ORDINANCE NO. 2021-353

AN ORDINANCE OF THE TOWN OF WINDSOR AMENDING CHAPTER 11 OF TITLE III OF THE CODE OF THE TOWN OF WINDSOR REGULATING THE SALE OF TOBACCO PRODUCTS AND PARAPHERNALIA AND REQUIRING A TOBACCO RETAIL LICENSE

WHEREAS, Chapter 11 of Title III of the Code of the Town of Windsor currently regulates the sale of tobacco products and paraphernalia with particular emphasis on the sale to children and teens; and

WHEREAS, a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the Town, to protect the health, safety, and welfare of all residents, including but not limited to children and minors; and

WHEREAS, approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death[1]; and

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[2]; and

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness[3]; and

WHEREAS, tobacco use is the number one cause of preventable death in California[4] and continues to be an urgent public health issue, as evidenced by the following:

- 40,000 California adults die from their own smoking annually;[5]
- More than 25% of all adult cancer deaths in California are attributable to smoking;[6]
- Smoking costs California $13.29 billion in annual health care expenses, $3.58

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[1] U.S. Department of Health and Human Services, *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General.* Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Printed with corrections, January 2014, 11. Available at: https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf.

[2] World Health Organization. *WHO Report on the Global Tobacco Epidemic, 2013: Enforcing Bans on Tobacco Advertising, Promotion and Sponsorship,* 2013, Executive Summary,1. Available at: http://www.who.int/tobacco/global_report/2013/en/.

[3] U.S.HHS. *The Health Consequences of Smoking: 50 Years of Progress*,

[4] California Department of Public Health California Tobacco Control Program, "*The #1 Preventable Cause of Death – Tobacco Free CA,*" as of March 2, 2020. Available at: https://tobaccofreeca.com/health/tobacco-is-the-number-one-preventable-causeof-death/#:~:text=Tobacco%20products%20continue%20to%20be,year%20from%20tobacco%2Drelated%20diseases.

[5] Centers for Disease Control and Prevention. *Best Practices for Comprehensive Tobacco Control Programs — 2014.* U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014, 82. Available at: https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf

[6] Lortet-Tieulent J, Goding Sauer A, Siegel RL, et al. *State-Level Cancer Mortality Attributable to Cigarette Smoking in the United States. JAMA Intern Med.* 2016;176(12):1792-1798. doi: 10.1001/jamainternmed.2016.6530.

billion in Medi-Cal costs caused by smoking, and $10.35 billion in smoking caused productivity losses[7];

- 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[8]; and'

WHEREAS, tobacco use among certain populations in California contributes to health disparities and creates significant barriers to health equity, as evidenced by the following:

- African American (20.4%), Asian (11.4%), and Hispanic (15.2%) males report a higher smoking prevalence than the statewide average among all adults (11.0%)[9];

- American Indian/Alaska Native (36.2%) Californians have the highest smoking prevalence (19.1%) among all reported adult demographic populations,

- Smoking is more prevalent among rural (14.9%) compared to urban (10.6%) Californians[10];

- Californians with the highest levels of educational attainment and annual household income have the lowest smoking prevalence[11];

- Adults who identify as lesbian, gay, bisexual, or transgender report smoking at a higher rate (17.4%) than the statewide average (11.0%)[12]

- Those who reported experiencing psychological distress over the past month smoke at rates (26.7%) higher than the statewide average (11.0%)[13]; and

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, research indicates over 67% of current and former adult smokers

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[7] Campaign for Tobacco-Free Kids, The Toll of Tobacco in California. https://www.tobaccofreekids.org/problem/tollus/california. Accessed July 19, 2020

[8] U.S.HHS. *The Health Consequences of Smoking: 50 Years of Progress*,

[9] California Department of Public Health California Tobacco Control Program. *California Tobacco Facts and Figures 2019.* Sacramento, CA: California Department of Public Health. 2019. Available at: https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/C TCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid.

started by the age of 18 and almost 100% start by age 26:[14]

- Disparities in tobacco use exist among California high school students, with higher rates found among LGBTQ, American Indian, and Pacific Islander youth;[15]

- Unless smoking rates decline, an estimated 441,000 California youth who are alive today will die prematurely from smoking-related diseases;[16]

- In 2017, 22.8% of high school students in California had tried cigarette smoking;[17]

- Between 2014 and 2018, electronic smoking device use among California youth increased from 14.1% to 46.2%;[18]

- E-cigarettes (electronic smoking devices) have been the most commonly used tobacco product by youth in the United States since 2014; [19]

- More than 80% of high-school students who consume tobacco use a vaping device; and[20]

WHEREAS, the tobacco industry encourages youth and young adult tobacco initiation through predatory targeting,[21] 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;[22]

- Tobacco industry documents state that if "a man has never smoked by the age of 18,

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[14] California Tobacco Control Program, *California Tobacco Facts and Figures 2016.* Sacramento, CA: California Department of Public Health. 2016, 20. Available at: https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf.

[15] Ibid.

[16] U.S.HHS. *The Health Consequences of Smoking: 50 Years of Progress*, table 12.2.1, 693

[17] Kann L, McManus T, Harris WA, et al, *Youth Risk Behavior Surveillance — United States, 2017,* MMWR Surveill Summ. 2018;67(8):1-114 and Supplementary Tables 52-93. Available at: https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm

[18] Lin C, Baiocchi M, Halpern-Felsher B. *Longitudinal trends in e-cigarette devices used by Californian youth, 2014–2018.* Addict Behav. 2020; 108:106459. doi: 10.1016/j.addbeh.2020.106459.

[19] U.S. Department of Health and Human Services, created through a partnership between the Office of the U.S. Surgeon General and the U.S. Centers for Disease Control and Prevention, Office on Smoking and Health. *Get the Facts on E-cigarettes/Know the Risks,* 2020 Available at: https://ecigarettes.surgeongeneral.gov/getthefacts.html#:~:text=E%2Dcigarettes%20have%20been%20the,(ages%2018%2D24).

[20] Office of Governor Newsom, E-cigarette executive order, September 16, 2019, Available at: https://tobaccofreeca.com/ecigarettes/governor-gavin-newsom-signs-executive-order-to-confront-youth-vaping-epidemic/

[21] California Tobacco Control Program, California Tobacco Facts and Figures 2019. Sacramento, CA: California Department of Public Health. 2019. Available at: https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/CATobaccoFactsandFigures2019.pdf.

