

ORDINANCE NO. 2017-01

TOBACCO PRODUCT AND RETAIL SALES CONTROL

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance amends Division 445 of the County Ordinance Code to establish restrictions on the retail sales of emerging tobacco products, such as electronic smoking devices and flavored tobacco products, and to reduce the accessibility and exposure of tobacco products to minors and the public generally.

SECTION II. Section 445-2.006 of the County Ordinance Code is amended to read:

445-2.006 Definitions. For the purposes of this division, the following words and phrases have the following meanings:

- (a) “Characterizing flavor” means a distinguishable taste or aroma imparted by a tobacco product or any byproduct produced by the tobacco product that is perceivable by an ordinary consumer by either the sense of taste or smell, other than the taste or aroma of tobacco. A “characterizing flavor” includes, but is not limited to, a taste or aroma relating to a fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.
- (b) “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.
- (c) “Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.
- (d) “Consumer” means a person who purchases a tobacco product for consumption and not for sale to another.
- (e) “Electronic smoking device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances. An “electronic smoking device” includes a device that is manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, or a vapor pen.

- (f) “Enclosed” means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed space may have openings for ingress and egress, such as doorways or passageways. An enclosed space includes all areas within that space, such as hallways and areas screened by partitions that do not extend to the ceiling or are not solid.
- (g) “Flavored tobacco product” means any tobacco product, other than cigarettes as defined by federal law, that contains a constituent that imparts a characterizing flavor.
- (h) “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, any tobacco product known or labeled as “small cigar” or “little cigar.”
- (i) “Package” or “packaging” means a pack, box, carton, or container of any kind, or any wrapping, in which a tobacco product is sold or offered for sale to a consumer.
- (j) “Menthol cigarettes” means cigarettes as defined by federal law, that have a characterizing flavor of menthol, mint, or wintergreen, including cigarettes advertised, labeled, or described by the manufacturer as possessing a menthol characterizing flavor.
- (k) “Multi-unit residence” means a building that contains two or more dwelling units, including but not limited to apartments, condominiums, senior citizen housing, nursing homes, and single room occupancy hotels. A primary residence with an attached or detached accessory dwelling unit permitted pursuant to Chapter 82-24 of this code is not a multi-unit residence for purposes of this division.
- (l) “Multi-unit residence common area” means any indoor or outdoor area of a multi-unit residence accessible to and usable by residents of different dwelling units, including but not limited to halls, lobbies, laundry rooms, common cooking areas, stairwells, outdoor eating areas, play areas, swimming pools, and carports.
- (m) “Place of employment” means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: indoor work areas; bars; restaurants; at least 80 percent of the guest rooms in any hotel and motel; vehicles used for business purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed child-care or health-care facilities when employees, children or patients are present and during business hours. The places specified in subdivisions (e)(1), (2), (6), and (7) of Labor Code section 6404.5 are places

of employment for the purposes of this division and are regulated as specified in this division. The places specified in subdivisions (e)(3), (4), and (5) of Labor Code section 6404.5 are not places of employment for the purposes of this division.

- (n) “Public place” means any area to which the public is invited or in which the public is permitted. A private residence is not a public place.
- (o) “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.
- (p) “Service area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not the service involves the exchange of money. “Service areas” include but are not limited to automatic teller machine waiting areas, bank teller windows, ticket lines, bus stops and taxi stands.
- (q) “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the byproducts, except when the combusting or vaporizing material contains no tobacco or nicotine or illegal substances, and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “smoke” includes, but is not limited to, tobacco smoke, electronic smoking device vapors, marijuana smoke, and smoke from any illegal substance.
- (r) “Smoking” means inhaling, exhaling, burning, or carrying any lighted, heated, or ignited cigar, cigarette, cigarillo, pipe, hookah, electronic smoking device, or any plant product intended for human inhalation.
- (s) “Tobacco paraphernalia” means any item designed or marketed for the consumption, use, or preparation of tobacco products.
- (t) “Tobacco product” means any of the following:
 - (1) Any product containing, made from, 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, and snuff.

- (2) Any electronic smoking device.
 - (3) Any component, part, or accessory of a tobacco product, whether or not it is sold separately.
 - (4) “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 the product is marketed and sold solely for that approved purpose.
- (u) “Tobacco retailer” means any individual or entity who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. “Tobacco retailing” means the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange. (Ords. 2017-01 § 2, 2013-10 § II, 4-9-13, 2010-10 § II, 10-12-10, 2006-66 § 4, 98-43 § 2, 91-44 § 2).

SECTION III. The title of Chapter 445-6 is amended to read:

**Chapter 445-6
TOBACCO SALES**

SECTION IV. Section 445-6.006 is added to the County Ordinance Code, to read:

445-6.006 Flavored tobacco products. It is a violation of this division for any tobacco retailer to sell or offer for sale any flavored tobacco product. (Ord. 2017-01 § 4).

