

ORDINANCE NO. 2015-08

AN ORDINANCE OF THE CITY OF EL CERRITO REQUIRING THE LICENSURE OF TOBACCO RETAILERS AND AMENDING THE EL CERRITO MUNICIPAL CODE BY REPEALING SECTION 19.20.210, AMENDING SECTION 19.46.060(D) AND TABLE 19.07-A AND ADDING A NEW CHAPTER 6.100 (“TOBACCO RETAILER LICENSE PROGRAM”)

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge; and

WHEREAS, society is becoming more aware of the harms of smoking, particularly in El Cerrito, where a majority of participants in surveys and community meetings indicated a need to regulate smoking within the City limits; and

WHEREAS, the City Council recently adopted Ordinance 2014-05 to regulate smoking within the City of El Cerrito and protect the public and environment from secondhand smoke; and

WHEREAS, nationally, the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare and therefore is a threat to the public health, safety, and welfare of the residents of the City of El Cerrito; 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 City of El Cerrito, to protect the health, safety, and welfare of our residents; 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;<sup>1</sup> and

WHEREAS, the California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority, as evidenced by the fact that:

1. The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Cal. Health & Safety Code § 118950);
2. State law prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code § 308);
3. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Cal. Bus. & Prof. Code § 22956) and provides procedures for using minors to conduct onsite compliance checks of tobacco retailers (Cal. Bus. & Prof. Code § 22952); and

4. State law prohibits the sale or furnishing of electronic cigarettes to minors (Cal. Health & Safety Code § 119405).

WHEREAS, the density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates;<sup>2</sup> and

WHEREAS, a California study found that the density of tobacco retailers near schools was positively associated with the prevalence of students reporting experimental smoking;<sup>3</sup> and

WHEREAS, a high density of tobacco retailers has been associated with increased smoking rates, particularly among youth;<sup>4</sup> and

WHEREAS, over 8 percent of all tobacco retailers statewide were witnessed unlawfully selling to minors in 2012, and tobacco stores (defined as businesses in which at least 80 percent of merchandise was tobacco products) sold to minors at a much higher rate than the statewide average, as high as 20.5 percent;<sup>5</sup> and

WHEREAS, many cigarette, tobacco, and retail outlets specializing in tobacco paraphernalia (sometimes called “head shops”) sell items that are commonly known to be drug paraphernalia, including bongs and pipes used to smoke methamphetamine and other illicit drugs, and claim that such items are intended for tobacco use; and

WHEREAS, state law prohibits sales of “drug paraphernalia”;<sup>6</sup> yet 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, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); 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

WHEREAS, California courts have affirmed the power of the City of El Cerrito 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, despite the state’s efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that 19 percent of seniors in West Contra Costa Unified School District have smoked a whole cigarette;<sup>7</sup> and in California, 64 percent of adult smokers started by the age of 18;<sup>8</sup> and

WHEREAS, “little cigars” look nearly identical to cigarettes;<sup>9</sup> and

WHEREAS, although the sale of flavored and individual cigarettes is banned by federal

law, neither federal nor California law restrict the sale of flavored cigar products or the sale of individual cigar products;<sup>10</sup> and

WHEREAS, the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy and fruit-flavored cigarettes,<sup>11</sup> largely because these flavored products were marketed to youth and young adults,<sup>12</sup> and younger smokers were more likely to have tried these products than older smokers;<sup>13</sup> and although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,<sup>14</sup> neither federal nor California laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic smoking devices and the nicotine solutions used in these devices; and

WHEREAS, flavored non-cigarette tobacco products have become increasingly common and are available in a variety of flavors that appeal to children and young adults,<sup>15</sup> including apple, cherry, chocolate, grape, peach, strawberry, and vanilla; and

WHEREAS, the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;<sup>16</sup> and

WHEREAS, data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;<sup>17</sup> and

WHEREAS, tobacco companies have used flavorings such as mint and wintergreen in smokeless tobacco products as part of a “graduation strategy” to encourage new users to start with products with lower levels of nicotine and progress to products with higher levels of nicotine;<sup>18</sup> and

WHEREAS, the U.S. Centers for Disease Control and Prevention has reported current e-cigarette use (use on at least 1 day in the past 30 days) among high school students increased from 4.5 percent in 2013 to 13.4 percent in 2014, rising from approximately 660,000 to 2 million students. Among middle school students, current e-cigarette use more than tripled from 1.1 percent in 2013 to 3.9 percent in 2014—an increase from approximately 120,000 to 450,000 students.;<sup>19</sup> and

WHEREAS, nicotine solutions, which are consumed via electronic smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;<sup>20</sup> and

WHEREAS, the California Attorney General has stated that electronic cigarette companies have targeted minors with fruit-flavored products;<sup>21</sup> and

WHEREAS, research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes. For example:

1. A review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the

ordinances were enacted, with an average decrease of 26 percent in the youth sales rate;<sup>22</sup>

2. License suspension or revocation after repeated violations is recognized as an effective strategy to reduce youth access to tobacco;<sup>23</sup> and

3. A study of the effect of licensing and enforcement methods used in the Philadelphia area revealed a decrease in sales to minors from 85 percent in 1994 to 43 percent in 1998;<sup>24</sup>

4. A study of several Minnesota cities found that an increased licensing fee in conjunction with strict enforcement of youth access laws led to a decrease from 39.8 percent to 4.9 percent in the number of youth able to purchase tobacco;<sup>25</sup> and

WHEREAS, over 148 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from using tobacco;<sup>26</sup> and

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

WHEREAS, the City Council finds that the regulations imposed by this chapter provide a reasonable opportunity for tobacco retailers to operate within the City of El Cerrito. In the establishment of these regulations, the City Council considered their effects on the number and suitability of locations for tobacco retailers.