[22] Ling PM, Glantz SA. *Why and How the Tobacco Industry Sells Cigarettes to Young Adults: Evidence From Industry Documents. Am J Public Health.* 2002;92(6):908-916. doi: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1447481/

the odds are three-to-one he never will. By age 24, the odds are twenty-to-one";[23]

- The tobacco industry spends an estimated $620 million annually to market tobacco products to California residents;[24] and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority; and

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 law (California Business and Professions Code Section 22971.3); and

WHEREAS, California courts have affirmed the power of the Town to regulate business activity to discourage violations of law; and

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;[25]

- 19.1% of California tobacco retailers unlawfully sold tobacco products to underage persons in 2018; [26] and

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 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:

- Tobacco products are the number one seller in U.S. convenience stores, and in 2018, they generated an average of $595,870 in sales per store;[27]

- Systematic scientific reviews indicate that merchant compliance with youth

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[23] Burrows, D.S. "Estimated Change in Industry Trend Following Federal Excise Tax Increase." *UCSF Library Truth Tobacco Industry Documents.* Date Mod. Industry, Apr. 17, 2012, 2: https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/nnnw0084. Accessed July 20, 2020.

[24] Campaign for Tobacco-Free Kids, *The Toll of Tobacco in California.* Accessed July 20, 2020

[25] Kann L, McManus T, Harris WA, et al. *Youth Risk Behavior Surveillance — United States*, 2017. MMWR Surveill Summ. 2018;67(8):1-114 and Supplementary Tables 52-93. Available at: https://www.cdc.gov/healthyyouth/data/yrbs/

[26] California Tobacco Control Program. *California Tobacco Facts and Figures 2019*

[27] National Association of Convenience Stores. Convenience Stores and Their Communities. 2019. Available at: https:// https://www.convenience.org/Topics/CommunityToolkit/Convenience-Stores-and-Their-Communities

tobacco sales laws reduces the rate of tobacco use among adolescents;[28] [29]

- 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; [30] [31]

- A review of 41 California communities with strong tobacco retailer licensing ordinances found that youth sales rates declined in 40 of these communities after the ordinances were enacted, with an average 69% decrease in the youth sales rate;[32] and

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act ("Tobacco Control Act"), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,[33] largely because these flavored products are marketed to youth and young adults, [34] [35]and younger smokers were more likely than older smokers to have tried these products;[36] and

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 2018, more than 86% of tobacco retailers in California sold flavored noncigarette tobacco products, over 91% of tobacco retailers sold menthol cigarettes [37], and as of 2016, 8 out of 10 tobacco retailers near schools sold flavored non-cigarette tobacco products;[38] and

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[28] U.S. Department of Health and Human Services. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2012. Available at: https://www.ncbi.nlm.nih.gov/books/NBK99237/pdf/Bookshelf_NBK99237.pdf

[29] DiFranza JR. *Which interventions against the sale of tobacco to minors can be expected to reduce smoking?* Tob Control. 2012;21:436-442. doi: 10.1136/tobaccocontrol-2011-050145.

[30] McLaughlin I. *License to Kill?: Tobacco Retailer Licensing as an Effective Enforcement Tool. Tobacco Control Legal Consortium*. 2010. Available at: http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-syn-retailer-2010.pdf.

[31] Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. Washington, DC: The National Academies Press. 2015. Available at: https://www.nap.edu/catalog/18997/public-healthimplications-
of-raising-the-minimum-age-of-legal-access-to-tobacco-products.

[32] The American Lung Association in California Center for Tobacco Policy and Organizing, *Tobacco Retailer Licensing is Effective*. 2018. Available at: https://center4tobaccopolicy.org/wp-content/uploads/2018/09/Tobacco-Retailer-LIcensing-is-

[33] 21 U.S.C. § 387g(a)(1)(A).

[34] U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General,2012*.

[35] Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. 2015

[36] U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General,2012*.

[37] Schleicher NC, Johnson T, Vishwakarma M, et al. California Tobacco Retail Surveillance Study 2018. Available at: https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/CaliforniaTobaccoRetailSurveillanceStudyReport-2018.pdf.

[38] California Department of Public Health, California Tobacco Control Program. *2016 Healthy Stores for a Healthy Community Survey Results-all counties.* 2016. Available at: https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/HSHCTechnicalReport2016.pdf. received the following from CTCP: https://3rz43f180d43qd3m43tl5x17-wpengine.netdna-ssl.com/wp-content/uploads/2020/06/HSHC-Retail-Survey-Results-All-Counties.xlsx

WHEREAS, flavored tobacco products are used by the majority of youth and young adult tobacco users (86.4% and 57.7%, respectively) in California;[39] and

WHEREAS, mentholated and flavored products have been shown to be "starter" products for youth who begin using tobacco [40] [41] and that these products help establish tobacco habits that can lead to long-term addiction;[42] [43] and

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+); [44] and

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;[45] [46]and

WHEREAS, in 2018, the Surgeon General issued an "Advisory on E-cigarette Use Among Youth" emphasizing the importance of protecting our children from a lifetime of nicotine addiction and associated health risks by immediately addressing the epidemic of youth ecigarette (electronic smoking device) use; [47] and

WHEREAS, the FDA declared the use of e-cigarettes (electronic smoking device) among children to be an epidemic on December 4, 2019:[48] and

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;[49] and

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[39] California Tobacco Control Program. *California Tobacco Facts and Figures 2019.*

[40] 21 U.S.C. § 387g(a)(1)(A).

[41] Wackowski O, Delnevo CD. *Menthol cigarettes and indicators of tobacco dependence among adolescents.* Addict Behav. 2007;32(9):1964-1969. doi: 10.1016/j.addbeh.2006.12.023.

[42] U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General,2012*

[43] Villanti AC, Johnson AL, Glasser AM, et al. *Association of Flavored Tobacco Use With Tobacco Initiation and Subsequent Use Among US Youth and Adults,* 2013-2015. JAMA Netw Open. 2019;2(10):e1913804. doi: 10.1001/jamanetworkopen.2019.13804.

[44] Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. *Changes in the prevalence and correlates of menthol cigarette use in the USA,* 2004-2014. Tob Control. 2016;25(Suppl 2):ii14-ii20. doi: 10.1136/tobaccocontrol-2016-053329.

[45] United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1 (D.D.C. 2006), aff'd in part, vacated in part, 566 F.3d 1095 (D.C. Cir. 2009), and order clarified, 778 F. Supp. 2d 8 (D.D.C. 2011).

[46] Kreslake JM, Wayne GF, Alpert HR, Koh HK, Connolly GN. *Tobacco industry control of menthol in cigarettes and targeting of adolescents and young adults.* Am J Public Health. 2008;98(9):1685-1692. doi: 10.2105/AJPH.2007.125542

[47] 121. doi: 10.1093/ntr/ntr122.

51 Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes.* 2013. Available at: https://www.fda.gov/media/

[48] http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf.