SECTION V. Section 445-6.008 is added to the County Ordinance Code, to read:

445-6.008 Packaging and labeling. No tobacco retailer may sell any tobacco product to any consumer unless that product is sold in the original manufacturer’s packaging intended for sale to consumers and conforms to all applicable federal labeling requirements. (Ord. 2017-01 § 5).

SECTION VI. Section 445-6.010 is added to the County Ordinance Code, to read:

445-6.010 Minimum package size for little cigars and cigars. No tobacco retailer may sell to a consumer any of the following:

- (a) Any little cigar unless it is sold in a package of at least ten little cigars.
- (b) Any cigar unless it is sold in a package of at least ten cigars. This subsection does not apply to a cigar that has a price of at least \$5 per cigar, including all applicable taxes and

fees. (Ord. 2017-01 § 6).

SECTION VII. Section 445-6.012 is added to the County Ordinance Code, to read:

445-6.012 Identification required. No tobacco retailer may sell or transfer a tobacco product or tobacco paraphernalia to a person who reasonably appears to be under the age of 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 the tobacco product or tobacco paraphernalia. (Ord. 2017-01 § 7).

SECTION VIII. Section 445-6.014 is added to the County Ordinance Code, to read:

445-6.014 Menthol cigarettes. It is a violation of this division for any tobacco retailer to sell or offer for sale menthol cigarettes. (Ord. 2017-01 § 8).

SECTION IX. Section 445-10.002 of the County Ordinance Code is amended to read:

445-10.002 License requirement.

- (a) It is unlawful for any retailer, individual, or entity to conduct tobacco retailing in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from Contra Costa County for each location where tobacco retailing is conducted.
- (b) No tobacco retailer's license will be issued that:
 - (1) Authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.
 - (2) Authorizes tobacco retailing in a pharmacy.
 - (3) Results in the total number of tobacco retailer's licenses in the unincorporated area of the county exceeding 98.
- (c) Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation. (Ords. 2017-01 § 9, 2003-01 § 3, 98-50 § 2).

SECTION X. Section 445-10.004 of the County Ordinance Code is amended to read:

445-10.004 Enforcement of state law. If a clerk or employee sells a tobacco product or tobacco paraphernalia to any person under the age of 21, the retailer shall immediately notify the appropriate local law enforcement agency of the violation of Penal Code section 308 for

enforcement under that statute. (Ords. 2017-01 § 10, 2003-01 § 3, 98-50 § 2).

SECTION XI. Section 445-10.006 of the County Ordinance Code is amended to read:

445-10.006 Definitions. For purposes of this chapter, the following words and phrases have the following meanings:

- (a) “Director” means the director of Contra Costa health services or his or her designee.
- (b) “Drug paraphernalia” has the meaning set forth in California Health & Safety Code section 11014.5.
- (c) “Licensee” means a tobacco retailer who has been issued a tobacco retailer's license in accordance with Section 445-10.010.
- (d) “Pharmacy” means any retail establishment where the profession of pharmacy is practiced by a pharmacist licensed by the State of California under the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.
- (e) “Public health director” means the public health director of Contra Costa County.
- (f) “Tax collector” means the treasurer-tax collector of Contra Costa County.
- (g) “Tobacco retailer” has the definition set forth in Section 445-2.006. (Ords. 2017-01 § 11, 2003-01 § 3, 98-50 § 2).

SECTION XII. Section 445-10.018 of the County Ordinance Code is amended to read:

445-10.018 License suspension.

- (a) Grounds for Suspension. A tobacco retailer's license may be suspended for any violation of this division, any state or federal tobacco-related laws, any state or federal law regulating controlled substances or drug paraphernalia, or any state or local law regulating advertising and signage on retailer’s window space.
- (b) Notice of Suspension Hearing. If any grounds for suspension exist, the director may issue a notice of suspension hearing. The notice of suspension hearing will be served to a tobacco retailer as specified in Section 445-10.022 and will include all of the following information:

- (1) The date of the violation.
 - (2) The address or other description of the location where the violation occurred.
 - (3) The code section(s) violated, or applicable state or federal law violated, and a description of the violation.
 - (4) The time period of the tobacco retailer's license suspension.
 - (5) The date of the suspension hearing before the public health director. The notice of suspension hearing will set the hearing date no sooner than twenty days and no later than forty-five days following the date the notice of suspension hearing is served.
- (c) **Suspension Hearing.** A tobacco retailer's license may be suspended by the public health director after a tobacco retailer's license suspension hearing. At the hearing, the licensee will be given the opportunity to testify and to present evidence concerning the notice of suspension hearing. After considering the testimony and evidence submitted at the hearing, the public health director will issue a written decision to suspend or not suspend the tobacco retailer's license. The public health director will list in the decision the reason or reasons for the decision and will list the time period of the tobacco retailer's license suspension, if applicable. The written decision will be served as specified in Section 445-10.022.
- (d) **Time Period of License Suspension.**
- (1) A tobacco retailer's license suspension may be up to thirty days for a first violation.
 - (2) A tobacco retailer's license suspension may be up to ninety days for a second violation occurring within five years of the first violation.
 - (3) A tobacco retailer's license suspension may be up to one year for each subsequent violation occurring within five years of the most recent prior determination.
- (e) **Suspension Appeal.** The decision of the public health director to suspend a tobacco retailer's license is appealable to the board of supervisors and will be heard at a noticed public hearing as provided in Chapter 14-4 of this code.
- (f) **Final Order.** The tobacco retailer's license suspension becomes a final administrative order at one of the following times:

