

ORDINANCE NO. 2018-323

**AN ORDINANCE OF THE TOWN OF WINDSOR
AMENDING AND RESTATING IN ITS ENTIRETY CHAPTER 11 OF TITLE III OF
THE TOWN OF WINDSOR MUNICIPAL CODE, REGULATING THE SALE OF
TOBACCO PRODUCTS AND PARAPHERNALIA AND
REQUIRING A TOBACCO RETAIL LICENSE**

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

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

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

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

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

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco law (California Business and Professions Code Section 22971.3); and

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

WHEREAS, despite State and local efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the facts that:

In California, 36.8 percent of high school students have smoked a whole cigarette by 14 years of age;

In California, 64 percent of adult smokers started by the age of 18;

In Sonoma County, 70 percent of 11th graders and 52 percent of 9th graders report that it is "fairly" or "very" easy to obtain cigarettes; and

WHEREAS, California retailers continue to sell tobacco to underage consumers, as evidenced by the following:

Over 7 percent of all tobacco retailers were witnessed unlawfully selling to minors in 2013;

Among the 14.2 percent of minors nationwide who smoked cigarettes in 2011, 14.0 percent had usually obtained their own cigarettes by buying them in a store or gas station; and

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

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;

Over 90 percent of enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco; and

A study found that odds of daily smoking were reduced by 2% for each 1% increase in merchant compliance with youth access laws; and

WHEREAS, over 100 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop minors from using tobacco; and

WHEREAS, a requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the Town to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco-related laws; and

WHEREAS, the Town has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in 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, this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Section 15060(c)(2) of the CEQA Guidelines because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and Section 15060(c)(3) of the CEQA Guidelines because the activity is not a “project” as defined in Section 15378 of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly.

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

SECTION 1. Recitals Made Findings.

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

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

Chapter 11 of Title III of the Code of the Town of Windsor, entitled "Regulating the Sale of Tobacco Products and Paraphernalia", is hereby amended and restated in its entirety to read and provide as follows:

3-11-100 - Purpose of Chapter.

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

3-11-105 - Definitions.

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

- a. "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies, or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter, is not an arm's length transaction.
- b. "Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, as defined in this section.
- c. "Cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.
- d. "Cigarette" means (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and (2) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance or the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described herein.
- e. "Department" means the County of Sonoma Department of Health Services, and any agency or person designated by the department to enforce or administer the provisions of this chapter.
- f. "Electronic smoking device" means an electronic and/or battery-operated device which can be used to deliver an inhalable dose of nicotine, or other substances, by delivering a vaporized solution. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an

electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

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

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

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

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

k. "Little cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand. "Little cigar" includes, but is not limited to, tobacco products known or labeled as "small cigar" or "little cigar."

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

m. "Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten percent (10%) or greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person can or does have or share ultimate control over the day-to-day operations of a business.

n. "Self-service display" means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer. A vending machine is a form of self-service display.

o. "Smoking" means inhaling, exhaling from, burning, or possessing any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation.

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

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

r. "Tobacco product" means:

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

2. Any electronic device that delivers nicotine or other substances to the person inhaling from the device, including but not limited to, an electronic cigarette, cigar, pipe, or hookah;

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

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

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

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

v. "Vending machine" means a machine, appliance, or other mechanical device operated by currency, token, debit card, credit card, or any other form of payment that is designed or used for vending purposes, including but not limited to machines or devices that use remote control locking mechanisms.

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

3-11-115 - Requirements and Prohibitions.

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

retailing without a valid tobacco retailer's license is a nuisance as a matter of law.

b. **Lawful Business Operation.** In the course of tobacco retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee's agents or employees, to violate any local, state, or federal law applicable to tobacco products, or tobacco retailing.

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

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

e. **Minimum Age for Persons Selling Tobacco.** No person who is younger than the minimum age established by state law for the purchase or possession of tobacco products shall engage in tobacco retailing.

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

g. **False and Misleading Advertising Prohibited.** A tobacco retailer without a valid tobacco retailer license or a proprietor without a valid tobacco retailer license, including, for example, a person whose license has been suspended or revoked:

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

2. Shall not display any advertisement relating to tobacco products that promotes the sale or distribution of such products from the tobacco retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

h. **Packaging and Labeling.** No tobacco retailer shall sell any tobacco product to any consumer unless such product:

1. is sold in the original manufacturer's packaging intended for sale to the consumer; and

2. conforms to all applicable federal labeling requirements.

i. **Drug Paraphernalia.** It shall be a violation of this chapter for any licensee or any of the licensee's agents or employees to violate any local, state, or federal law regulating controlled substances or drug paraphernalia, such as, California Health and Safety Code Section 11364.7.

j. Display of Price. The price of each tobacco product offered for sale shall be clearly and conspicuously displayed to indicate the price of the product clearly.

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

1. Any single cigar or little cigar, whether or not packaged for individual sale;
2. Any number of cigars or little cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;
3. Any package of cigars or little cigars containing fewer than five (5) cigars.
4. Any package of chewing tobacco or snuff containing fewer than five (5) units.