[49] Henriksen L, Schleicher NC, Dauphinee AL, Fortmann SP. *Targeted advertising, promotion, and price for menthol cigarettes in California high school neighborhoods.* Nicotine Tob Res. 2012;14(1):116-121. doi: 10.1093/ntr/ntr122

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[50] and possibly Hispanic and Latino individuals [51],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; [52] and

WHEREAS, research indicates that the FDA ban on all flavored cigarette products (except menthol) led to a 6% decrease in youth tobacco use and a 17% decrease in the likelihood of a youth becoming a cigarette smoker; tobacco use by youth decreased by 6% and the likelihood of a youth becoming a cigarette smoker; [53]and

WHEREAS, studies indicate that laws prohibiting the sale of flavored tobacco products lead to decreases in youth tobacco use, as evidenced by the following:

- An evaluation of New York City's law, which prohibits the sale of all flavored tobacco, excluding menthol, indicated 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; [54]

- An evaluation of a law in Providence, Rhode Island, which prohibits the sale of all flavored tobacco, excluding menthol, indicated that as a result of the law, current use of any tobacco product among high school youth declined from 22% to 12% and e-cigarette use declined from 13.3% to 6.6%, even as statewide ecigarette use among high school increased to more than 20%; [55] and

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

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[50] Food and Drug Administration. *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes.* 2013. Available at: https://www.fda.gov/media/86497/download http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf.

[51] Tobacco Products Scientific Advisory Committee. *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations.* 2011. Available at: https://wayback.archiveit.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf

[52] FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes.* 2013

[53] Courtemanche CJ, Palmer MK, Pesko MF. *Influence of the Flavored Cigarette Ban on Adolescent Tobacco Use.* Am J Prev Med. 2017;52(5):e139-e146. doi: 10.1016/j.amepre.2016.11.019

[54] Farley SM, Johns M. *New York City flavoured tobacco product sales ban evaluation.* Tob Control. 2017;26(1):78-84. doi: 10.1136/tobaccocontrol-2015-052418.

[55] Pearlman DN, Arnold JA, Guardino GA, Boles Welsh E. *Advancing Tobacco Control Through Point of Sale Policies,* Providence, Rhode Island. Prev Chronic Dis. 2019;16:E129. doi: 10.5888/pcd16.180614.

cinogens; [56] [57] and

WHEREAS, unlike cigarette use that has steadily declined among youth, the prevalence of the use of non-cigarette tobacco products has increased among California youth;[58] and

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; [59] [60] and

WHEREAS, research has also consistently shown that increases in cigarettes prices will result in less smoking across various sociodemographic populations; [61] and

WHEREAS, a systematic review by the U.S. Community Preventive Services Task Force found that 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%; [62]and

WHEREAS, unequal price increases across different types of tobacco products lead to substitution from one product to another; [63] [64] and

WHEREAS, youth are particularly responsive to changes in tobacco prices, [65] [66]and evidence suggests that tobacco companies deliberately target youth with price reductions; [67] [68] and

WHEREAS, evidence also suggests that cigarettes are cheaper in neighborhoods with lower

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[56]Hoffmann D, Hoffmann I. Chapter 3: Chemistry and Toxicology. In: *Smoking and Tobacco Control Monograph* No. 9: Cigars: Health Effects and Trends. National Cancer Institute; 1998.

[57] Pickworth WB, Rosenberry ZR, Yi D, et al. Cigarillo and Little Cigar Mainstream Smoke Constituents from Replicated Human Smoking . Chem Res Toxicol. 2018;31(4):251-258. doi: 10.1021/acs.chemrestox.7b00312.

[58] California Tobacco Control Program. *California Tobacco Facts and Figures 2019.*

[59] U.S.HHS. *The Health Consequences of Smoking: 50 Years of Progress*, price 706, 707+

[60] Jawad M, Lee JT, Glantz S, Millett C. *Price elasticity of demand of non-cigarette tobacco products: a systematic review and meta-analysis*. Tob Control. 2018. doi: 10.1136/tobaccocontrol-2017-054056.

[61] Yao T, Ong MK, Max W, et al. *Responsiveness to cigarette prices by different racial/ethnic groups of US adults*. Tob Control. 2018;27(3):301-309. doi: 10.1136/tobaccocontrol-2016-053434.

[62] Community Preventive Services Task Force. *Reducing Tobacco Use and Secondhand Smoke Exposure: Interventions to Increase the Unit Price for Tobacco Products*. 2012. Available at: https://www.thecommunityguide.org/findings/tobacco-useand-secondhand-smoke-exposure-interventions-increase-unit-price-tobacco.

[63] Huang J, Gwarnicki C, *A comprehensive examination of own- and cross-price elasticities of tobacco.*

[64] Jawad M, Lee JT, Glantz S, Millett C, *Price elasticity of demand of non-cigarette tobacco products,* 2018.

[65] 2012 U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General,2012.*

[66] Levy DT, Tam J, Kuo C, Fong GT, Chaloupka F. *The Impact of Implementing Tobacco Control Policies: The 2017 Tobacco Control Policy Scorecard.* J Public Health Manag Pract. 2018;24(5)448-457. doi: 10.1097/PHH.0000000000000780.

[67] U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General,2012.*

[68] Tessman GK, Caraballo RS, Corey CG, Xu X, Chang CM. *Exposure to tobacco coupons among U.S. middle and high school students.* Am J Prev Med. 2014;47(2 Suppl 1):S61-68. doi: 10.1016/j.amepre.2014.05.001.

household incomes, [69] [70]Newport menthol cigarettes cost less in areas with higher proportions of African Americans [71] and underserved communities are targeted with price discounts and coupons; [72] [73] and

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 $6.2 billion of $8.6 billion advertising and promotional expenditures in 2018; [74] [75] and

WHEREAS, price-discounted sales account for a substantial proportion of overall tobacco product sales; [76] and

WHEREAS, although federal and state law ban the sale of individual cigarettes,[77] [78] neither federal nor California state laws restrict the sale of individual little cigars and cigars; and

WHEREAS, many retailers sell little cigars and cigars individually, making them more affordable and appealing to youth [79]. For example:

- 78.3% of California tobacco retailers sell a popular brand of youth-friendly cigars for less than $1.00;[80]

- Between 2012 and 2106, annual sales of cigarillos increased by 78%, and by 155% for "concept-flavored" (e.g. Jazz) cigarillos;[81] and

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[69] Henriksen L, Schleicher NC, Barker DC, Liu Y, Chaloupka FJ. *Prices for Tobacco and Nontobacco Products in Pharmacies Versus Other Stores: Results From Retail Marketing Surveillance in California and in the United States.* Am J Public Health. 2016;106(10):1858-1864. doi: 10.2105/AJPH.2016.303306.