- (1) On the date of the suspension hearing, if a tobacco retailer fails to appear at a scheduled suspension hearing.
- (2) On the date the public health director's decision is served, if a tobacco retailer fails to file a written appeal to the board of supervisors within the time specified.
- (3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors.
- (4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors. (Ords. 2017-01 § 12, 2003-01 § 3, 98-50 § 2).

SECTION XIII. Section 445-10.024 is added to the County Ordinance Code, to read:

445-10.024 Display and advertisement without license.

- (a) A tobacco retailer without a valid tobacco retailer's license, including a tobacco retailer whose license has been suspended or revoked, shall keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia while a license is suspended or revoked is a violation of Section 445-10.002.
- (b) A tobacco retailer without a valid tobacco retailer's license, including a tobacco retailer whose license has been suspended or revoked, may not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of these products from the tobacco retailer's location or that could lead a reasonable consumer to believe that these products can be obtained at that location. (Ord. 2017-01 § 13).

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SECTION XIV. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the Contra Costa Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: DAVID J. TWA,
Clerk of the Board of Supervisors
and County Administrator

Board Chair

By:

Deputy

[SEAL]

KCK:

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ORDINANCE NO. 2017-01

**DIVISION 445
SECONDHAND SMOKE AND TOBACCO
PRODUCT CONTROL**

**Chapter 445-2
GENERAL PROVISIONS**

445-2.002 Title.

This division is known as the secondhand smoke and tobacco product control ordinance of Contra Costa County.

(Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)

445-2.004 Purpose.

The purposes of this division are to protect the public health, safety and welfare against the health hazards and harmful effects of the use of addictive tobacco products; and further to maintain a balance between the desires of persons who smoke and the need of nonsmokers to breathe smoke-free air, while recognizing that where these conflict, the need to breathe smoke-free air shall have priority.

(Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)

445-2.006 Definitions.

For the purposes of this division, the following words and phrases have the following meanings:

- (a) “Characterizing flavor” means a distinguishable taste or aroma imparted by a tobacco product or any byproduct produced by the tobacco product that is perceivable by an ordinary consumer by either the sense of taste or smell, other than the taste or aroma of tobacco. A “characterizing flavor” includes, but is not limited to, a taste or aroma relating to a fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, menthol, mint, wintergreen, herb, or spice.
- (b) “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.
- (c) “Constituent” means any ingredient, substance, chemical, or compound, other than tobacco, water, or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacture, or packing of the tobacco product.
- (d) “Consumer” means a person who purchases a tobacco product for consumption and not for sale to another.

- (e) “Electronic smoking device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances. An “electronic smoking device” includes a device that is manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, a vape pen, or a vapor pen.
- (f) “Enclosed” means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed space may have openings for ingress and egress, such as doorways or passageways. An enclosed space includes all areas within that space, such as hallways and areas screened by partitions that do not extend to the ceiling or are not solid.
- (g) “Flavored tobacco product” means any tobacco product, other than cigarettes as defined by federal law, that contains a constituent that imparts a characterizing flavor.
- (h) “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, any tobacco product known or labeled as “small cigar” or “little cigar.”
- (i) “Package” or “packaging” means a pack, box, carton, or container of any kind, or any wrapping, in which a tobacco product is sold or offered for sale to a consumer.
- (j) “Menthol cigarettes” means cigarettes as defined by federal law, that have a characterizing flavor of menthol, mint, or wintergreen, including cigarettes advertised, labeled, or described by the manufacturer as possessing a menthol characterizing flavor.
- (k) “Multi-unit residence” means a building that contains two or more dwelling units, including but not limited to apartments, condominiums, senior citizen housing, nursing homes, and single room occupancy hotels. A primary residence with an attached or detached ~~second~~ accessory dwelling unit permitted pursuant to Chapter 82-24 of this code is not a multi-unit residence for purposes of this division.
- (l) “Multi-unit residence common area” means any indoor or outdoor area of a multi-unit residence accessible to and usable by residents of different dwelling units, including but not limited to halls, lobbies, laundry rooms, common cooking areas, stairwells, outdoor eating areas, play areas, swimming pools, and carports.
- (m) “Place of employment” means any area under the control of an employer, business, or nonprofit entity that an employee, volunteer, or the public may have cause to enter in the normal course of operations, regardless of the hours of operation. Places of employment include, but are not limited to: indoor work areas; bars; restaurants; at least 80 percent of the guest rooms in any hotel and motel; vehicles used for business