NOW THEREFORE, it is the intent of the City Council, in enacting this ordinance, to ensure compliance with the business standards and practices of the City and to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those which prohibit or discourage the sale or distribution of tobacco and nicotine products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalties provided therein.

The City Council of the City of El Cerrito does hereby ordain as follows:

SECTION 1. FINDINGS.

The above recitals are hereby declared to be true and correct and are findings of the City Council of the City of El Cerrito.

SECTION 2. AMENDMENT OF TITLE 19 OF THE EL CERRITO MUNICIPAL CODE

A. Section 19.20.210 (“Tobacco Sales”) of the El Cerrito Municipal Code is hereby repealed.

B. Section 19.46.060 (D) of the El Cerrito Municipal Code is hereby amended to read as follows: *(strikeout indicating deleted text)*

Section 19.46.060(D) – **Industry, Medium.** Manufacturing or assembly of products from extracted, raw or finished materials or recycled or secondary materials, or bulk storage and handling of such products and materials. This classification includes: ~~tobacco product~~

~~manufacturing~~ textile mills, textile product mills, apparel manufacturing, leather and allied product manufacturing, wood product manufacturing, paper manufacturing, chemical manufacturing, plastics and rubber products manufacturing, nonmetallic mineral product manufacturing, primary metal manufacturing, and fabricated metal product manufacturing.”

C. Table 19.07-A (“Use Regulations-Commercial And Transit-Oriented Mixed-Use Districts”) under the heading Commercial Use Types is hereby amended to read as follows (*strikeout indicates deleted text and underlined text is to be added*):

	CN	CC	TOM	Additional Regulations
Tobacco Sales	<u>CL</u>	<u>AL</u>	<u>AL</u>	See <u>Section 19.20.210</u> <u>Chapter 6.100</u>

D. 19.46.050.X.2 (Use Classifications *strikeout indicates deleted text and underlined text is to be added*):

~~Tobacco Sales. Retail establishments deriving 50 percent or more of gross sales receipts from the sale or exchange of tobacco related products, including but not limited to, cigarettes, cigars, chewing tobacco and dipping tobacco, cigarette papers, pipes, or any other instrument or paraphernalia for the smoking or ingestion of tobacco and products prepared from tobacco.~~

“Tobacco Retailer” means any person that sells tobacco, tobacco products, electronic smoking devices, smoking paraphernalia, or any combination thereof, including retail or wholesale sales. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products or smoking paraphernalia sold, offers for sale, exchanged, or offered for exchange.

**SECTION 3. AMENDMENT OF EL CERRITO MUNICIPAL CODE TITLE 6**  
Title 6 (“Business Permits and Regulations”) of the El Cerrito Municipal Code is hereby amended to add a new Chapter 6.100 (“Tobacco Retailer License Program”) to read as follows:

**TOBACCO RETAILER LICENSE PROGRAM**

**Article 1 – Title and Definitions**

**6.100.010 – Title.**

**6.100.020 – Definitions.**

**Article 2. Requirements and Prohibitions**

**6.100.040 - Tobacco Retailer License Required.**

**6.100.060 - Lawful Business Operation.**

**6.100.080 - Display of License.**

**6.100.100 - Positive Identification Required.**

- 6.100.120 - Minimum Age for Persons Selling Tobacco.**
- 6.100.140- Self-Service Displays Prohibited.**
- 6.100.160 - Flavored Tobacco Products Prohibited.**
- 6.100.180 - Single and Small-Pack Cigars Prohibited.**
- 6.100.200 - Original Labeling and Packaging.**
- 6.100.220 - No Tobacco Product or Electronic Smoking Device Use on Premises.**
- 6.100.240 - Mobile Vending.**
- 6.100.260 - Tobacco Samples Prohibited.**
- 6.100.280 - False and Misleading Advertising Prohibited.**
- 6.100.300 - Drug Paraphernalia Laws.**
- 6.100.320 - Significant Tobacco Retail Establishments Prohibited.**
- 6.100.340 - Consideration for Existing Retailers.**

### **Article 3. Location Requirements**

- 6.100.360 - Schools and Youth-Populated Areas.**
- 6.100.380 - Proximity to Other Retailers.**
- 6.100.390 - Distances**