[70] Mills SD, Golden SD, Henrisksen L. *Neighbourhood disparities in the price of the cheapest cigarettes in the USA.* J Epidemiol
Community Health. 2019;73(9):894-896. doi: 10.1136/jech-2018-210998.

[71] Henriksen L, Schleicher NC, Barker DC, Liu Y, Chaloupka FJ. Prices for Tobacco

[72] Counter Tobacco. *Disparities in Point-of-Sale Advertising and Retailer Density.* https://countertobacco.org/resourcestools/evidence-summaries/disparities-in-point-of-sale-advertising-and-retailer-density/. Accessed May 18, 2020.

[73] Henriksen L, Schleicher NC, Johnson TO, Roeseler A, Zhu SH. *Retail Tobacco Marketing in Rural Versus Nonrural Counties:*
Product Availability, Discounts, and Prices. Health Promot Pract. 2020;21(1_suppl):27S-36S. doi: 10.1177/1524839919888652

[74] CDC. *State Cigarette Minimum Price Laws — United States*, 2009.

[75] NCI. *Monograph 2: Smokeless Tobacco or Health* 1992.

[76] Wang TW, Falvey K, Gammon DG, et al. *Sales Trends in Price-Discounted Cigarettes, Large Cigars, Little Cigars, and Cigarillos-United States,* 2011-2016. Nicotine Tob Res. 2018;20(11):1401-1406. doi: 10.1093/ntr/ntx249.

[77] 21 C.F.R. § 1140.16(b).

[78] Cal. Penal Code § 308.3(a).

[79] Schleicher NC, Johnson T, Rigdon J, et al. California Tobacco Retail Surveillance Study, 2017. Available at: https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/SurveyInstrumentsTrainingManualsAndProtocols/CaliforniaTobaccoRetailSurveillanceStudt2017-CTRSS%206-4.pdf . https://tobaccoeval.ucdavis.edu/sites/g/files/dgvnsk5301/files/inline-files/CaliforniaTobaccoRetailSurveillanceStudt2017-CTRSS%206-4.pdf

[80] Ibid.

[81] Gammon DG, Rogers T, Coats EM, et al. *National and state patterns of concept-flavoured* cigar sales, USA, 2012-2016. Tob Control. 2019;28(4):394-400. doi: 10.1136/tobaccocontrol-2018-054348.

WHEREAS, a 10% increase in cigar prices has been associated with decreased cigar sales [82] [83]and may significantly reduce cigar use among youth; [84] and

WHEREAS, neither federal nor California state laws set a minimum price for tobacco products; and

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;[85] and

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%; [86] 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 more than 10million smokers to quit;[87] and that a state-level minimum floor price law designed to raise the average price of cigarette packs by just under $2.00 could decrease the prevalence of cigarette use and consumption by more than 4% and reduce income-based smoking disparities in California;[88] and

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; [89] [90] and

WHEREAS, pharmacies sell cigarettes cheaper than other stores [91]and advertise tobacco product discounts more than other stores in California; [92] and

WHEREAS, tobacco-free pharmacy sales policies decrease the availability of tobacco

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[82] Gammon DG, Loomis BR, Dench DL, King BA, Fulmer EB, Rogers T. *Effect of price changes in little cigars and cigarettes on little cigar sales*: USA, Q4 2011-Q4 2013. Tob Control. 2016;25(5):538-544. doi: 10.1136/tobaccocontrol-2015-052343.

[83] Jawad M, Lee JT, Glantz S, Millett C, *Price elasticity of demand of non-cigarette tobacco products,* 2018.

[84] Ringel JS, Wasserman J, Andreyeva T. *Effects of public policy on adolescents' cigar use: evidence from the National Youth Tobacco Survey.* Am J Public Health. 2005;95(6):995-998. doi: 10.2105/AJPH.2003.030411.178 Katz MH. *Banning tobacco sales in pharmacies: the right prescription.* JAMA. 2008;300(12):1451-1453. doi: 10.1001/ jama.300.12.1451.

[85] Huang J, Chriqui JF, DeLong H, Mirza M, Diaz MC, Chaloupka FJ. *Do state minimum markup/price laws work? Evidence from retail scanner data and TUS-CPS. Tob Control.* 2016;25(Suppl 1):i52-i59. doi: 10.1136/tobaccocontrol-2016-053093.

[86] Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. Arch Pediatr Adolesc Med. 2007;161(5):440-445. doi: 10.1001/archpedi.161.5.440.

[87] Doogan NJ, Wewers ME, Berman M. *The Impact of a Federal Cigarette Minimum Pack Price Policy on Cigarette Use in the USA.* Tob Control. 2018;27(2):203-208. doi: 10.1136/tobaccocontrol-2016-053457.

[88] Golden SD, Kim K, Kong A, et al. *Simulating the Impact of a Cigarette Minimum Floor Price Law on Adult Smoking Prevalence in California.* Nicotine Tob Res. 2020;ntaa046. doi: 10.1093/ ntr/ntaa046.

[89] Katz MH. *Banning tobacco sales in pharmacies: the right prescription.* JAMA. 2008;300(12):1451-1453. doi: 178

[90] Hudmon KS, et al, *Tobacco sales in pharmacies: time to quit.* Tob Control. 2006;15(1):35-38. doi: 10.1136/tc.2005.012278

[91] Henriksen L, Schleicher et alNC, Barker DC, Liu Y, Chaloupka FJ. *Prices for Tobacco and Nontobacco Products in Pharmacies*

[92] Schleicher NC, Johnson T, Vishwakarma M, et al. *California Tobacco Retail Surveillance Study 2018.* Available at: https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/Reports/CaliforniaTobaccoRetailSurveillanceStudyReport-2018.pdf.

products by reducing tobacco retailer density by up to three times compared with communities that do not have such policies, [93] 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; [94] and

WHEREAS, the density and proximity of tobacco retailers increase smoking behaviors, including number of cigarettes smoked per day,[95] particularly in neighborhoods experiencing poverty; [96] [97] and

WHEREAS, the density of tobacco retailers near adolescents' homes has been associated with increased youth smoking rates [98]smoking and initiation of non-cigarette tobacco use;[99] and

WHEREAS, adults who smoke are likely to have a harder time quitting when residential proximity to tobacco retailers is closer [100] and density is higher; [101] [102] and

WHEREAS, tobacco retailers are more prevalent in underserved communities, especially in neighborhoods with a higher proportion of African American or Hispanic residents; [103] [104] and

WHEREAS, tobacco retailer density is higher in urban compared to rural areas, except for low-income communities, which have higher tobacco retailer densities regardless of geography, and Hispanic communities, which are associated with variable retailer densities

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[93] Jin Y, Lu B, Klein EG, Berman M, Foraker RE, Ferketich AK. *Tobacco-Free Pharmacy Laws and Trends in Tobacco Retailer Density in California and Massachusetts.* Am J Public Health. 2016;106(4):679-685. doi: 10.2105/ AJPH.2015.303040

[94] Polinski JM, Howell B, Gagnon MA, Kymes SM, Brennan TA, Shrank WH. *Impact of CVS Pharmacy's Discontinuance of Tobacco Sales on Cigarette Purchasing* (2012-2014). Am J Public Health. 2017;107(4):556-562. doi: 10.2105/ AJPH.2016.303612

[95] Chuang YC, Cubbin C, Ahn D, Winkleby MA. *Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking.* J Epidemiol Community Health. 2005;59(7):568-573. doi: 10.1136/ jech.2004.029041.