purposes; taxis; employee lounges and breakrooms; conference and banquet rooms; bingo and gaming facilities; long-term health care facilities; warehouses; retail or wholesale tobacco shops; and private residences used as licensed child-care or health-care facilities when employees, children or patients are present and during business hours. The places specified in subdivisions ~~(de)~~(1), (2), ~~(3), (4), (6), and (7), (8), (11), (12), (13) and (14)~~ of Labor Code section 6404.5 are places of employment for purposes of this division and are regulated as specified in this division. The places specified in subdivisions ~~(de)~~(3), (4), and (5), ~~(9), and (10)~~ of Labor Code section 6404.5 are not places of employment for purposes of this division.

- (n) “Public place” means any area to which the public is invited or in which the public is permitted. A private residence is not a public place.
- (o) “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 ~~a the~~ retailer or employee of the retailer. A vending machine is a form of self-service display.
- (p) “Service area” means any area designed to be or regularly used by one or more persons to receive or wait to receive a service, enter a public place, or make a transaction, whether or not the service involves the exchange of money. “Service areas” include but are not limited to automatic teller machine waiting areas, bank teller windows, ticket lines, bus stops and taxi stands.
- (q) “Smoke” means the gases, particles, or vapors released into the air as a result of combustion, electrical ignition, or vaporization ~~of a tobacco product~~, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the ~~tobacco product~~by product, except when the combusting or vaporizing material contains no tobacco or nicotine or illegal substances, and the purpose of inhalation is solely olfactory, such as, for example, smoke from incense. The term “smoke” includes, but is not limited to, tobacco smoke, electronic smoking device ~~cigarette~~-vapors, ~~and~~ marijuana smoke, and smoke from any illegal substance. ~~“Smoke” excludes incense or similar products inhaled solely for olfactory purposes as long as those products do not contain tobacco or nicotine.~~
- (r) “Smoking” means ~~engaging in an act that generates smoke.~~ ~~“Smoking” includes inhaling, exhaling, burning, possessing, holding, or carrying any lighted, heated, or ignited cigar, lighted cigarette, cigarillo, lighted pipe, lighted hookah pipe, operating electronic cigarette smoking device, or any plant product intended for human inhalation other smoke inhalation device of any kind.~~ ~~“Smoking” includes smoking marijuana for medical purposes.~~
- (s) “Tobacco paraphernalia” means any item designed or marketed for the consumption, use, or preparation of tobacco products.

(t) “Tobacco product” means any of the following:

(1) Any ~~substance-product~~ containing, made from, or derived from tobacco ~~leaf~~ for 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, hookah tobacco, and snuff, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco.

(2) Any electronic smoking device.
~~Any product or formulation of matter containing biologically active amounts of nicotine 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, including but not limited to electronic cigarettes.~~

(3) Any component, part, or accessory of a tobacco product, whether or not it is sold separately.

(4) ~~The term~~ “Tobacco product” does not include any product that has been specifically approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for that approved purpose in treating nicotine dependence or tobacco dependence.

(u) “Tobacco retailer” means any individual or entity who sells, offers for sale, or exchanges or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia. “Tobacco retailing” means the doing of any of these things. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

(Ords. 2017-01 § 2, 2013-10 § II, 4-9-13, 2010-10 § II, 10-12-10, 2006-66 § 4, 98-43 § 2, 91-44 § 2).

~~(Ord. No. 2013-10, § II, 4-9-13; Ord. No. 2010-10, § II, 10-12-10; Ords. 2006-66 § 4, 98-43 § 2, 91-44 § 2)~~

Chapter 445-4

SECONDHAND SMOKE

445-4.002 County facilities.

(a) Smoking is prohibited in all buildings, vehicles, and other enclosed areas occupied by county employees, owned or leased by the county, or otherwise operated by the county.

- (b) Smoking is prohibited in all outdoor areas owned or leased by the county, including parking lots, the grounds of the county's hospital and health clinics, and the grounds of all other buildings owned or leased by the county.
- (c) Smoking is prohibited on the grounds of the county's jails and county juvenile system facilities to the extent allowed by law.

(Ord. No. 2014-06, § II, 6-17-14; Ords. 2006-66 § 5, 91-44 § 2)

445-4.004 Prohibition of smoking.

