations within the previous five years.
 - 7. A signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product without a license required by this Chapter. Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.

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

6-20.080 License Issuance or Denial.

A. Issuance of License.

1. Upon the receipt of a complete and adequate application for a tobacco retailer's license and the license fee required by this chapter, the Department may approve or deny the application for a license within a reasonable period of time, or it may delay action for a reasonable period of time to complete any investigation of the application or the applicant deemed necessary.
2. All new and renewed licenses will be valid for a period of one year. All licenses will begin on July 1 and end on June 30 the following year.
3. New licenses will only be available when the number is below the total number allowed under Section 6.20.060.

B. *Denial of Application.* The Department may deny an application for a tobacco retailer's license based on any of the following:

1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this Chapter;
2. The Department has information that the applicant, or the applicant's agent(s) or employee(s), violated any local, State, or federal tobacco control law or Health and Safety Code Section 11351 within the preceding 365 days;
3. The application seeks authorization for tobacco retailing at a location regarding which this chapter prohibits issuance of a license;
4. The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits issuing a license; or
5. The application seeks authorization for tobacco retailing in a manner that is prohibited pursuant to this chapter, that is unlawful pursuant to any other chapter of this code, or that is unlawful pursuant to any other law.
6. Any other reason the granting of a license to the applicant is not consistent with the public health and welfare or the purpose of this chapter, including the applicant's history of noncompliance with this chapter or other laws relating to the sale of tobacco products.

6-20.090 License Renewal and Expiration. A tobacco retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is 1 year, beginning on July 1 and ending on June 30. Each Tobacco Retailer shall submit the annual license fee no later than 30 days prior to expiration of the current license. A tobacco retailer that fails to timely submit a renewal application and fee is ineligible for license renewal.

6-20.100 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. The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter including, but not limited to, issuing a license, administering the license program, tobacco retailer education, tobacco retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

6-20.130 Compliance Monitoring.

- A. Compliance with this chapter shall be monitored by the Department and all licensed premises must be open to inspection during regular business hours.
- B. Failure to provide or arrange for access to a licensed premises for any inspection or investigation is a violation of this ordinance.
- C. The Department will endeavor to conduct at least one (1) compliance check per 12-month period. These may involve the participation of persons between the ages of eighteen and twenty to enter licensed premises to attempt to purchase tobacco products. Nothing in this paragraph shall create a right of action in any licensee or other person against the City, Department, or its agents.
- D. Any Tobacco Retailer found to be in violation of this Chapter shall pay all costs related to enforcement to ensure Tobacco Retailer's compliance with this Chapter, including but not limited to fees for reinspection to determine compliance after violation, enforcement costs, litigation costs, and attorneys' fees in any administrative or civil matter in which the City prevails pursuant to Chapter 1-30 of this Code.

6-20.140 Suspension or Revocation of License.

- A. *Suspension or Revocation of License for Violation.* In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended or revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard through administrative review, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law applicable to the licensee in violation of this chapter.

1. Upon a finding by the Department of a first violation of this chapter at a location within any five-year (5) period, the license may be suspended for up to thirty (30) days.
 2. Upon a finding by the Department of a second violation of this chapter at a location within any five-year (5) period, the license may be suspended for up to sixty (60) days.
 3. Upon a finding by the Department of a third violation of this chapter at a location within any five-year (5) period, the license may be suspended for up to ninety (90) days.
 4. Upon a finding by the Department of a fourth violation of this chapter at a location within any five-year (5) period, the license shall be revoked.
- B. *Revocation of License Wrongly Issued.* A tobacco retailer's license shall be revoked if, after administrative review, the Hearing Officer 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 6.20.080(B) existed at the time application was made or at any time before the license issued. The decision by the Hearing Officer shall be the final decision of the City.
- C. During any period of suspension or revocation, the tobacco retailer/licensee shall conspicuously post, at each point-of-sale register and near the entrance door of the tobacco retail location, a notice of a tobacco retail license suspension provided by the Department. The notice shall include the suspension or revocation period, reason for suspension or revocation, tobacco retailer/licensee and location information, and contact information to report violations.
- D. Except for where a license is revoked as provided above, and where otherwise provided, a license suspension does not result in an otherwise eligible licensee from applying for a license following the suspension period, contingent upon such conditions as the Department considers necessary to bring the licensee into compliance with this ordinance.

6-20.150 Tobacco Retailing Without a Valid License.

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

2. After a second violation of this section at a location within any five-year period, no new license may be issued for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until three (3) have passed from the date of the violation.
3. After a third or subsequent violation of this section at a location within any five-year period (unless ownership of the business at the location has been transferred in an arm's length transaction), no new license may be issued for the person or the location.

6-20.160 Penalties for Violation.