[96] Ibid.

[97] Huang J, Chriqui JF, DeLong H, Mirza M, Diaz MC, Chaloupka FJ. *Do state minimum markup/price laws work?* Evidence from retail scanner data and TUS-CPS. Tob Control. 2016;25(Suppl 1):i52-i59. doi: 10.1136/tobaccocontrol-2016-053093.

[98] Finan LJ, Lipperman-Kreda S, Abadi M, et al. *Tobacco Outlet Density and Adolescents' Cigarette Smoking: A Meta-Analysis. Tob Control.* 2019;28(1):27-33. doi: 10.1136/tobaccocontrol-2017-054065.

[99] Abdel Magid HS, Halpern-Felsher B, Ling PM, et al. *Tobacco Retail Density and Initiation of Alternative Tobacco Product Use Among Teens.* J Adolesc Health. 2020;66(4):423-430. doi: 10.1016/j.jadohealth.2019.09.004

[100] Reitzel LR, Cromley EK, Li Y, et al. *The effect of tobacco outlet density and proximity on smoking cessation.* Am J Public Health. 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.

[101] Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. *The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty.* Addiction. 2015;110(1):152-161. doi: 10.1111/ add.12718

[102] Shareck M, Datta GD, Vallee J, Kestens Y, Frohlick KL. *Is Smoking Cessation in Young Adults Associated With Tobacco Retailer Availability in Their Activity Space?* Nicotine Tob Res. 2020;22(4):512-521. doi: 10.1093/ntr/nty242

[103] Siahpush M, Jones PR, Singh GK, Timsina LR, Martin J. *Association of availability of tobacco products with socio-economic and racial/ethnic characteristics of neighbourhoods.* Public Health. 2010;124(9):525-529. doi: 10.1016/j. puhe.2010.04.010

[104] Fakunle DO, Curriero FC, Leaf PJ, Furr-Holden DM, Thorpe RJ. Black, White, or Green? *The Effects of Racial Composition and Socioeconomic Status on Neighborhood-Level Tobacco Outlet Density.* Ethn Health. 2019;1-16. doi: 10.1080/13557858.2019.1620178.

across geography;[105] [106] and

WHEREAS, policies to reduce tobacco retailer density have been shown to be effective [107] [108] and may reduce or eliminate inequities in the location and distribution of tobacco retailers; and

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; [109] [110] and

WHEREAS, strong policy enforcement and monitoring of retailer compliance with tobacco control policies (e.g., requiring identification checks) is necessary to achieve reductions in youth tobacco sales; [111] [112]

WHEREAS, the Institute of Medicine recognizes that retailers are not likely to comply with youth tobacco access laws unless such laws are actively enforced through retailer compliance check paired with meaningful penalties on business owners for violations; [113] and

WHEREAS, state law California Health and Safety Code section 11364 prohibits possession of and California Health and Safety Code section 11014.5 prohibits sales of "drug paraphernalia"; and

WHEREAS, many retailers nevertheless sell items that are commonly known to be "drug paraphernalia," including bongs and pipes used to smoke methamphetamine and other illicit drugs, claiming that such items are intended for tobacco use; and

WHEREAS, several California cities require compliance with state drug paraphernalia laws as a condition of obtaining and maintaining a local tobacco retailer license; [114] and

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); and

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[105] Rodriguez D, Predictors of tobacco outlet density nationwide:2011.

[106] Rodriguez D, Carlos HA, Adachi-Mejia AM, Berke EM, Sargent J. *Retail tobacco exposure: using geographic analysis to identify areas with excessively high retail density.* Nicotine Tob Res. 2014;16(2):155-165. doi: 10.1093/ntr/ntt126.

[107] Ribisl KM, Luke DA, Bohannon DL, Sorg AA, Moreland-Russell S. *Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools.* Nicotine Tob Res. 2017;19(2):239-244. doi: 10.1093/ntr/ntw185.

[108] Luke DA, Hammond RA, Combs T, et al. *Tobacco Town: Computational Modeling of Policy Options to Reduce Tobacco Retailer Density.* Am J Public Health. 2017;107(5):740-746. doi: 10.2105/AJPH.2017.303685.

[109] U.S. Depart. HHS, *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General,2012.*

[110] DiFranza JR. *Which interventions against the sale of tobacco to minors can be expected to reduce smoking*? Tob Control. 2012;21:436-442. doi: 10.1136/tobaccocontrol-2011-050145.

[111] DiFranza JR. *Best Practices for Enforcing State Laws Prohibiting the Sale of Tobacco to Minors.* J Public Health Manag Pract. 2005;11(6):559-565. doi: 10.1097/00124784-200511000-00014.

[112] Macinko J, Silver D. Impact of New York City's 2014 *Increased Minimum Legal Purchase Age on Youth Tobacco Use.* Am J Public Health. 2018;108(5):669-675. doi: 10.2105/AJPH.2018.304340.

[113] Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products.* Washington, DC: National Academies Press. 2015

[114] Family Smoking Prevention and Tobacco Control Act § 3(1), Pub. L. No. 111-31, 123 Stat. 1776-1858 (2009).

WHEREAS, California courts have affirmed the power of the cities and counties to regulate business activity to discourage violations of law. See, e.g., *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); and

WHEREAS, over 180 cities and counties in California have passed tobacco retailer licensing ordinances as of 2018 in an effort to stop youth from using tobacco;[115] and

WHEREAS, the Town has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

WHEREAS, a requirement for a tobacco retailer license 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 Town to to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobaco-related laws; and

WHEREAS, the Town has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraing the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

WHEREAS, this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15060(c)(2) of the CEQA Guidelines because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines because the activity is not a "project" as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF WINDSOR DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals Made Findings.