Smoking is prohibited in the following places within the unincorporated area of Contra Costa County:

- (a) Enclosed places of employment.
- (b) Enclosed public places.
- (c) Service areas.
- (d) All areas within twenty feet of doors, windows, air ducts and ventilation systems of enclosed places of employment, except while passing on the way to another destination.
- (e) All areas within twenty feet of doors, windows, air ducts and ventilation systems of enclosed public places, except while passing on the way to another destination.
- (f) The following outdoor areas:
 - (1) Outdoor dining areas at bars and restaurants.
 - (2) Outdoor lounges and outdoor dining areas at places of employment.
 - (3) Public trails and public parks.
 - (4) Public event venues.
- (g) All multi-unit residence common areas, except that a landlord may designate a portion of an outdoor common area as a smoking area. A designated smoking area of an outdoor common area of a multi-unit residence must not overlap with any area where smoking is otherwise prohibited by local, state, or federal law; must be located at least twenty-five feet in all directions from non-smoking areas; must not include areas used primarily by children; must be no more than twenty-five percent of the total outdoor common area; must have a clearly marked perimeter; and must be identified by conspicuous signs.
- (h) All areas within twenty feet of doors, windows, air ducts and ventilation systems of multi-unit residences, except while passing on the way to another destination.
- (i) All outdoor balconies, porches, decks, patios, and carports of multi-unit residences.
- (j) All dwelling units in any new multi-unit residence that receives a building permit on or after January 1, 2011.

(Ord. No. 2010-10, § III, 10-12-10; Ords. 2006-66 § 5, 91-44 § 2)

445-4.006 Exceptions.

- (a) Smoking is permitted at any location within the county unless otherwise prohibited by this code or by state or federal law.
- (b) Smoking is permitted in up to twenty percent of guest rooms in any hotel or motel, as long as the hotel or motel permanently designates at least eighty percent of its guest rooms as nonsmoking rooms, appropriately signs nonsmoking rooms, and permanently removes ashtrays from these rooms. Smoking rooms shall be segregated from nonsmoking rooms on separate floors, wings or portions of either. Smoking rooms and nonsmoking rooms shall not be interspersed. Nothing in this division requires a hotel or motel to provide smoking rooms and the owner or operator of a hotel or motel may choose to prohibit smoking throughout the property.

(Ord. No. 2010-10, § IV, 10-12-10; Ords. 2006-66 § 5, 91-44 § 2)

445-4.008 Posting requirements.

- (a) "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch in height, or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it), shall be conspicuously posted in every building or other place where smoking is regulated by this division by the owner, operator, manager or other person having control of the building or other place.
- (b) Every hotel or motel regulated by this division shall post at its entrance a sign clearly stating that nonsmoking rooms are available, and every patron shall be asked as to his or her preference.

(Ords. 2006-66 § 5, 91-44 § 2)

445-4.010 Ashtray placement.

No ashtray or other receptacle used for disposing of smoking materials may be placed at any location where smoking is prohibited by this division or otherwise prohibited by law.

(Ord. No. 2009-26, § II, 10-20-09)

445-4.012 Disclosure of non-smoking residential units.

In a multi-unit residence where units are rented or leased to tenants, the owner and manager of the residence shall do all of the following:

- (a) Maintain and keep on file at the premises: (1) a list of all designated non-smoking units at the residence; and (2) a floor plan of the residence that identifies the location of all designated non-smoking units, any units where smoking is permitted, and any designated outdoor smoking areas.

- (b) Disclose whether a policy for handling smoking complaints is in effect at the multi-unit residence, and if so, the terms of that policy.
- (c) Provide a copy of the list and floor plan, and a copy of any policy for addressing smoking complaints in effect at a multi-unit residence, to each tenant along with every new lease or rental agreement for the occupancy of a unit in a multi-unit residence.

(Ord. No. 2009-26, § III, 10-20-09)

445-4.014 Required lease terms.

- (a) Commencing January 1, 2011, every lease and other rental agreement for the occupancy of a dwelling unit in a multi-unit residence that is entered into, renewed, or continued month-to-month must include the terms specified in subsection (b) of this section on the earliest possible date allowed by law after providing any required legal notice.
- (b) Required Terms.
 - (1) For any multi-unit residence where the landlord has designated separate smoking and non-smoking dwelling units, a clause stating that smoking is prohibited in all dwelling units that have been designated as non-smoking units must be included in the written agreements specified in subsection (a) of this section.
 - (2) For any multi-unit residence where the landlord has prohibited smoking in all dwelling units, a clause stating that smoking is prohibited in all dwelling units must be included in the written agreements specified in subsection (a) of this section.
 - (3) For any new multi-unit residence that receives a building permit on or after January 1, 2011, a clause stating that smoking is prohibited in all dwelling units must be included in the written agreements specified in subsection (a) of this section.
 - (4) A clause stating that it is a material breach of the lease or rental agreement to: (i) violate any law regarding smoking while on the premises; (ii) smoke in a non-smoking dwelling unit; or (iii) smoke in any multi-unit residence common area where smoking is prohibited, must be included in the written agreements specified in subsection (a) of this section.
- (c) The California Apartment Association's Form 34.0, revised January 2010 and as amended from time to time, may be used to comply with this section.
- (d) A landlord's failure to enforce any smoking regulation of a lease or agreement on one or more occasions does not constitute a waiver of the lease or agreement provisions required by this section and does not prevent future enforcement of the lease or agreement provisions required by this section.
- (e) A landlord is not liable under this chapter to any person for a tenant's breach of smoking regulations if:
 - (1) The landlord has fully complied with all provisions of this chapter, and

- (2) Upon receiving a signed written complaint regarding prohibited smoking, the landlord provides a warning to the offending tenant, stating that the tenant may be evicted if another complaint is received. Upon receiving a second signed, written complaint against the offending tenant, the landlord may evict the tenant, but is not liable for the failure to do so.