### **Article 4. License Application and Procedures.**

- 6.100.400 - Application Form.**
- 6.100.420 - Issuance Procedure.**
- 6.100.440 - Appeal.**
- 6.100.460 - Renewal of License.**
- 6.100.480 - Delinquency—Installments.**
- 6.100.500 - Licenses Nontransferable.**
- 6.100.520 - License Conveys a Limited, Conditional Privilege.**
- 6.100.540 - Fee for License.**
- 6.100.560 - Compliance Monitoring.**
- 6.100.580 - Inspection And Right Of Entry.**
- 6.100.600 - Suspension or Revocation of License for Violation.**
- 6.100.620 - Product Removal During Suspension or Revocation.**
- 6.100.640 - Appeal of Suspension or Revocation.**

### **Article 5. Penalties**

- 6.100.660 – Penalties.**
- 6.100.680 - Tobacco Retailing Without a License.**

### **Article 1. Title and Definitions**

**6.100.010 Title.** This Chapter shall be known as the Tobacco Retailer License Program. The City of El Cerrito hereinafter shall be called "City."

**6.100.020 Definitions.** The following definitions apply to this Chapter:

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. The City may require tobacco retailers to provide documentation that demonstrates that a transaction was at arm’s length.

B. “Cigar” means (i) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (ii) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this Chapter, “Cigar” includes, but is not limited to, tobacco products known or labeled as “cigar,” “cigarillo,” “tiparillo,” “little cigar,” “blunt,” “blunt wrap,” or “cigar wrap.”

C. “Cigar Lounge” means any facility, building, structure or location, where customers consume cigars or similar smoking products

D. “Characterizing Flavor” means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted by a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.

E. “Distinguishable” means perceivable by an ordinary consumer by either the sense of smell or taste.

F. “Drug Paraphernalia” has the meaning set forth in California Health & Safety Code section 11014.5, as that section may be amended from time to time.

G. “Electronic Smoking Device” means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. “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. “Electronic smoking device” does not include any product specifically approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

H. “Flavored Tobacco Product” means any tobacco product (other than cigarettes as defined by the U.S. Food and Drug Administration) that contains a constituent that imparts a characterizing flavor. This includes cigars, little cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, and electronic cigarettes or electronic smoking devices containing nicotine.

1. For purposes of this definition, “constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, which is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.

2. Further, a tobacco product is presumed to be a flavored tobacco product if a manufacturer or any of the manufacturer's agents or employees has:

a. Made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text and/or images on the product's labeling or packaging that are used explicitly or implicitly to communicate information about the flavor, taste, or aroma of a tobacco product; or

b. Taken actions directed to consumers that would be reasonably expected to result in consumers believing that the tobacco product imparts a characterizing flavor.

I. "Gross Receipts" includes the total of amounts actually received or receivable from sales and the total of amounts actually received or receivable for the performance of any act or service of whatever nature it may be for, for which a charge is made or credit allowed, in connection with the sale of materials, goods, wares, or merchandise. Refer to ECMC 4.32.010 for the full definition.

J. "Hookah Lounge" means any facility, building, structure or location, where customers share tobacco or a similar smoking product from a communal hookah placed throughout the establishment.

K. "Imitation Tobacco Product" means any edible non-tobacco product designed to resemble a tobacco product or any non-edible non-tobacco product designed to resemble a tobacco product that is intended to be used by children as a toy. Examples of imitation tobacco products include, but are not limited to, candy or chocolate cigarettes, bubble gum cigars, shredded bubble gum resembling spit tobacco, and shredded beef jerky in containers resembling snuff tins. An electronic smoking device is not an imitation tobacco product.

L. "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.

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

N. "Self-Service Display" means the open display or storage of tobacco products, electronic smoking devices or smoking paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.

O. "Significant Tobacco Retail Establishment" means any tobacco retail business for which the principal or core business is selling tobacco products, smoking paraphernalia, or both, as evidenced by any one of the following:

1. Twenty percent (20%) or more of floor or display area is devoted to tobacco products, smoking paraphernalia, or both;
2. Fifty percent (50%) or more of gross sales receipts are derived from tobacco products, smoking paraphernalia, or both;

### 3. Self-disclosure

P. “Smoking Lounge” means any facility, building, structure or location, where customers consume tobacco or a similar smoking product, or where customers use an electronic smoking device or other apparatus to deliver an inhaled dose of nicotine or other substance within the establishment. This includes cigar lounge, hookah lounge, vapor bar, and similar establishments.

Q. “Smoking Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the consumption or preparation of tobacco products; electronic smoking devices and item specifically designed for the preparation, charging, or use of Electronic Smoking Devices including cartridges, cartomizers, e-liquid, smoke juice, tips, atomizers, Electronic Smoking Device batteries, Electronic Smoking Device chargers, and any other Electronic Smoking Device Paraphernalia.

R. "Tobacco Product" means any of the following:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, snus; 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.
3. 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.

S. “Tobacco Retailer” or “Retailer” means any person that sells tobacco, tobacco products, electronic smoking devices, smoking paraphernalia, or any combination thereof, including retail or wholesale sales. “Tobacco retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of tobacco, tobacco products or smoking paraphernalia sold, offers for sale, exchanged, or offered for exchange.