The above recitals are hereby declared to be true and correct findings of the Town Council of the Town of Windsor.

SECTION 2. Amendment to Chapter 11 of Title III of the Code of the Town of Windsor.

Chapter 11 of Title III of the Code of the Town of Windsor, entitled "Regulating the Sale of Tobacco Products and Paraphernalia", is hereby amended and restated in its entirety to read and provide as follows (with additons **bold and underlined,** and deleteions in ~~strikethrough~~

[115] CDPH, *California Tobacco Facts and Figures* 2019, 2

"CHAPTER. 11 REGULATING THE SALE OF TOBACCO PRODUCTS AND PARAPHERNALIA

Article 1. - Regulating the Sale of Tobacco Products and Paraphernalia to Children and Teens

3-11-100 - Purpose of Chapter.

In enacting this ordinance, it is the intent of the Town Council to ensure compliance with the business standards and practices of the Town, 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 minors, but it is not the Town Council's intent 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.

3-11-105 - Definitions.

The following words and phrases shall be construed as defined in this section:

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. "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, as defined in this section.

c. "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 **four and one-half (4.5)** ~~three~~ pounds per thousand.

d. **"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 at a discounted price.**

e. "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 or 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.

f. "Department" means the County of Sonoma Department of Health Services, and any agency or person designated by the department to enforce or administer the provisions of this chapter.

g. "Electronic smoking device" ~~means an electronic and/or battery-operated device which can be used to deliver an inhalable dose of nicotine, or other substances, by delivering a vaporized solution. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.~~ **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, epipe, vape pen, or e-hookah. Electronic smoking device includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.**

h. "Employee" means any person who is employed or retained as an independent contractor by an employer, as defined in this section; or any person who volunteers his or her services for an employer, association, nonprofit or volunteer entity.

i. "Employer" means any person, partnership, corporation, association, nonprofit or other entity who employs or retains the services of one (1) or more persons, or who supervises volunteers.

j. "Flavored Tobacco Product" means any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a tobacco product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice.

k. "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.

l. "Health officer" means the Sonoma County public health officer or his or her designee.

m ."Hearing officer" means the health officer or designated alternate who shall represent the department as the hearing officer.

n ."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" or "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 four and one-half (4.5) pounds per thousand. "Little cigar" includes, but is not limited to, tobacco products known or labeled as small cigar, little cigar, or cigarillo.

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

p. "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.

q."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.

r."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. A vending machine is a form of self-service display.

s. "Smoking" ~~means inhaling, exhaling from, burning, or possessing any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation.~~ **means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated product containing, made, or derived from nicotine, tobacco, marijuana, or other plant, whether natural or synthetic, that is intended for inhalation. "Smoking" includes using an electronic smoking device.**

t."This Code" means the Code of the Town of Windsor.

u."Tobacco paraphernalia" means any item designed for the consumption, use, or preparation of tobacco products, including, as examples and without limitation, cigarette papers or wrappers, blunt wraps as defined in California Penal Code Section 308, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

v."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, dipping tobacco, pipe tobacco, bidis, snuff,

or any other preparation of tobacco; 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, cigar, pipe, or hookah;

Notwithstanding any provision of subsections (a) and (b) to the contrary, "tobacco product" includes any component, part, or accessory of a tobacco product, whether or not sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

w."Tobacco retailer" means any person who sells, offers for sale, or does of offers to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia, without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange. "Tobacco retailing" shall mean the doing of any of these things.

x."Town" means the Town of Windsor, in the State of California.

y."Town Council" means the Town Council of the Town of Windsor.

z."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.

aa. Youth-Oriented Area" means a parcel in the town of Windsor that is occupied by:

1) a private or public preschool, kindergarten, elementary, middle, junior high, or high school. For the purpose of this definition a preschool is a licensed child-care facility or preschool, other than a small-family day care home or a large-family day care home as defined in California Health & Safety Code § 1596.78;

2. a park or playground open to the public or to all the residents of a private community.

3-11-110 - Delegation of Administrative and Enforcement Authority. The County of Sonoma Department of Health Services is hereby delegated the authority and responsibility to administer and enforce the provisions of this Chapter, except where expressly provided otherwise. Any powers granted to or duties imposed upon the director of the department may be delegated by the director to authorized representatives of the department.

3-11-115 - Requirements and Prohibitions.

a. *Tobacco Retailer's License Required.* It shall be unlawful for any person to act as a tobacco retailer in the Town without first obtaining and maintaining a valid tobacco retailer's license pursuant to this chapter for each location at which that activity 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, or tobacco retailing.

c. *Display of License.* Each tobacco retailer license shall be prominently displayed in a publicly visible location at the licensed location.

d. *Positive Identification Required.* No person engaged in tobacco retailing shall sell or transfer a tobacco product to another person who appears to be under the age of twenty-seven (27) years without first examining the photo identification of the recipient to confirm that the recipient is at least the minimum age under state law to purchase and possess the tobacco product or tobacco paraphernalia.

e. *Minimum Age for Persons Selling Tobacco.* 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.

f. *Self-Service Displays Prohibited.* Tobacco retailing by means of a self-service display is prohibited.

g. *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 out of public view. The public display of tobacco products in violation of this provision shall constitute tobacco retailing without a license under Section 3-11-165 ; and

2. Shall not display any advertisement relating to tobacco products 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.

h. *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 the consumer; and

2. conforms to all applicable federal labeling requirements.

i. *Drug Paraphernalia.* It shall be a violation of this chapter for any 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, California Health and Safety Code Section 11364.7.

j. *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 clearly.

k. *Minimum Pack Size.* Notwithstanding any other provision of this chapter, it shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to sell, offer for sale, or exchange for any form of consideration:

1. Any single cigar or little cigar, whether or not packaged for individual sale;

2. Any number of cigars or little cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;

3. Any package of cigars or little cigars containing fewer than five (5) cigars.

4. Any package of chewing tobacco or snuff containing fewer than five (5) units.

This section shall not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars ($5.00).

l. *Minimum Price for Cigarettes, Little Cigars, Cigars, and Chewing Tobacco.* No tobacco retailer shall sell to a consumer:

1. A package of cigarettes at a price that is less than seven $7.00 dollars per package of twenty (20) cigarettes, including all applicable taxes and fees.

2. A package of little cigars that is less than seven-$7.00 dollars per package of five (5) little cigars, including all applicable taxes and fees.

3. A package of cigars that is less than seven $7.00 dollars per five (5) cigars, including all applicable taxes and fees.