- A. The remedies provided by this chapter are cumulative and in addition to all other remedies, criminal or civil, which may be pursued by the City of Santa Rosa to address any such violation of this chapter, and as set forth in Chapters 1-28 and 1-30 of the Santa Rosa City Code.
- B. *Administrative fine.* In addition to any other penalty authorized by law, a tobacco Retailer shall pay a fine if the Tobacco Retailer or Retailer's agents or employees violate any of the requirements, conditions, or prohibitions of this Chapter. The amount of the administrative fine for each violation of this Chapter shall be as follows:
 1. A fine not to exceed \$600 for each violation identified during the first instance in which the Retailer has committed a violation or violations; and
 2. A fine not to exceed \$1,000 for each violation identified during the second instance in which the Retailer has committed a violation or violations within 60-months of a first violation; and
 3. A fine not to exceed \$1,800 for each violation identified during a third instance in which the Retailer has committed a violation or violations within 60-months of a first violation; and
 4. A fine not to exceed \$4,000 for each violation identified during a fourth instance in which the Retailer has committed a violation or violations within 60 months of a first violation; and
- C. The Hearing Officer, through administrative review, may waive or reduce any fines and penalties for a Tobacco Retailer's first violation of this section if the Tobacco Retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Department's waiver of penalties for a first violation, the violation will be considered in determining the fines and suspension periods or revocation for any future violation. This subsection shall not apply to any violation involving a law regulating youth access to Tobacco Products.
- D. The Hearing Officer shall have discretion to allow a Tobacco Retailer a period of time to correct any violation of any requirement, condition, or prohibition of this Chapter, other than a violation of a law regulating youth access to Tobacco Products. If the Department

provides a corrections period, and a Tobacco Retailer's violation is corrected within the time allowed for correction, no penalty shall be imposed under this section.

E. Violations of this chapter are hereby declared to be public nuisances.

F. For the purposes of the civil remedies provided in this Chapter:

1. Each day on which tobacco products or tobacco accessories are offered for sale in violation of this chapter shall constitute a separate violation of this chapter; and
2. Each individual retail tobacco product and each individual retail item of tobacco accessories that is distributed, sold, or offered for sale in violation of this chapter shall constitute a separate violation of this chapter.

G. All tobacco retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of tobacco products at the retail location. The sale of any tobacco product by an employee shall be considered an act of the tobacco retailer.

6-20.200 Other Licenses, Permits, Taxes, Fees, or Charges. Except as expressly provided in this Chapter, nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other title or Chapter of this Code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or Chapter of this code or any other ordinance or resolution of the City. Any references made or contained in any other title or Chapter of this code to any permits, licenses, taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the permits, licenses, taxes, fees or charges, or schedule of license fees, provided for in other titles or Chapters of the Santa Rosa City Code unless otherwise expressly provided.

6-20.210 Successor's and Assignee's Responsibility. If any person, while liable for any amount under this Chapter, sells, assigns or otherwise transfers a business operating with a tobacco retail license, whether voluntarily or involuntarily, the person's successor, assignee or other transferee, or other person or entity obtaining ownership or control of the business ("Transferee"), shall satisfy the conditions contained herein relating to the tobacco retail license. Failure to do so could result in forfeiture of the tobacco retail license. The Transferee shall notify the Department of the date of transfer at least 30 days before the transfer date; or if the agreement to sell, transfer, or otherwise dispose of the business was made less than 30 days before the date of transfer, notice shall be provided immediately upon the existence of the agreement.

6-20.260 Appeal Procedure. A decision of the Department to deny a license is appealable to the Hearing Officer and any appeal must be filed in writing with the City Clerk within fifteen (15) calendar days of the mailing of the decision or determination. The Clerk shall schedule the appeal and give fifteen (15) days' written notice to the appellant of the time and place of hearing by serving the notice personally or by depositing in the United States Post Office in the City, postage prepaid, addressed as shown on the appeal papers or, if none, such other address as is

known to the City. The City Manager shall have authority to determine all questions raised on such appeal. No such determination shall conflict with any substantive provision of this Chapter.”

Section 2. Environmental Determination. The Council finds that the adoption and implementation of this Ordinance is exempt from the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA,” and 14 Cal. Code Reg. §§ 15000 et seq., “CEQA Guidelines”). Pursuant to CEQA Guidelines section 15378 (b), the Ordinance is not a project within the meaning of CEQA because it creates a licensing and government funding mechanism that will not result in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

In the alternative, adoption and implementation of the proposed ordinance is exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15061(b)(3) of the State CEQA Guidelines because it can be seen with certainty that there is no possibility that this ordinance may have a significant effect on the environment. Adoption and implementation of the standards, license requirements, and other measures contained in the ordinance will not in and of themselves result in any direct physical change to the environment subject to CEQA.

In addition, the adoption and implementation of the proposed ordinance is exempt from CEQA pursuant to Sections 15307 and 15308 of the State CEQA Guidelines as actions taken to assure the maintenance, restoration, enhancement, and protection of natural resources and the environment as authorized by state law where the regulatory process involves procedures for protection of the environment. The basis for this determination is that the proposed ordinance establishes standards, license requirements, and other measures that regulate the licensure of tobacco retailers more stringently than existing codes, and will result in reduced sales of tobacco products to minors. These standards, license requirements, and other measures will protect human health, which is an aspect of the environment under Public Resources Code Section 21083(b)(3), by strengthening existing standards for preventing the sale of tobacco products to youth and establishing new limitations on tobacco retailer licensure. Reduced sale of tobacco products will reduce the harmful environmental effects of disposal of tobacco products.

Section 3. Severability. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid and/or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

///

///

///

Section 4. Effective Dates. This ordinance shall become effective on July 1, 2024. However, Section 6.20.050 (E) shall not take effect until January 1, 2025.

This ordinance was introduced by the Council of the City of Santa Rosa on May 21, 2024.

IN COUNCIL DULY PASSED AND ADOPTED this ____ day of June 2024.

AYES:

NOES:

ABSENT:

ABSTAIN/RECUSE:

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM: _____
City Attorney