T. “Tobacco Retailer License” means the license issued pursuant to Article 4 that authorizes retail sales of tobacco, tobacco products, electronic smoking devices, smoking paraphernalia, or any combination thereof, at a certain, fixed location and by a certain tobacco retailer.

U. “Vapor Lounge” or “Vape Lounge” or “Vapor Bar” (also referred to as “smoking device bar” or “electronic smoking device lounge”) means any facility, building, structure or

location where customers use an electronic smoking device or other apparatus to deliver an inhaled dose of nicotine or other substance within the establishment.

## **Article 2. Requirements and Prohibitions**

**6.100.040 Tobacco Retailer License Required.** It shall be unlawful for any person to engage in the retail sales of tobacco in the City of El Cerrito without first obtaining and maintaining a valid tobacco retailer license pursuant to this chapter for each location at which that activity is to occur. Tobacco retailing without a valid tobacco retailer license is a nuisance as a matter of law.

**6.100.060 Lawful Business Operation.** It shall be a violation of this chapter for any person, or any of the person's agents or employees, to violate any local, state, and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or smoking paraphernalia.

**6.100.080 Display of License.** A current tobacco retailer license shall be prominently displayed in a publicly visible location at each licensed location.

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

**6.100.120 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 the sales transaction of tobacco products.

**6.100.140 Self-Service Displays Prohibited.** Tobacco retailing, including sales of any tobacco product, electronic smoking device, or smoking paraphernalia, by means of a self-service display is prohibited.

**6.100.160 Flavored Tobacco Products Prohibited.** No tobacco retailer, nor any of the retailer's agents or employees, shall sell or offer for sale, or possess with intent to sell or offer for sale, any imitation tobacco products or flavored tobacco product.

1. There shall be a presumption that a tobacco retailer in possession of four (4) or more flavored tobacco products, which shall include individual flavored tobacco products, packages of flavored tobacco products, or any combination thereof, possesses such flavored tobacco products with intent to sell or offer for sale.

**6.100.180 Single and Small-Pack Cigars Prohibited.** No tobacco retailer, nor any of the retailer's agents or employees, shall sell or offer for sale, or possess with intent to sell or offer for sale:

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

2. Any number of 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 containing fewer than five (5) cigars.
4. Subsection one does not apply to the sale or offer for sale of a single cigar for which the retail price exceeds five dollars (\$5.00). This minimum retail amount may be adjusted from time to time by a resolution of the City Council.

**6.100.200 Original Labeling and Packaging.** Every tobacco retailer shall maintain on the premises the original labeling and packaging provided by the manufacturer for all tobacco products that are sold or offered for sale by the retailer separately from the original packaging designed for retail sale to the consumer. The original labeling and packaging from which the contents are sold separately shall be maintained during such time as the contents of the package are offered for sale, and may be disposed of upon the sale of the entire contents of such package.

**6.100.220 No Tobacco Product or Electronic Smoking Device Use on Premises.** A Cigar lounge, hookah bar, vape bar or similar establishment is prohibited in the City of El Cerrito. No retailer shall operate a smoking lounge, or any facility, building, structure or location, where customers consume any amount of tobacco product, or where customers use an electronic smoking device or other apparatus to deliver an inhaled dose of nicotine or other substance.

**6.100.240 Mobile Vending.** No license for a tobacco retailer 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.

**6.100.260 Tobacco Samples Prohibited.** Except as allowed in adult-only businesses per State and Federal law, no person shall knowingly distribute, furnish without charge, or cause to be furnished without charge for a commercial purpose, cigarettes or other tobacco products including and smoking paraphernalia, or coupons for discounts on the purchase of cigarettes or other tobacco products including and smoking paraphernalia, at any event open to the public or in any public place, including but not limited to any public way, mall or shopping center, park, playground, or any property owned by the City or any other public agency.

**6.100.280 False and Misleading Advertising Prohibited.** A person selling tobacco products without a valid tobacco retailer license or a licensee whose privilege to sell tobacco has been suspended or revoked:

1. Shall keep all tobacco products and smoking paraphernalia out of public view. The public display of tobacco products or smoking paraphernalia in violation of this provision shall constitute tobacco retailing without a license; and
2. Shall not display any advertisement relating to tobacco products or smoking paraphernalia that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

**6.100.300 Drug Paraphernalia Laws.** It shall be a violation of this chapter for any retailer or any of the retailer'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, except that conduct authorized pursuant to the state Medical Marijuana Program (California Health and Safety Code sections 11362.7 *et seq.*) shall not be a violation of this chapter.

**6.100.320 Significant Tobacco Retail Establishments Prohibited.** No tobacco retailer shall operate as a “significant tobacco retail establishment.”

1. No license for a tobacco retail establishment may be issued if the retailer intends to operate a significant tobacco retail establishment.
2. No tobacco retailer may utilize more than twenty percent (20%) of the store display area for tobacco products, smoking paraphernalia or both.
3. No tobacco retailer may derive fifty percent (50%) or more of gross receipts from tobacco products, smoking paraphernalia, or both.