(Ord. No. 2010-10, § V, 10-12-10)

Chapter 445-6

TOBACCO PRODUCTS SALES

445-6.002 Self-service displays.

- (a) It is unlawful for any person or tobacco retailer to sell, permit to be sold, offer for sale, or display for sale any tobacco product or tobacco paraphernalia by means of self-service display, vending machine, rack, counter-top or shelf that allows self-service sales for any tobacco product or tobacco paraphernalia.
- (b) All tobacco products and tobacco paraphernalia shall be offered for sale exclusively by means of vendor or employee assistance. Tobacco products and tobacco paraphernalia shall be kept in a locked case that requires employee assistance to retrieve the tobacco products or tobacco paraphernalia.

(Ords. 2006-66 § 6, 98-43 § 2).

445-6.004 Distribution of free samples and coupons.

It is unlawful for any person, agent, or employee of a person in the business of selling or distributing cigarettes or other tobacco or smoking products to distribute, or direct, authorize, or permit any agent or employee to distribute, any of the following to any person on any public street or sidewalk or in any public park or playground or on any other public ground or in any public building:

- (a) Any tobacco product;
- (b) Coupons, certificates, or other written material that may be redeemed for tobacco products without charge.

(Ords. 2006-66 § 6, 91-44 § 2)

445-6.006 Flavored tobacco products.

It is a violation of this division for any tobacco retailer to sell or offer for sale any flavored tobacco product.

(Ord. 2017-01 § 4).

445-6.008 Packaging and labeling.

No tobacco retailer may sell any tobacco product to any consumer unless that product is sold in the original manufacturer's packaging intended for sale to consumers and conforms to all applicable federal labeling requirements.

(Ord. 2017-01 § 5).

445-6.010 Minimum package size for little cigars and cigars.

No tobacco retailer may sell to a consumer any of the following:

- (a) Any little cigar unless it is sold in a package of at least ten little cigars.
- (b) Any cigar unless it is sold in a package of at least ten cigars. This subsection does not apply to a cigar that has a price of at least \$5 per cigar, including all applicable taxes and fees.

(Ord. 2017-01 § 6).

445-6.012 Identification required.

No tobacco retailer may sell or transfer a tobacco product or tobacco paraphernalia to a person who reasonably appears to be under the age of 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 the tobacco product or tobacco paraphernalia.

(Ord. 2017-01 § 7).

445-6.014 Menthol cigarettes.

It is a violation of this division for any tobacco retailer to sell or offer for sale menthol cigarettes.

(Ord. 2017-01 § 8).

**Chapter 445-8
ENFORCEMENT**

445-8.002 Compliance.

- (a) A person may not smoke in any place where smoking is prohibited by this division.
- (b) A person who owns, manages, operates or otherwise controls the use of any place where smoking is prohibited by this division may not knowingly or intentionally permit smoking in those places. For purposes of this subsection, a person has acted knowingly or

intentionally if he or she has not taken the following actions to prevent smoking by another person: (1) requested that a person who is smoking refrain from smoking; and (2) requested that a person who is smoking leave the place if the person refuses to stop smoking after being asked to stop. This section does not require physically ejecting a person from a place or taking steps to prevent smoking under circumstances that would involve risk of physical harm.

- (c) The presence or absence of the signs required by Section 445-4.008 is not a defense to the violation of any other provision of this division.

(Ords. 2009-26, § IV, 10-20-09, 2006-66 § 7, 91-44 § 2)

445-8.004 Remedies.

The county may seek compliance with this division by any remedy allowed under this code, including but not limited to administrative fines (Chapter 14-12), infraction citations (Section 14-8.008), and any other remedy allowed by law.

(Ords. 2006-66 § 7, 2003-01 § 4, 98-43 § 2, 91-44 § 2)

445-8.006 Initiation of enforcement.

Any person may initiate enforcement of this division by notifying the director of health services or his or her designee of any violation.

(Ords. 2006-66 § 7, 91-44 § 2)

445-8.008 Liability.

For purposes of determining liability of persons, firms, corporations, or controlling franchises with business operations in multiple locations, each individual business location shall be deemed a separate entity.

(Ords. 2006-66 § 7, 2003-01 § 4, 98-43 § 2).