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

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

1. A package of cigarettes at a price that is less than seven dollars (\$7.00) per package of twenty (20) cigarettes, including all applicable taxes and fees.
2. A package of little cigars that is less than seven dollars (\$7.00) per package of five (5) little cigars, including all applicable taxes and fees.
3. A package of cigars that is less than seven dollars (\$7.00) per five (5) cigars, including all applicable taxes and fees.
4. A package of chewing tobacco or snuff that is less than seven dollars (\$7.00) per package of five (5) units.

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

m. Flavored Tobacco Products. No tobacco retailer shall sell a tobacco product containing, as a constituent or additive, an artificial or natural flavor (other than tobacco or 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 unless (1) the tobacco product consists of a package of cigars containing at least five (5) cigars or little cigars, or (2) a single cigar for which the retail price exceeds five dollars (\$5.00), or (3) the tobacco product

consists of pipe tobacco, or (4) the package of chewing tobacco or snuff contains at least five (5) units.

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

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

b. Schools. No license may be issued to authorize tobacco retailing within one thousand (1,000) feet of a school, as measured by a straight line from the nearest point of the property line of the parcel on which the applicant's business is located. For the purposes of this subsection, a "school" means a parcel in the Town that is occupied by a private or public kindergarten, elementary, middle, junior high, or high school.

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

1. B and B Service Station
705 Shiloh Rd.
Windsor, CA 95492
2. Estrella's Market & Taqueria
10351 Old Redwood Hwy., Ste 100
Windsor, CA 95492
3. Fast & Easy Mart Windsor
8916 Brooks Rd. S.
Windsor, CA 95492
4. Hembree Shell
6301 Hembree Ln.
Windsor, CA 95492
5. Martin's Market
10333 Old Redwood Hwy.
Windsor, CA 95492
6. MD Liquor & Food #15
8499 Old Redwood Hwy., Ste 116
Windsor, CA 95492
7. Oliver's Market / Tavern Off the Green
9230 Old Redwood Hwy.
Windsor, CA 95492
8. Pohley's Market
341 Windsor River Rd.
Windsor, CA 95492
9. Quick Shop & Deli
8197 Old Redwood Hwy.
Windsor, CA 95492

10. Safeway Store 1434
9080 Brooks Rd. S.
Windsor, CA 95492
11. Walmart Store #2553
6650 Hembree Ln.
Windsor, CA 95492
12. Windsor Chevron
9120 Old Redwood Hwy.
Windsor, CA 95492
13. Windsor Golf Club, Inc.
1320 19th Hole Dr.
Windsor, CA 95492
14. Windsor Market #7
9025 Old Redwood Hwy., Ste G
Windsor, CA 95492
15. Windsor Palms Market
8465 Old Redwood Hwy., Ste 720
Windsor, CA 95492
16. Windsor Shell
9033 Old Redwood Hwy.
Windsor, CA 95492

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

1. On the effective date of the ordinance codified in this chapter, the tobacco retailer is open for business and is operating as a tobacco retailer.
2. On the effective date of this ordinance codified in this chapter, the tobacco retailer maintains a valid tobacco retailer's license issued by the California Board of Equalization or its successor agency, if the tobacco retailer sells products that require such license.
3. The tobacco retailer license to be issued pursuant to this ordinance is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension).
4. The tobacco retailer has not violated this chapter or any other tobacco control law three (3) or more times within the previous five (5)-year period.
5. The tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) conspicuous days.
6. The tobacco retailer does not substantially change the business premises or business operation.
7. The tobacco retailer continuously retains the right to operate under other

applicable laws including, without limitation, this Code and the Town zoning ordinance.

d. Excessive Density. Other than the existing locations eligible for issuance of a tobacco retailer license as set forth above, no new license may be issued to authorize tobacco retailing if the number of tobacco retailer licenses issued exceeds one (1) retailer per one thousand five hundred (1,500) inhabitants Town-wide. For the purposes of this subsection, the total population of the Town shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department of Finance, whichever has been more recently updated, as of the date the license application is filed.

3-11-125 - Application Procedure.

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

It is the responsibility of each proprietor to be informed regarding all laws applicable to tobacco retailing, including those laws affecting the issuance of a tobacco retailer's license. No proprietor may rely on the issuance of a license as a determination by the Town that the proprietor has complied with all laws applicable to tobacco retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a proprietor shall be revoked pursuant to Section 3-11-160 of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a tobacco retailer's license any status or right to act as a tobacco retailer in contravention of any provision of law.