Existing tobacco retailers operating at the time this chapter goes into effect may seek an exception to this section for up to ten (10) years) by demonstrating that use of a larger display area or percentage of gross receipts preceded the effective date of this chapter. The tobacco retailer shall make this showing to the satisfaction of the City. Such tobacco retailers will be allowed to continue to devote the same amount of display area and/or receive up to the same percent of gross receipts from tobacco products as demonstrated so long as:

1. A tobacco retailer license and exception to this section are obtained in a timely manner;
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, as determined by the City;
4. The tobacco retailer does not increase the percent of display area and/or gross receipts beyond that store’s previously declared percentages, or the aforementioned limits, whichever is greater;
5. The tobacco retailer does not receive three or more citations for any reason within a five year period;
6. The tobacco retailer retains the right to operate under other applicable laws; and
7. The tobacco retailer is required to post signs restricting the age of customers to the state mandated minimum age for purchasing tobacco.

This exception will sunset ten (10) years from adoption of this ordinance.

**6.100.340 Consideration for Existing Retailers.** Existing tobacco retailers have 24 months from adoption of this chapter to comply with sections 6.100.120 through 6.100.200 inclusive so long as:

1. The tobacco retailer license is obtained and renewed annually in a timely manner. The license will be considered delinquent if payment is past due by more than 30 days;
2. The tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days, unless required to close or suspend tobacco retailing to comply with other laws, in which case the sixty (60) day period shall be tolled until the tobacco retailer is legally allowed to re-open or resume tobacco sales;

3. The tobacco retailer does not substantially change the business premises or business operation;
4. The tobacco retailer does not receive three or more violations within a twenty-four month period; and
5. The tobacco retailer retains the right to operate under other applicable laws.

### **Article 3. Location Requirements.**

**6.100.360 Schools and Youth-Populated Areas.** No new license may be issued to authorize tobacco retailing within five hundred (500) feet of public and private schools and areas with youth populations as follows:

1. A private or public kindergarten, elementary, middle, junior high, or high school;
2. A library open to the public; or
3. A publically-owned park (excluding the Ohlone Greenway and pocket parks as defined in the San Pablo Avenue Specific Plan) or recreation facility including, but not limited to, clubhouses, the Community Center, the Senior Center, and the Swim Center.

EXCEPTION: Tobacco retailers operating at the time this chapter goes into effect may remain in their current location. In addition, if, within ten (10) years of adoption of this ordinance, such businesses are sold in an arm's length transaction, as determined by the City, the location exception will continue to apply to the new owner.

**6.100.380 Proximity to other Retailers.** No new license may be issued to authorize tobacco retailing within one thousand (1,000) feet of a tobacco retailer location already licensed pursuant to this chapter.

**EXCEPTIONS:**

1. Tobacco retailers operating at the time this chapter goes into effect may remain in their current location. In addition, if, within ten (10) years of adoption of this ordinance, such businesses are sold in an arm's length transaction, as determined by the City, the location exception will continue to apply to the new owner.
2. Any new retailer may request an exception to this section. If the body of approval is the Planning Commission, they will hear the exception request; If the Planning Commission is not the body of approval for the use, the Zoning Administrator will hear the exception request at an administrative hearing. In making a decision on an exception, the approving body will consider whether there are specific economic, legal, social, environmental or other benefits of the proposed retail operation that will outweigh the harms. (For example, the decision to grant the exception will take into account if the proposed use will provide a public benefit which will further one or more of the goals of the San Pablo Avenue Specific Plan or other adopted city policy document related to economic development.) The benefits will be stated in a finding(s) that the approving body makes when approving the exception.

**6.100.390 Distances.** The distances set forth in section 6.100.360 shall be measured as a straight line, without regard to intervening structures or objects, from the property line of the property containing the tobacco retail business to the property line of the other property. The

distances set forth in section 6.100.380 between tobacco retailers shall be measured from the outside wall of the tenant space of each tobacco retailer.

#### **Article 4. License Application and Procedures.**

##### **6.100.400 Application Form.**

Applications for a tobacco retailer license shall be submitted on a form provided by the City.

##### **6.100.420 Issuance Procedure.**

Upon the receipt of a complete application for a tobacco retailer license and the license fee required by this chapter, the City shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter;
2. Tobacco retailing is not an allowed use at the stated location;
3. The application seeks authorization for tobacco retailing that is prohibited pursuant to this chapter, that is unlawful pursuant to any portion of the El Cerrito Municipal Code or that is unlawful pursuant to any other law;
4. The location for which a tobacco retailer license is sought lacks a valid state tobacco retailer license issued by the California Board of Equalization; or
5. The applicant has been found in violation of three (3) or more regulations within the last five years pertaining to any local, state, and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, imitation tobacco products and/or smoking paraphernalia.

##### **6.100.440 Appeal.**

Any person aggrieved by any decision of the license administrator with respect to the issuance or refusal to issue such license may follow the process described in ECMC 4.32.150

##### **6.100.460 Renewal of License.**

The initial tobacco retailer license will expire at the same time as the retailer's business license, therefore, the initial license may have a term shorter than one year.