4. A package of chewing tobacco or snuff that is less than seven $7.00 dollars per package of five (5) units.

The minimum prices established in this section shall be adjusted annually (as a percent change in the annual adjustment by the department, and not a seasonal adjustment) by the department in proportion to the Consumer Price Index: All urban consumers for all items in the San Francisco-Oakland-San Jose, CA statistical area as reported by the United States Bureau of Labor Statistics or any successor thereto.

m. Flavored Tobacco Products. No tobacco retailer shall sell a tobacco product containing, as a constituent or additive, an artificial or natural flavor (other than tobacco) or an herb or spice, including strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, that is a characterizing flavor of the tobacco product or smoke produced by the tobacco product.) ~~the tobacco product consists of a package of cigars containing at least five (5) cigars or little cigars, or (2) a single cigar for which the retail price exceeds five dollars ($5.00), or (3) the tobacco product consists of pipe tobacco, or (4) the package of chewing tobacco or snuff contains at least five (5) units.~~

n. *Electronic Smoking Device Sales Prohibited.* It shall be unlawful for any tobacco retailer to sell any electronic smoking device.

o. *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.

3-11-120 - Limits on Eligibility For A Tobacco Retailer License.

a. *Mobile Vending.* No license may be issued to authorize tobacco retailing at other than a fixed location. For example, tobacco retailing by persons on foot or from vehicles is prohibited.

~~b. *Schools.* No license may be issued to authorize tobacco retailing within one thousand (1,000) feet of a school, 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. For the purposes of this subsection, a "school" means a parcel in the Town that is occupied by a private or public kindergarten, elementary, middle, junior high, or high school.~~

***b. Pharmacies.* No license may issue, and no existing license may be renewed, to authorize tobacco retailing in a pharmacy.**

***c. Proximity to Youth-Oriented Area.* No new license may issue to authorize tobacco retailing within one thousand (1,000) 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.**

d. *Population and Density.* The issuing of tobacco retailer licenses is limited as follows:

1. The total number of tobacco retailer licenses within the Town shall be limited to one per two thousand (2,000) inhabitants in the Town of Windsor,

2. For the purposes of this subsection, the total population of the Town 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.

3. 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). An exisiting tobacco retailer license lawfully transferred to a new proprietor shall not be considered a new license for the purpose of this section.

4. 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 subsection c 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-oriented area, may apply for and receive a license for the location pursuant to the standard licensing application procedure.

5. Notwithstanding subsection c, a tobacco retailer operating lawfully on the date this ordinance is adopted that would otherwise be ineligible 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:

a. the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);

b. the tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days;

c. 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 locationfor which a significant purpose is avoiding the effect of violations of this chapter; and

d. the tobacco retailer retains the right to operate under all other applicable laws.

e. the tobacco retailer has not violated this chapter or any other tobacco control law three (3) or more times within the previous five (5)-year period.

f. the tobacco retailer continuously retains the right to operate under other applicable laws including, without limitation, this Code and the Town Zoning Ordinance.

If the Town of Windsor 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.

~~c. Eligible Locations. The following locations are eligible to apply for a Tobacco Retailer license, and a license may be issued to authorize tobacco retailing to businesses at the following locations where tobacco products are sold, offered for sale, or exchanged, provided that the businesses comply with the requirements of this subsection:~~

~~B and B Service Station~~
~~705 Shiloh Rd.~~
~~Windsor, CA 95492~~

~~Estrella's Market & Taqueria~~
~~10351 Old Redwood Hwy., Ste 100~~
~~Windsor, CA 95492~~

~~Fast & Easy Mart Windsor~~
~~8916 Brooks Rd. S.~~
~~Windsor, CA 95492~~

~~Hembree Shell~~
~~6301 Hembree Ln.~~
~~Windsor, CA 95492~~

~~Martin's Market~~
~~10333 Old Redwood Hwy.~~
~~Windsor, CA 95492~~

~~MD Liquor & Food #15~~
~~8499 Old Redwood Hwy., Ste 116~~
~~Windsor, CA 95492~~

~~Oliver's Market / Tavern Off the Green~~
~~9230 Old Redwood Hwy.~~
~~Windsor, CA 95492~~

~~Pohley's Market~~
~~341 Windsor River Rd.~~
~~Windsor, CA 95492~~

~~Quick Shop & Deli~~
~~8197 Old Redwood Hwy.~~
~~Windsor, CA 95492~~

~~Safeway Store 1434~~
~~9080 Brooks Rd. S.~~
~~Windsor, CA 95492~~

~~Walmart Store #2553~~
~~6650 Hembree Ln.~~
~~Windsor, CA 95492~~

~~Windsor Chevron~~
~~9120 Old Redwood Hwy.~~
~~Windsor, CA 95492~~

~~Windsor Golf Club, Inc.~~
~~1320 19th Hole Dr.~~
~~Windsor, CA 95492~~

~~Windsor Market #7~~
~~9025 Old Redwood Hwy., Ste G~~
~~Windsor, CA 95492~~

~~Windsor Palms Market~~
~~8465 Old Redwood Hwy., Ste 720~~
~~Windsor, CA 95492~~

~~Windsor Shell~~
~~9033 Old Redwood Hwy.~~
~~Windsor, CA 95492~~

~~A tobacco retailer that meets all of the following requirements shall be exempt from the limitations specified in subsection (b), above, and may receive or renew a tobacco retail license as long as it is otherwise eligible:~~

~~1. On the effective date of the ordinance codified in this chapter, the tobacco retailer is open for business and is operating as a tobacco retailer.~~

~~2. On the effective date of this ordinance codified in this chapter, the tobacco retailer maintains a valid tobacco retailer's license issued by the California Board of Equalization or its successor agency, if the tobacco retailer sells products that require such license.~~

~~3. The tobacco retailer license to be issued pursuant to this ordinance is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension).~~

~~4. The tobacco retailer has not violated this chapter or any other tobacco control law three (3) or more times within the previous five (5) year period.~~

~~5. The tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) conspicuous days.~~

~~6. The tobacco retailer does not substantially change the business premises or business operation.~~

~~7. The tobacco retailer continuously retains the right to operate under other applicable laws including, without limitation, this Code and the Town zoning ordinance.~~

~~d. Excessive Density. Other than the existing locations eligible for issuance of a tobacco retailer license as set forth above, no new license may be issued to authorize tobacco retailing if the number of tobacco retailer licenses issued exceeds one (1) retailer per one thousand five hundred (1,500) inhabitants Town-wide. For the purposes of this subsection, the total population of the Town 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.~~

3-11-125 - Application Procedure.

a. Application for a tobacco retailer's license shall be submitted in the name of each proprietor proposing to conduct or conducting retail tobacco sales, and shall be signed by each proprietor or an authorized agent thereof on an annual basis.