All applications shall be submitted on a form supplied by the department and shall contain the following information:

1. The name, address, and telephone number of each proprietor of the business seeking a license.
2. The business name, address, and telephone number of the single fixed location for which a license is sought and whether the fixed location is within one thousand (1,000) feet of a school as measured in Section 3-11-120(b).
3. A single name and mailing address authorized by each proprietor to receive all communications and notices (the "authorized person and address") required by, authorized by, or convenient to the enforcement of this chapter. If an authorized person and address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.
4. Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization or its successor agency.
5. Such other information as the department deems necessary for the administration

or enforcement of this chapter as specified on the application form required by this section.

b. A licensed tobacco retailer shall inform the department in writing of any change in the information submitted on an application for a tobacco retailer's license within ten (10) business days of a change.

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

3-11-130 - Issuance of License.

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

1. The information presented in the application is inaccurate or false. Intentionally supplying inaccurate or false information shall be a violation of this chapter.

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

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

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

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

3-11-135 - License Renewal and Expiration.

a. Renewal of License. A tobacco retailer's license is invalid if the appropriate license fee has not been timely paid in full or if the term of the license has expired. The term of a tobacco retailer license is one calendar year. Each tobacco retailer shall apply for the renewal of his or her tobacco retailer's license and submit the license fee no later than July 1 of each year, commencing July 1, 2018, and annually thereafter.

b. Expiration of License. A tobacco retailer's license that is not timely renewed shall expire

on June 30 of each year. To renew a license not timely renewed pursuant to subparagraph (a), the proprietor must:

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

3-11-140 - Transfer Restrictions.

- a. A tobacco retailer's license may not be transferred from one location to another. A new tobacco retailer's license is required whenever a tobacco retailing location has a change in proprietor(s).
- b. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless: the new proprietor(s) provide the department with clear and convincing evidence that the new proprietor(s) have acquired or are acquiring the location in an arm's length transaction.

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

Nothing in this chapter shall be construed to grant any person obtaining and maintaining a tobacco retailer's license any status or right other than the limited conditional privilege to act as a tobacco retailer at the location in the Town identified on the face of the license. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any other provision of applicable law, including but not limited to, any provision of this Code including without limitation, the zoning ordinance and building codes, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code Section 6404.5. For example, obtaining a tobacco retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code Section 6404.5.

3-11-150 - Fee for License. The fee to issue or to renew a tobacco retailer's license shall be established from time to time by resolution of the Town Council. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. Fees are nonrefundable except as may be required by law.

3-11-155 - Compliance Monitoring.

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

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

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

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

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

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

3-11-160 - Suspension or Revocation of License.

a. Suspension or Revocation of License for Violation. In addition to any other penalty authorized by law, a tobacco retailer's license shall be suspended or revoked if any court of competent jurisdiction determines, or the department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in Section 3-11-115 above.

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

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

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

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

b. Revocation of License Wrongly Issued. A tobacco retailer's license shall be revoked if the department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Section 3-11-130(a) existed at the time

application was made or at any time before the license issued. Such a revocation shall be without prejudice to the filing of a new license application.

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

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

a. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or, if on appeal from a determination of the department, the Town Council finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer's license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a tobacco retailer's license as follows:

1. After a first violation of this section at a location within any sixty (60)-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until thirty (30) days have passed from the date of the violation.
2. After a second violation of this section at a location within any sixty (60)-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until ninety (90) days have passed from the date of the violation.
3. After of a third or subsequent violation of this section at a location within any sixty (60)-month period, no new license may issue for the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until sixty (60) months have passed from the date of the violation.

b. Tobacco products and tobacco paraphernalia offered for sale or exchange in violation of this section are subject to seizure by the department or any peace officer and shall be forfeited after the licensee and any other owner of the tobacco products and tobacco paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the tobacco products and tobacco paraphernalia were not offered for sale or exchange in violation of this chapter. The decision by the department may be appealed to the Town Council pursuant to the procedures set forth in Section 3-11-160(c). Forfeited tobacco products and tobacco paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure Section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

c. For the purposes of the civil remedies provided in this chapter, each of the following

constitutes a separate violation of this chapter:

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

3-11-170 - Additional Remedies.

- a. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- b. Whenever evidence of a violation of this chapter is obtained in any part through the participation of a person under the age of eighteen (18) years old, such a person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- c. Violations of this chapter are subject to a civil action brought by the Town Attorney, punishable by a civil fine not less than One Hundred Dollars (\$100) and not exceeding Five Hundred Dollars (\$500) per violation.
- d. Violations of this chapter may, in the discretion of the Town Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require.
- e. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- f. Violations of this chapter are hereby declared to be public nuisances.
- g. In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the Town Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

3-11-175 - Enforcement.

This chapter shall not be enforced by the Town or the department until July 30, 2018.

SECTION 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The Town Council of the Town of Windsor hereby declares that it would have

adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

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

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

PASSED, APPROVED, AND ADOPTED this 7th day of March 2018, by the following vote:

AYES:	COUNCILMEMBERS FUDGE, MILLAN, SALMON, VICE MAYOR FOPPOLI AND MAYOR OKREPKIE
NOES:	NONE
ABSTAIN:	NONE
ABSENT:	NONE



BRUCE OKREPKIE, MAYOR

ATTEST:


MARIA DE LA O, TOWN CLERK