The renewal term of a tobacco retailer license is one year. Each tobacco retailer shall apply for the annual renewal of his or her tobacco retailer license and the license fee shall be due and payable in advance of the time the retailer's business license expires. The applicant for the renewal of a tobacco retailer license shall submit the renewal form, including a sworn statement setting forth such information concerning the applicant's business as may be required by the license administrator to enable the administrator to ascertain if tobacco retail was the principal or core business during the preceding year and if the applicant or an employee has been found in violation pertaining to any local, state, and/or federal laws regarding sales, advertising or display of tobacco products, electronic smoking devices, flavored tobacco products, imitation tobacco products and/or smoking paraphernalia.

**6.100.480 Delinquency—Installments.**

For failure to pay a renewal fee of the license when due, the license administrator shall add a penalty at the rate set forth for business license taxes per ECMC 4.32.210, using the tobacco license cost as the basis to determine the penalty amount.

No license shall be issued, nor one which has been suspended or revoked, shall be reinstated or reissued to any person who, at the time of applying therefore, is indebted to the City for any delinquent license fees, unless such licensee, with the consent of the license administrator, enters into a written agreement with the City through the license administrator to pay such delinquent fees in at least monthly installments extending over a period not to exceed one year.

Such agreement must acknowledge the obligation owed to the City by the licensee, and provide that upon failure to make timely payment of any installment, the whole amount unpaid shall become immediately due and payable and that the current license shall be revocable by the license administrator upon thirty days' notice and, in the event legal action is brought by the City to enforce collection of any amount included in the agreement, such licensee shall pay all costs of suit incurred by the city or its assignee, including reasonable attorney fees. The execution of such an agreement shall not prevent the prior accrual of penalties on unpaid balances at the rate provided in this section, but no penalties shall accrue on account of fees included in the agreement after the execution of the agreement and the payment of the first installment and during such time as such licensee shall not be in breach of the agreement.

**6.100.500 Licenses Nontransferable.**

A. A tobacco retailer license may not be transferred from one person to another or from one location to another. A new tobacco retailer license is required whenever a tobacco retailing business has a change in owner(s).

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:

1. The location has been transferred to new owner(s) in an arm's length transaction; and
2. The new owner(s) provide the City with convincing evidence that the new owner(s) have acquired or are acquiring the location in an arm's length transaction.

**6.100.520 License Conveys a Limited, Conditional Privilege.** Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the City identified on the face of the permit. 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 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 license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

**6.100.540 Fee for License.** The fees for the annual tobacco retailer license shall be established by the City Council and included in the City's Master Fee Schedule. Fees are payable at the time the retailer obtains or renews its business license. 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 enforcement, but shall not exceed the cost of the regulatory program authorized by this chapter. Annual fees shall not be pro-rated or refunded during the course of the year. Upon adoption of this chapter, the following fees will be included in the City's Master Fee Schedule as amended by Council resolution and reviewed annually thereafter:

\$485 for tobacco retailer license (initial license)

\$439 for tobacco retailer license renewal

The City may charge a re-inspection fee to offset the additional staff time required to handle non-compliant businesses. Additional inspections will be billed based on actual costs incurred.

To encourage compliance in a timely manner, tobacco retailers operating at the time this chapter is adopted who are able to demonstrate full compliance with Article 2 (Requirements and Prohibitions) of this chapter at the time of initial application for a tobacco retailer license shall have the license fee for the first year reduced by fifty percent (50%). Tobacco retailers operating at the time this chapter is adopted who are able to demonstrate full compliance with Article 2 of this chapter at the time of license renewal in 2016 shall have that year's license renewal fee reduced by twenty five percent (25%).

**6.100.560 Compliance Monitoring.** Compliance with the regulations in this chapter shall be enforced by the City's Community Development Department, in conjunction with the El Cerrito Police Department. The City Manager may designate another position responsible for these duties. The Code Enforcement Officer or his/her designee shall use reasonable efforts to conduct a compliance check visit to each tobacco retailing location at least once during the initial twelve (12) month period, and thereafter on a periodic basis to determine if the tobacco retailer is in compliance with these regulations. Nothing in this section shall create a right of action in any tobacco retailer or other person against the City or its agents in conducting these annual inspections.

Retailers may be subject to additional inspections based on random selection, past violations or complaints. Nothing in this paragraph shall create a right of action in any licensee or other person against the City or its agents.

The City's Police Department shall develop and carry out inspections in an effort to enforce any local, state or federal law related to tobacco sales, especially those related to a minimum age for tobacco purchases or possession.

**6.100.580 Inspection and Right of Entry.** To the extent permissible by law, the Community Development Director, Chief of Police and their designees shall have the right to enter and inspect any tobacco retailer for the purpose of ensuring compliance with the regulations in this chapter, provided that any such entry and inspection shall be conducted in

a reasonable manner and when there is reason to suspect a violation of any of the provisions of the tobacco retailer regulations.

Whether in plain clothes or uniform, peace officers have the right to visit and inspect any tobacco retailing location at any time during business hours without a search warrant upon presentation of appropriate credentials. This includes inspecting the bar and back bar, store room, office, closed or locked cabinets, safes, kitchen, or any other area within the premises. Inspections will be requested or conducted no more than once in a 24-hour period. Refusal to allow inspection will be a violation of this chapter.

**6.100.600 Suspension or Revocation of License for Violation.** In addition to any other penalty authorized by law, a tobacco retailer license shall be suspended or revoked if any court of competent jurisdiction determines, or the City 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 this chapter.

1. Upon a finding by the City of a first violation of this chapter, at a location within any five (5) year period, the privilege to sell tobacco, tobacco products, electronic smoking devices and smoking paraphernalia shall be suspended for ten (10) days.
2. Upon a finding by the City of a second violation of this chapter at a location within any five (5) year period, the privilege to sell tobacco, tobacco products, electronic smoking devices and smoking paraphernalia shall be suspended for thirty (30) days.
3. Upon a finding by the City of a third violation of this chapter at a location within any five (5) year period, the privilege to sell tobacco, tobacco products, electronic smoking devices and smoking paraphernalia shall be suspended for sixty (60) days.
4. Upon a finding by the City of four (4) or more violations of this chapter at a location within any five year period, the tobacco retailer license shall be revoked.

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:

1. The location has been transferred to new owner(s) in an arm's length transaction; and
2. The new owner(s) provide the City with evidence that the new owner(s) have acquired or are acquiring the location in an arm's length transaction.

**6.100.620 Product Removal During Suspension or Revocation.** To ensure customers and the public are aware of periods of suspension or revocation, all tobacco-related products, paraphernalia, and advertising must be removed from public view during periods of suspension or revocation.

1. During periods of suspension or revocation, the City shall post a notice to the public on the property that states "This retailer has violated important public health laws regulating tobacco. Tobacco sales are currently banned at this location." The notice will be at least 22" wide and placed nearby the main entrance to the store

**6.100.640 Appeal of Suspension or Revocation.** Any person found to be in violation of this chapter shall have the right to a hearing in accordance with ECMC Chapter 1.14, “Administrative Penalties.”

## **Article 5. Penalties**

### **6.100.660 Penalties.**

- A. Violations of this chapter are hereby declared to be public nuisances.
- B. Violations of this chapter may be prosecuted as infractions or misdemeanors when the interests of justice so require.
- C. Violations of this chapter are subject to a civil action brought by the City Attorney, punishable by a civil fine not less than two hundred fifty dollars (\$250) and not exceeding one thousand dollars (\$1,000) per violation.
- D. Any person who is found to have violated this chapter shall be liable for such costs, expenses and disbursements paid or incurred by the City or any of its contractors in the correction, abatement, prosecution of, or administrative hearing on, the violation. Re-inspection fees to ascertain compliance with previously noticed violations shall be charged to the owner of the establishment, as may be set by the City Council in the Master Fee Schedule.

### **6.100.680 Tobacco Retailing Without A License.**

A. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the City 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 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 license as follows:

- 1. After a first violation of this section at a location within any five (5) year period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm’s length transaction), until thirty (30) days have passed from the date of the violation.
- 2. After a second violation of this section at a location within any five (5) year period, no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm’s length transaction), until ninety (90) days have passed from the date of the violation.
- 3. After of a third or subsequent violation of this section at a location within any five (5) year period, the tobacco retailer license will be revoked and no new license may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm’s length transaction), until two (2) years have passed from the date of the violation.

B. For the purposes of the civil remedies provided in this chapter:

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

SECTION 4. SEVERABILITY If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this chapter. The city council hereby declares that it would have passed the ordinance codified in this chapter, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional without regard to whether any portion of this chapter would be subsequently declared invalid or unconstitutional.

SECTION 5. NOTICING, POSTING AND PUBLICATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given and the public hearing has been properly held and conducted.

SECTION 6. EFFECTIVE DATE.

This ordinance shall take effect on January 1, 2016.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on September 15, 2015 and passed by the following vote:

AYES: Councilmembers Abelson, Bridges, Lyman, Quinto and Mayor Friedman  
NOES: None  
ABSENT: None  
ABSTAIN: None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on \_\_\_\_\_, 2015 and passed by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

APPROVED:

\_\_\_\_\_  
Mark Friedman, Mayor

ATTEST:

\_\_\_\_\_  
Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on \_\_\_\_\_, 2015.

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Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2015-XX of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the \_\_\_ day of \_\_\_\_\_, 2015; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this \_\_\_ day of \_\_\_\_\_, 2015.

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Cheryl Morse, City Clerk

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- <sup>1</sup> U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking — 50 Years of Progress. A Report of the Surgeon General*, [www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf](http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf)
- <sup>2</sup> Henriksen L, Feighery EC, Schleicher NC, et al. 2008. “Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?” *Preventive Medicine* 47: 210-214.
- <sup>3</sup> McCarthy WJ, Mistry R, Lu Y, et al. 2009. “Density of Tobacco Retailers Near Schools: Effects on Tobacco Use Among Students.” *American Journal of Public Health*, 99(11): 2006-2013.<sup>4</sup>
- Henriksen L, Feighery EC, Schleicher NC, et al. 2008. “Is Adolescent Smoking Related to Density and Proximity of Tobacco Outlets and Retail Cigarette Advertising Near Schools?” *Preventive Medicine* 47:210-214.<sup>5</sup>
- Chapman R. 2012. *State Health Officer’s Report on Tobacco Use and Promotion in California*. California Department of Public Health, California Tobacco Control Program, p. 8, [www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf](http://www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf)
- <sup>6</sup> Cal. Health & Safety Code §§ 11014.5, 11364.7.
- <sup>7</sup> West Contra Costa Unified School District. California Healthy Kids Survey, 2014-15: Main Report. San Francisco: WestEd Health & Human Development Program for the California Department of Education. [http://www.wccusd.net/cms/lib03/CA01001466/Centricity/Domain/11/West\\_Contra\\_Costa\\_Unified\\_1415\\_Sec\\_CHKS.pdf](http://www.wccusd.net/cms/lib03/CA01001466/Centricity/Domain/11/West_Contra_Costa_Unified_1415_Sec_CHKS.pdf)
- <sup>8</sup> Chapman, R. 2012. *State Health Officer’s Report on Tobacco Use and Promotion in California*. California Department of Public Health, California Tobacco Control Program, p. 6, [www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf](http://www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf)
- <sup>9</sup> Answers About Black & Milds, Swisher Sweets, and Other Little Cigars and Cigarillos. Available at: <http://smokefree.gov/tob-cigarillo.aspx>.
- <sup>10</sup> 21 C.F.R. § 1140.14(d).
- <sup>11</sup> 21 U.S.C. § 387g.
- <sup>12</sup> Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.”

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- American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).
- <sup>13</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).
- <sup>14</sup> 21 U.S.C. § 387g.
- <sup>15</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 164, 205, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf); Morris DS and Fiala SC. 2013. “Flavoured, Non-cigarette Tobacco for Sale in the USA: An Inventory Analysis of Internet Retailers.” *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/08/08/tobaccocontrol-2013-051059.full>.
- <sup>16</sup> Food and Drug Administration. 2011. *Fact Sheet: Flavored tobacco products*, [www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf](http://www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf); U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).
- <sup>17</sup> King BA, Tynan MA, Dube SR, et al. 2013. “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students.” *Journal of Adolescent Health*. [Article in press], [www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract](http://www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract).
- <sup>18</sup> U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).
- <sup>19</sup> Centers for Disease Control & Prevention. April 17, 2015. “Tobacco Use Among Middle and High School Students — United States, 2011–2014 .” *Morbidity and Mortality Weekly Report (MMWR)* 64(14);381-385 [http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a3.htm?s\\_cid=mm6414a3\\_w](http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6414a3.htm?s_cid=mm6414a3_w)
- <sup>20</sup> Cameron JM, Howell DN, White JR, et al. 2013. “Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions.” *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, [www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf](http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf).
- <sup>21</sup> Press Release, State of California Department of Justice, Office of the Attorney General, Brown Announces Electronic Cigarette Maker's Agreement to Stop Deceptive Marketing and Sales to Minors (Aug. 3, 2010), [oag.ca.gov/news/press-releases/brown-announces-electronic-cigarette-makers-agreement-stop-deceptive-marketing](http://oag.ca.gov/news/press-releases/brown-announces-electronic-cigarette-makers-agreement-stop-deceptive-marketing).

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- <sup>22</sup> American Lung Association in California, Center for Tobacco Policy & Organizing. 2013. *Tobacco Retail Licensing is Effective*, <http://center4tobaccopolicy.org/wp-content/uploads/2013/09/Tobacco-Retailer-Licensing-is-Effective-September-2013.pdf>
- <sup>23</sup> California Department of Health Services, Tobacco Control Section. 2003. *Final Report, Independent Evaluation of the California Tobacco Control Prevention & Education Program: Waves 1, 2, and 3 (1996-2000)*, p. 110, [www.cdph.ca.gov/programs/tobacco/Documents/WavesComplete.pdf](http://www.cdph.ca.gov/programs/tobacco/Documents/WavesComplete.pdf)
- <sup>24</sup> Ma GX, Shive S and Tracy M. 2001. "The Effects of Licensing and Inspection Enforcement to Reduce Tobacco Sales to Minors in Greater Philadelphia, 1994-1998." *Addictive Behaviors* 26(5): 677-687.
- <sup>25</sup> Forster JL, Murray DM, Wolfson M, et al. 1988. "The Effects of Community Policies to Reduce Youth Access to Tobacco." *American Journal of Public Health* 88(8): 1193-1197.
- <sup>26</sup> American Nonsmokers' Rights Foundation. 2012. *California Municipalities with Laws Restricting Youth Access to Tobacco*, <http://changelabsolutions.org/publications/anrf-list>