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 Town that the proprietor has complied with all laws applicable to tobacco retailing. A license issued contrary to this 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 3-11-160 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.

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 and whether the fixed location is within one thousand (1,000) feet of a school as measured in Section 3-11-120(b).

3. A single name and mailing address authorized by each proprietor to receive all communications and notices (the "authorized person and address") required by, authorized by, or convenient to the enforcement of this chapter. If an authorized person and 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 tobacco retailer's license by the California Department of Tax and Fee Administration or its successor agency.

5. 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.

b. 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.

c. 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, subject to the laws' exemptions.

3-11-130 - Issuance of License.

a. Bases For Denial. Upon the receipt of a complete application for a tobacco retailer's license and the license fee required by this chapter, the department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists and that no exceptions are applicable:

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 application seeks authorization for tobacco retailing at a location for which this chapter prohibits issuance of tobacco retailer licenses. However, this subparagraph shall not constitute a basis for denial of a license if the applicant provides the Department with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an arm's length transaction.

3. The application seeks authorization for tobacco retailing for a proprietor to whom this chapter prohibits a license to be issued.

4. The application seeks authorization for tobacco retailing at a location other than the one listed in Section 3-11-120(c), that is unlawful pursuant to this Code or the Town's zoning ordinance, or that is unlawful pursuant to any other law.

b. Appeal of Denial. A decision of the department to deny a license is appealable to the Town Council and any appeal must be filed in writing with the Town Clerk within fifteen (15) days of the mailing of the department's denial of the issuance of the license and the

applicable appeal fee must be paid.

3-11-135 - License Renewal and Expiration.

a. Renewal of License. A tobacco retailer's license is invalid if the appropriate license 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 calendar year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than July 1 of each year, commencing July 1, 2018, and annually thereafter.
b. Expiration of License. A tobacco retailer's license that is not timely renewed shall expire on June 30 of each year. To renew a license not timely renewed pursuant to subparagraph (a), the proprietor must:

1. submit the license fee and the renewal form; and

2. submit a signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed.

3-11-140 - Transfer Restrictions.

a. A tobacco retailer's license may not be transferred from one location to another. ~~A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietor(s).~~ **Tobacco licenses which are transfered from one proprietor to another at the same physical location shall be excempt from the restrictions of 3-11-120(c).**

b. Notwithstanding any other provision of this 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: the new proprietor(s) provide the department with clear and convincing evidence that the new proprietor(s) have acquired or are acquiring the location in an arm's length transaction.

3-11-145 - License Conveys a Limited, Conditional Privilege.

Nothing in this 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 Town identified on the face of the license. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code including without limitation, the zoning ordinance and building codes, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. For example, 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.

3-11-150 - 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 Town Council. The fee shall be calculated

so as to recover the cost of administration and enforcement of this 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 chapter. Fees are nonrefundable except as may be required by law.

3-11-155 - Compliance Monitoring.

a. Compliance with this chapter shall be monitored by the department. In addition, any peace officer may enforce the penal provisions of this chapter. The department may designate any number of additional persons to monitor compliance with this chapter.

b. The department shall inspect each tobacco retailer at least one (1) time per twelve (12) month period. Nothing in this paragraph shall create a right of action in any licensee or other person against the Town, the department, or their agents.

c. The department shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:

1. the youth decoy is participating in an inspection supervised by a peace officer, code enforcement official, or the person designated by the Town to monitor compliance with this chapter;

2. the youth decoy is acting as an agent of a person designated by the Town to monitor compliance with this chapter; or

3. the youth decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the department or the California Department of Health Services.

3-11-160 - 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, 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 designated in Section 3-11-115 above.

1. Upon a finding by the department of a first violation of this chapter at a location within any sixty (60)-month period, the license shall be suspended for thirty (30) days.

2. Upon a finding by the department of a second violation of this chapter at a location within any sixty (60)-month period, the license shall be suspended for ninety (90)

days.

3. Upon a finding by the department of a third violation of this chapter at a location within any sixty (60)-month period, the license shall be suspended for one (1) year.

4. Upon a finding by the department of four or more violations of this chapter at a location within any sixty (60)-month period, the license shall be revoked.

b. 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 3-11-130(a) existed at the time application was made or at any time before the license issued. Such a revocation shall be without prejudice to the filing of a new license application.

c. Appeal of Suspension or Revocation. A decision of the department to suspend or revoke a license is appealable to the Town Council and any appeal must be filed in writing with the Town Clerk within fifteen (15) days of mailing of the department's decision and the applicable appeal fee must be paid. If such an appeal is timely made, it shall stay enforcement of the appealed action. The decision of the Town Council shall be the final decision of the Town.

3-11-165 - Tobacco Retailing Without A Valid License.

a. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or, if on appeal from a determination of the department, the Town Council 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 sixty (60)-month period, no new license may issue for 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 sixty (60)-month period, no new license may issue for 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 sixty (60)-month period, no new license may issue for the location ~~(unless ownership of the business at the location has been transferred in an arm's length transaction)~~ until six (6) months have passed from the date of the violation.

b. 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 chapter. The decision by the department may be appealed to the Town Council pursuant to the procedures set forth in Section 3-11-160(c). 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.

c. For the purposes of the civil remedies provided in this chapter, each of the following constitutes a separate violation of this chapter:

1. each day on which a tobacco product or tobacco paraphernalia is offered for sale in violation of this chapter; or

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 chapter.

3-11-170 - Additional Remedies.

a. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

b. 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 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.

c. Violations of this chapter are subject to a civil action brought by the Town Attorney, punishable by a civil fine not less than One Hundred Dollars ($100) and not exceeding Five Hundred Dollars ($500) per violation.

d. Violations of this chapter may, in the discretion of the Town Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require.

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

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

g. 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 Town Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

3-11-175 - Enforcement.

The restrictions in this chapter prohibiting the sale of menthol flavored tobacco products and electronic smoking devices shall not be enforced by the Town or the department until ~~July 30, 2021~~. **June 30, 2022"**

SECTION 3. Severability. 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 Town Council of the Town of Windsor 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 4. Effective Date. This Ordinance shall become effective thirty (30) days from and after the date of its passage.

SECTION 5. Publication or Posting. The Town Clerk of the Town of Windsor shall cause this Ordinance to be published, or to be posted in at least three(3) public places in the Town of Windsor, in accordance with Section 36933 of the Government Code of the State of California.

PASSED, APPROVED, AND ADOPTED this 18th of August 2021, by the following vote:

AYES:	**COUNCILMEMBERS FUDGE, LEMUS, VICE MAYOR REYNOZA AND MAYOR SALMON**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

SAM SALMON, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK