

ORDINANCE NO. NS-300.832

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF
SANTA CLARA ADDING CHAPTER XXIII OF DIVISION A18 TO THE
COUNTY OF SANTA CLARA ORDINANCE CODE RELATING TO TOBACCO
RETAILER PERMITS**

Summary

This ordinance adds Chapter XXIII to Division A18 of the County of Santa Clara Ordinance Code to require that tobacco retailers obtain permits and meet certain requirements to operate in the unincorporated areas of the County.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

Division A18 of the County of Santa Clara Ordinance Code is amended by adding a new Chapter to be numbered and titled and to read as follows:

**CHAPTER XXIII
TOBACCO RETAILER PERMITS**

Section A18-367. Findings and Intent.

The Board of Supervisors of the County of Santa Clara does hereby find the following:

(a) The failure of tobacco retailers to comply with all tobacco control laws, particularly the sale of tobacco products to minors, presents an imminent threat to the health, safety and welfare of the residents of the County.

(b) A local permitting system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the County and to protect the health, safety and welfare of the residents of the County.

(c) 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 following:

(1) The Legislature has declared that smoking is the single most important source of preventable disease and premature death in California (Health & Safety Code Section 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 and smoking paraphernalia by minors (Penal Code Section 308, subdivisions (a) and (b)).

(3) State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 18 years of age (Business & Professions Code Section 22956) and provides procedures for the use of minors to conduct onsite compliance checks of tobacco retailers (Business & Professions Code Section 22952, subdivisions (c) and (d)).

(4) State law prohibits the sale of tobacco products and paraphernalia through self-service displays with limited exceptions (Business & Professions Code Sections 22960 and 22962).

(5) State law prohibits the sale of “bidis” (hand-rolled filter-less cigarettes imported primarily from India and Southeast Asian countries) except in establishments that prohibit the presence of those persons under 18 years of age on the premises. (Penal Code Section 308.1, subdivision (a)).

(6) State law prohibits the manufacture for sale, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture for sale, distribution, or sale of “roll-your-own” tobacco in packages containing less than 0.60 ounces of tobacco (Penal Code Section 308.3, subdivision (a)).

(d) State law requires all tobacco retailers to be licensed by the Board of Equalization to curb the unlawful distribution and untaxed sale of cigarettes and tobacco products (Business & Professions Code Sections 22970.1 and 22972).

(e) 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 (Business & Professions Code Section 22971.3).

(f) California courts in such cases as *Cohen v. Board of Supervisors* (1985) 40 Cal. 3d 277, and *Bravo Vending v. City of Rancho Mirage* (1993) 16 Cal. App. 4th 383, have affirmed the power of a county to regulate business activity in order to discourage violations of law.

(g) Despite efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the following:

(1) In 2008, a national study found that, each day, nearly 3,900 children under 18 years of age smoke their first cigarette, and each year, approximately 350,000 children under 18 years of age become daily cigarette smokers.

(2) A national survey from 2003 found that smokers aged 18 or older who had first smoked at age 14 or younger had a nicotine dependence rate of 66.9 percent, whereas smokers who had smoked their first cigarette at age 18 or older had a nicotine dependence rate of 51.1 percent.

(3) Among middle school students who were current cigarette users in the United States in 2004, 70.6 percent were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and 66.4 percent were not refused purchase because of their age.

(4) In 2002, youth in the United States smoked approximately 540 million packs of cigarettes, generating nearly \$1.2 billion in tobacco industry revenue.

(5) In 2008, 14.6 percent of high school students and 6.0 percent of middle school students surveyed in California had used a cigarette within the past 30 days.

(6) A survey of seventh, ninth and eleventh graders in the County, conducted between 2006 and 2008, revealed the following:

(i) Thirteen percent of eleventh graders, nine percent of ninth graders, and four percent of seventh graders had used a cigarette within the past 30 days.

(ii) Three percent of seventh graders, ninth graders and eleventh graders had used smokeless tobacco within the past 30 days.

(iii) Seventy-one percent of eleventh graders, 56 percent of ninth graders, and 27 percent of seventh graders believed that it was fairly easy or very easy to obtain a cigarette.

(h) Research demonstrates that local tobacco retail ordinances dramatically reduce youth access to cigarettes, as evidenced by the following:

(1) In a 2009 review of 26 California communities with strong tobacco retailer licensing ordinances, the youth sales rate declined in all 26 communities, with an average decrease of 68 percent in the youth sales rate.

(2) A study in the Philadelphia area found that compliance checks, tobacco retailer education, and fines issued for tobacco sales to minors were associated with a 38 percentage point decrease in tobacco sales to minors between 1994 and 1998.

(i) The implementation of tobacco retailer licensing requirements is supported by many Californians, as evidenced by the following:

(1) In a 2008 survey, 78 percent of California voters in rural areas thought that tobacco retailers should be licensed, and 91 percent agreed that a store owner who repeatedly sells cigarettes to minors should no longer have the right to sell cigarettes.

(2) Over 90 percent of law enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco.

(j) As of January 2010, 96 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from smoking.

(k) California retailers continue to sell tobacco to underage consumers, as evidenced by the following:

(1) The California Department of Public Health's 2009 Youth Tobacco Purchase Survey revealed that nearly nine percent of all tobacco retailers unlawfully sold to minors in 2009.

(2) The 2009 Youth Tobacco Purchase Survey also revealed that a much higher percentage of non-traditional tobacco retailers sold to minors in 2009 in comparison to traditional tobacco retailers. Nearly 22 percent of donut shops, for example, sold to minors in 2009.

(3) California teens surveyed in 2002 said that they bought their cigarettes at gas stations (58 percent), liquor stores (45 percent), and supermarkets and small grocery stores (29 percent combined).

(4) The California Department of Public Health's Food and Drug Branch STAKE Enforcement Unit reports that, in compliance checks completed between July 2005 and June 2009 in the County, 15.6 percent of tobacco retailers illegally sold tobacco to minors.

(l) The density of tobacco retailers, particularly in neighborhoods surrounding schools, has been associated with increased youth smoking rates.

(m) A requirement for a tobacco retailer permit will not unduly burden legitimate business activities of retailers who sell or distribute tobacco products to adults but will allow the County to regulate the operation of lawful businesses to discourage violations of federal, state and local tobacco-related laws.

(n) The County 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 tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults.

This chapter is adopted (1) to ensure compliance with the business standards and practices of the County, (2) to encourage responsible tobacco retailing and (3) to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors. This chapter does not expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or alter the penalties provided by such laws.

Section A18-368. Definitions.

For the purposes of this chapter, the following definitions shall apply:

(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 or more informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm's Length Transaction.

(b) "Department" means the County's Department of Environmental Health and any agency or person designated by the director of the Department of Environmental Health to enforce or administer the provisions of this chapter.

(c) "Ownership" means possession of a 10 percent or greater interest in the stock, assets, or income of a business, other than a security interest for the repayment of debt.

(d) "School" means a public or private elementary, middle, junior high or high school.

(e) "Smoking" is as defined in Section B13-81(l) of Division B13 of this Code.

(f) "Tobacco Product" means any product containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, snus, bidis, or any other preparation of tobacco that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body. Tobacco Product does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

(g) "Tobacco Retailer" means any person who sells, exchanges, or offers to sell or exchange, for any form of consideration, Tobacco Products. "Tobacco Retailing" shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products sold, exchanged, or offered for sale or exchange.

Section A18-369. Requirements and Prohibitions.

(a) Tobacco Retailer Permit Required. It shall be unlawful for any person to act as a Tobacco Retailer in an unincorporated area of the County without first obtaining and maintaining a valid Tobacco Retailer permit pursuant to this chapter for each location at which that activity is to occur.

(b) Lawful Business Operation. It shall be a violation of this chapter for any Tobacco Retailer to violate any local, state, or federal law applicable to Tobacco Products or Tobacco Retailing.

(c) Display of Permit. Each Tobacco Retailer permit shall be prominently displayed in a publicly visible place at the permitted location.

(d) Positive Identification Required. No Tobacco Retailer shall sell or transfer a Tobacco Product to another person who appears to be under 30 years of age without first examining the customer's identification to confirm that the customer is at least the minimum age under state law to purchase and possess the Tobacco Product.

(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) False and Misleading Advertising Prohibited. A Tobacco Retailer either without a valid Tobacco Retailer permit or with a suspended Tobacco Retailer permit:

(1) Shall keep all Tobacco Products out of public view.

(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 Tobacco Products can be obtained at that location.

(g) Limitation on Storefront Advertising. No more than 15 percent of the square footage of the windows and clear doors of an establishment used for Tobacco Retailing shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and

unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement shall not apply to an establishment where there are no windows, or where existing windows are located at a height that precludes a view of the interior of the premises by a person standing outside the premises.

(h) 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 menthol) 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.

Section A18-370. Eligibility Requirements for a Permit.

(a) No Tobacco Retailer permit 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) No Tobacco Retailer permit may be issued to authorize Tobacco Retailing at a temporary or recurring temporary event. For example, Tobacco Retailing at flea markets and farmers' markets is prohibited.

(c) No Tobacco Retailer permit may be issued to authorize Tobacco Retailing at any location where 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 drugs are offered for sale, provided, however, that the prohibition contained in this subsection (c) shall not apply to existing Tobacco Retailers operating lawfully on the date immediately prior to this ordinance becoming effective.

(d) No Tobacco Retailer permit may be issued to authorize Tobacco Retailing at any location within 1,000 feet of a School, as measured by the shortest distance traveled from any entrance of the proposed location for Tobacco Retailing to the parcel boundary of the School, provided, however, that the prohibition contained in this subsection (d) shall not apply to the following:

(1) Any Tobacco Retailer operating lawfully on the date immediately prior to this ordinance becoming effective and

(2) Any lawfully operating Tobacco Retailer that would otherwise become ineligible to receive or renew a Tobacco Retailer permit due to the creation or re-location of a School.

(e) No Tobacco Retailer permit may be issued to authorize Tobacco Retailing at a location which is within 500 feet of a location occupied by another Tobacco Retailer, as measured by the shortest distance traveled from any entrance of the proposed location to any entrance of the existing location, provided, however, that the prohibition contained in this subsection (e) shall not apply to existing Tobacco Retailers operating lawfully on the date immediately prior to this ordinance becoming effective.

(f) Any exemption granted to a Tobacco Retailer pursuant to this section shall cease to apply upon the earlier of the following to occur:

(1) The Tobacco Retailer fails to timely renew the Tobacco Retailer permit pursuant to Section A18-373(b) of this chapter.

(2) A new person obtains Ownership in the business.

Section A18-371. Application Procedure.

(a) It is the responsibility of each Tobacco Retailer to be informed of all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer permit. No Tobacco Retailer may rely on the issuance of a Tobacco Retailer permit as a determination by the County that the Tobacco Retailer has complied with all laws applicable to Tobacco Retailing. A Tobacco Retailer permit issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Tobacco Retailer shall be revoked pursuant to Section A18-372 of this chapter.

(b) All applications shall be submitted on a form supplied by the Department.

(c) A permitted Tobacco Retailer shall inform the Department in writing of any change in the information submitted on an application for a Tobacco Retailer permit within 14 calendar days of a change.

(d) All information specified in an application pursuant to this section shall be subject to disclosure under the California Public Records Act (Government Code Section 6250 *et seq.*) or any other applicable law, subject to the laws' exemptions.

Section A18-372. Issuance of Permit.

(a) Upon the receipt of a complete application for a Tobacco Retailer permit, the application fee, and the annual permit fee, the Department shall issue a Tobacco Retailer permit 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.
- (2) The application seeks authorization for Tobacco Retailing at a location for which this chapter prohibits issuance of a Tobacco Retailer permit.
- (3) The application seeks authorization for Tobacco Retailing by a person to whom this chapter prohibits issuance of a Tobacco Retailer permit.
- (4) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this chapter (e.g., mobile vending) or that is unlawful pursuant to any other law.

(b) A Tobacco Retailer permit shall be revoked if the Department finds that one or more of the bases for denial of a Tobacco Retailer permit under this section existed at the time application was made or at any time before the Tobacco Retailer permit issued. Such a revocation shall be without prejudice to the filing of a new permit application.

(c) A decision to deny issuance of a Tobacco Retailer permit or to revoke a Tobacco Retailer permit that has been wrongly issued may be appealed pursuant to Section A18-381 of this chapter.

Section A18-373. Permit Term, Renewal, and Expiration.

(a) Term of Permit. The term of a Tobacco Retailer permit is one year. A Tobacco Retailer permit is invalid upon expiration.

(b) Renewal of Permit. The Department shall renew a valid Tobacco Retailer permit upon timely payment of the annual permit fee. The Department may, in its discretion, agree to renew any expired Tobacco Retailer permit within the three month period following expiration if the Tobacco Retailer pays the annual permit fee and applicable late charges. For every calendar month, or fraction thereof, that a Tobacco Retailer fails to renew an expired Tobacco Retailer permit, a late charge equal to 20 percent of the annual permit fee shall be assessed. A Tobacco Retailer permit renewed within three calendar months of expiration shall be treated as if timely renewed.

(c) Issuance of Permit after Revocation or Expiration of Permit. To apply for a new Tobacco Retailer permit more than three calendar months after expiration of a Tobacco Retailer permit or following revocation of a Tobacco Retailer permit that was wrongly issued, a Tobacco Retailer must submit a complete application for a Tobacco Retailer permit, along with the application fee and annual permit fee. The Department shall issue a Tobacco Retailer permit pursuant to the requirements of Section A18-372 of this chapter.

Section A18-374. Permits Nontransferable.

(a) A Tobacco Retailer permit may not be transferred from one person to another or from one location to another. Whenever a new person obtains Ownership in a business for which a Tobacco Retailer permit has been issued, a new Tobacco Retailer permit shall be required, but any exemption granted pursuant to Section A18-370 of this chapter shall cease to apply.

(b) Notwithstanding any other provision of this chapter, prior violations of this chapter at a location shall continue to be counted against a location and permit ineligibility and suspension periods shall continue to apply to a location unless:

(1) 100 percent of the interest in the stock, assets, or income of the business, other than a security interest for the repayment of debt, has been transferred to one or more new owners; and

(2) the County is provided with clear and convincing evidence, including an affidavit, that the business has been acquired in an Arm's Length Transaction.

Section A18-375. Permit Conveys a Limited, Conditional Privilege.

Nothing in this chapter shall be construed to grant any person obtaining and maintaining a Tobacco Retailer permit any status or right other than the limited, conditional privilege to act as a Tobacco Retailer at the location in the County identified on the face of the permit.

Section A18-376. Fees.

The Department shall not issue or renew a Tobacco Retailer permit prior to full payment of any applicable fees. The Board of Supervisors shall, from time to time, establish by resolution the fees to issue or to renew a Tobacco Retailer permit. The fees shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a permit, administering the permit 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. All fees and interest earned from such fees shall be used exclusively to fund administration and enforcement of this chapter.

Section A18-377. 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 County Executive may designate any number of additional persons to monitor and facilitate

compliance with this chapter.

(b) The Department or other person designated to enforce the provisions of this chapter shall check each Tobacco Retailer at least once per 12 month period to determine if the Tobacco Retailer is complying with all laws applicable to Tobacco Retailing, other than those laws regulating youth access to Tobacco Products. Nothing in this paragraph shall create a right of action in any Tobacco Retailer or other person against the County or its agents.

Section A18-378. Prevention of Sales to Youth.

(a) The Public Health Department or other persons designated to enforce the provisions of this chapter shall, in conjunction with the Sheriff's Office, check each Tobacco Retailer at least twice per 12 month period to determine whether the Tobacco Retailer is conducting business in a manner that complies with laws regulating youth access to Tobacco Products. Nothing in this paragraph shall create a right of action in any Tobacco Retailer or other person against the County or its agents.

(b) The County shall not enforce any law establishing a minimum age for Tobacco Product purchases or possession against a person who otherwise might be in violation of such law because of the person's age ("Youth Decoy") if the potential violation occurs when:

(1) the Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the County;

(2) the Youth Decoy is acting as an agent of a person designated by the County to monitor compliance with this chapter; or

(3) the Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the County or the California Department of Health Services.

Section A18-379. Penalties for a Violation by a Tobacco Retailer with a Permit.

(a) In addition to any other penalty authorized by law, an administrative fine shall be imposed and a Tobacco Retailer permit shall be suspended if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the Tobacco Retailer is afforded notice and an opportunity to be heard, that the Tobacco Retailer, or any of the Tobacco Retailer's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter, has pled guilty, "no contest" or its equivalent to such a violation, or has admitted to a such a violation.

(b) Amount of Fine. Each such violation shall be subject to an administrative fine as follows:

- (1) A fine not to exceed \$100.00 for a first violation within one year;
- (2) A fine not to exceed \$200.00 for a second violation within one year; and
- (3) A fine not to exceed \$500.00 for each additional violation within one year.

(c) Time Period for Permit Suspension.

- (1) For a first violation of this chapter at a location within any 24-month period, the Tobacco Retailer permit shall be suspended for up to 30 calendar days.
- (2) For a second violation of this chapter at a location within any 24-month period, the Tobacco Retailer permit shall be suspended for up to 90 calendar days.
- (3) For each additional violation of this chapter at a location within any 24-month period, the Tobacco Retailer permit shall be suspended for up to 1 year.

(d) Waiver of Penalties for First Violation. The Department may waive any penalties for a Tobacco Retailer's first violation of any requirement, condition or prohibition of this chapter, other than a violation of a law regulating youth access to Tobacco Products, if the Tobacco Retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Department's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.

(e) Corrections Period. The Department shall have discretion to allow a Tobacco Retailer a period of time to correct any violation of any requirement, condition or prohibition of this chapter, other than a violation of a law regulating youth access to Tobacco Products. If a Tobacco Retailer's violation is corrected within the time allowed for correction, no penalty shall be imposed under this section.

(f) Appeals. Any penalties imposed under this section may be appealed pursuant to Section A18-381 of this chapter.

Section A18-380. Penalties for Tobacco Retailing Without a Permit.

(a) In addition to any other penalty authorized by law, an administrative fine and an ineligibility period for application or issuance of a Tobacco Retailer permit shall be imposed if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any person

has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer permit, either directly or through the person's agents or employees, has pled guilty, "no contest" or its equivalent to such a violation, or has admitted to such a violation.

(b) Amount of Fine. Each such violation shall be subject to an administrative fine as follows:

- (1) A fine not to exceed \$100.00 for a first violation within one year;
- (2) A fine not to exceed \$200.00 for a second violation within one year; and
- (3) A fine not to exceed \$500.00 for each additional violation within one year.

(c) Time Period for Permit Ineligibility.

(1) For a first violation of this section at a location within any 24-month period, no new Tobacco Retailer permit may be issued for the person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction) until 30 calendar days have passed from the date of the violation.

(2) For a second violation of this section at a location within any 24-month period, no new Tobacco Retailer permit may be issued for the person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction) until 90 calendar days have passed from the date of the violation.

(3) For each additional violation of this section at a location within any 24-month period, no new Tobacco Retailer permit may be issued for the person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction) until 1 year has passed from the date of the violation.

(d) Waiver of Penalties for First Violation. The Department may waive any penalties for a Tobacco Retailer's first violation of this section, unless the violation also involves a violation of a law regulating youth access to Tobacco Products, if the Tobacco Retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Department's waiver of penalties for a first violation, the violation will be considered in determining the penalties for any future violation.

(e) Appeals. Any penalties imposed under this section may be appealed pursuant to Section A18-381 of this chapter.

Section A18-381. Appeals.

(a) A decision to deny issuance of a Tobacco Retailer permit, to revoke a Tobacco Retailer permit that has been wrongly issued, or to impose penalties for a violation of this chapter can be appealed to a hearing officer, subject to the following requirements and procedures. The hearing officer shall be the director of the Department, his or her designee, or another individual selected by the County.

(b) All appeals must be in writing, state the grounds asserted for relief and the relief sought, and be filed with the director of the Department or his or her designee within 10 calendar days of receipt of notice of the appealed action. If such an appeal is made, it shall stay enforcement of the appealed action.

(c) No later than 15 calendar days after receipt of the appeal, the hearing officer shall set an appeal hearing at the earliest practicable time and shall give notice of the hearing to the parties at least 10 calendar days before the date of the hearing.

(d) Neither the provisions of the Administration Procedure Act (Government Code Section 11500 et seq.) nor the formal rules of evidence in civil or criminal judicial proceedings shall apply to such hearing. At the hearing, the hearing officer may admit any evidence, including witnesses, relevant to the determination of the matter, shall be admitted, except as otherwise provided in Section A18-382(c) of this chapter. A record of the hearing shall be made by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made.

(e) The hearing officer may continue the hearing from time to time, in his or her sole discretion, to allow for orderly completion of the hearing.

(f) After the conclusion of the hearing, the hearing officer shall issue a written decision, which shall be supported by substantial evidence. Notice of the written decision, including findings of facts, conclusions of law, and notification of the time period in which judicial review may be sought pursuant to Code of Civil Procedure Section 1094.6, shall be served upon all parties no later than 20 calendar days following the date on which the hearing closed. Any decision rendered by the hearing officer shall be a final administrative decision.

Section A18-382. Enforcement.

(a) Any violation of this chapter is hereby declared to be a public nuisance.

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

(c) Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of 18 years old, such a person shall not be required over his or her objection 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.

(d) Violations of this chapter may be remedied by a civil action brought by the County, including but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. For the purposes of the civil remedies provided in this chapter, each day on which a Tobacco Product is offered for sale in violation of this chapter, and each individual retail Tobacco Product that is distributed, sold, or offered for sale in violation of this chapter, shall constitute a separate violation of this chapter.

(e) The District Attorney shall have discretion to prosecute violations of this chapter as infractions or misdemeanors.

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

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Section A18-383. Effective Date.

This chapter shall become operable 60 days after this ordinance receives final approval from the Board of Supervisors.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, this 23 day of November, 2010, by the following vote:

AYES: CORTESI, GAGE, KNISS, SEIRAKAWA, YEAGER

NOES: None

ABSENT: None

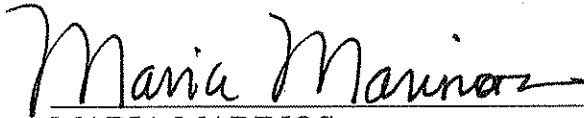
ABSTAIN: None



KEN YEAGER, President
Board of Supervisors

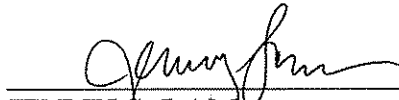
Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:



MARIA MARINOS
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



JENNY S. LAM
Deputy County Counsel