445-8.010 No retaliation.

No person shall retaliate against any employee or applicant for employment because the employee or applicant exercises any rights afforded by this division.

(Ords. 2006-66 § 7, 91-44 § 2)

445-8.012 Other applicable laws.

This division shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

(Ords. 2006-66 § 7, 91-44 § 2)

**Chapter 445-10
TOBACCO RETAILER'S LICENSE**

445-10.002 License requirement.

(a) It is unlawful for any retailer, individual, or entity to ~~sell or offer for sale any tobacco products~~ conduct tobacco retailing in the unincorporated area of the county without first obtaining and maintaining a valid tobacco retailer's license from Contra Costa County for each location where ~~these sales are~~ tobacco retailing is conducted. ~~Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited. Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation.~~

(b) No tobacco retailer's license will be issued that:

(1) Authorizes tobacco retailing at any location other than a fixed location. Tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.

(2) Authorizes tobacco retailing in a pharmacy.

(3) Results in the total number of tobacco retailer's licenses in the unincorporated area of the county exceeding 98.

(c) Each day that tobacco products are offered for sale by a tobacco retailer without a tobacco retailer's license is a separate violation.

(Ords. 2017-01 § 9, 2003-01 § 3, 98-50 § 2).

~~(Ords. 2003-01 § 3, 98-50 § 2).~~

445-10.004 Enforcement of state law.

If a clerk or employee sells a tobacco product or tobacco paraphernalia to ~~a minor~~ any person under the age of 21, the retailer shall immediately notify the appropriate local law enforcement agency of the violation of Penal Code Section 308 for enforcement under that statute.

(Ords. 2017-01 § 10, 2003-01 § 3, 98-50 § 2).

~~(Ords. 2003-01 § 3, 98-50 § 2).~~

445-10.006 Definitions.

For purposes of this chapter, the following words and phrases have the following meanings:

- (a) "Director" means the director of Contra Costa health services or his or her designee.
- (b) "Drug paraphernalia" has the meaning set forth in California Health & Safety Code section 11014.5.
- (c) "Licensee" means a tobacco retailer who has been issued a tobacco retailer's license in accordance with Section 445-10.010.
- (d) "Pharmacy" means any retail establishment where the profession of pharmacy is practiced by a pharmacist licensed by the State of California under the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.
- (e) "Public health director" means the public health director of Contra Costa County.
- (f) "Tax collector" means the treasurer-tax collector of Contra Costa County.
- (g) "Tobacco retailer" has the definition set forth in Section 445-2.006~~means any retailer, individual, or entity who sells or offers for sale any tobacco products in the unincorporated area of the county.~~

(Ords. 2017-01 § 11, 2003-01 § 3, 98-50 § 2).

~~(Ords. 2003-01 § 3, 98-50 § 2).~~

445-10.008 Application, issuance and renewal procedure.

- (a) Application. An application for a tobacco retailer's license shall be submitted to the tax collector in the name of the retailer, individual, or entity proposing to conduct retail tobacco sales on the business premises. The application shall be signed by the retailer, individual or entity or agent with written authority to act for same. All applications shall be submitted on a form available from the tax collector and shall contain the following information:
 - (1) The name, address, and telephone number of the applicant;
 - (2) The business name, address, and telephone number of each establishment where tobacco is to be sold.
- (b) Issuance and Renewal. All tobacco retailer's licenses will be issued and due for renewal effective July 1st and will expire on the subsequent June 30. Licensees must apply for

renewal before the tobacco retailer's license expires. Applicants for renewal must follow the application procedures set forth in subdivision (a).

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.010 Issuance, display, and transfer of license.

- (a) Upon receipt of a completed application for a tobacco retailer's license, including payment of a fee pursuant to Section 445-10.012, the tax collector will issue a tobacco retailer's license, unless any of the following grounds for denial exist:
 - (1) The application is incomplete or inaccurate;
 - (2) The application seeks authorization for tobacco retailing by a person or location for which a suspension is in effect under Section 445-10.018;
 - (3) The application seeks authorization for tobacco retailing that is an unlawful use of land, building or structure contrary to Divisions 82 or 84 of this code.
 - (4) Failure to pay an outstanding fine.
- (b) Each licensee must prominently display the tobacco retailer's license at the location where tobacco retail sales are conducted.
- (c) The tobacco retailer's license is nontransferable. If there is a change in location, a new tobacco retailer's license will be issued for the new address upon receipt of an application for change of location. The new tobacco retailer's license will retain the same expiration date as the previous one.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.012 License fee.

A tobacco retailer's license will not be issued unless a fee is paid. The fee for a tobacco retailer's license shall reflect the reasonable cost of providing services necessary to the licensing activities of this chapter. The fees prescribed by this section are regulatory permit fees and do not constitute a tax for revenue purposes. The fee shall be in the amount established annually by the board of supervisors in the Contra Costa County health services department's fee schedule.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.014 Business license.

If a tobacco retailer's license is denied, revoked, or suspended pursuant to this chapter, the holder of a valid business license issued pursuant to Chapter 64-14 of this code may nevertheless carry on all lawful aspects of his or her business, other than the sale or offering for sale of tobacco products, unless otherwise prohibited.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.016 License revocation.

- (a) Grounds for Revocation. A tobacco retailer's license may be revoked on any of the following grounds:
 - (1) One or more of the grounds for denial of a tobacco retailer's license under Section 445-10.010 existed either when a license application was made or before the tobacco retailer's license was issued;
 - (2) The tobacco retailer's license fee is unpaid;
 - (3) The tobacco retailer's license has been transferred in violation of Section 445-10.010.
- (b) Notice of Revocation Hearing. If any grounds for revocation exist, the director may issue a notice of revocation hearing. A notice of revocation hearing will be served to a tobacco retailer as specified in Section 445-10.022 and will include all of the following information:
 - (1) The address or a definite description of the location where the tobacco retailer's license is issued;
 - (2) The grounds for revocation;
 - (3) The date of the revocation hearing before the public health director. The notice of revocation hearing will set the hearing date no sooner than twenty days and no later than forty-five days following the date the notice of revocation hearing is served.
- (c) Revocation Hearing. A tobacco retailer's license may be revoked by the public health director after a tobacco retailer's license revocation hearing. At the hearing, the licensee will be given the opportunity to testify and to present evidence concerning the grounds set forth in the notice of revocation hearing. After considering the testimony and evidence submitted at the hearing, the public health director will issue a written decision to revoke or not revoke the license and will list in the decision the reason or reasons for that decision. The written decision will be served as specified in Section 445-10.022. A revocation is without prejudice to the filing of a new application for a tobacco retailer's license.
- (d) Revocation Appeal. The decision of the public health director to revoke a tobacco retailer's license is appealable to the board of supervisors and will be heard at a noticed public hearing as provided in Chapter 14-4 of this code.
- (e) Final Order. The tobacco retailer's license revocation becomes a final administrative order at one of the following times:
 - (1) On the date of the revocation hearing, if a tobacco retailer fails to appear at a scheduled revocation hearing;
 - (2) On the date the public health director's decision is served, if a tobacco retailer fails to file a written appeal to the board of supervisors within the time specified;
 - (3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors;

- (4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.018 License suspension.

- (a) Grounds for Suspension. A tobacco retailer's license may be suspended for any violation of this division, ~~Division 440 of this code, or~~ any state or federal tobacco-related laws, any state or federal law regulating controlled substances or drug paraphernalia, or any state or local law regulating advertising and signage on retailer's window space.
- (b) Notice of Suspension Hearing. If any grounds for suspension exist, the director may issue a notice of suspension hearing. The notice of suspension hearing will be served to a tobacco retailer as specified in Section 445-10.022 and will include all of the following information:
- (1) The date of the violation;
 - (2) The address or other description of the location where the violation occurred;
 - (3) The code section(s) violated, or applicable state or federal law violated, and a description of the violation;
 - (4) The time period of the tobacco retailer's license suspension;
 - (5) The date of the suspension hearing before the public health director. The notice of suspension hearing will set the hearing date no sooner than twenty days and no later than forty-five days following the date the notice of suspension hearing is served.
- (c) Suspension Hearing. A tobacco retailer's license may be suspended by the public health director after a tobacco retailer's license suspension hearing. At the hearing, the licensee will be given the opportunity to testify and to present evidence concerning the notice of suspension hearing. After considering the testimony and evidence submitted at the hearing, the public health director will issue a written decision to suspend or not suspend the tobacco retailer's license. The public health director will list in the decision the reason or reasons for the decision and will list the time period of the tobacco retailer's license suspension, if applicable. The written decision will be served as specified in Section 445-10.022.
- (d) Time Period of License Suspension.
- (1) A tobacco retailer's license suspension may be up to thirty days for a first violation;
 - (2) A tobacco retailer's license suspension may be up to ninety days for a second violation occurring within five years ~~twenty-four months~~ of the first violation;
 - (3) A tobacco retailer's license suspension may be up to one year for each subsequent violation occurring within five years ~~twenty-four months~~ of the most recent prior determination.

- (e) Suspension Appeal. The decision of the public health director to suspend a tobacco retailer's license is appealable to the board of supervisors and will be heard at a noticed public hearing as provided in Chapter 14-4 of this code.
- (f) Final Order. The tobacco retailer's license suspension becomes a final administrative order at one of the following times:
 - (1) On the date of the suspension hearing, if a tobacco retailer fails to appear at a scheduled suspension hearing;
 - (2) On the date the public health director's decision is served, if a tobacco retailer fails to file a written appeal to the board of supervisors within the time specified;
 - (3) On the date of the appeal hearing, if a tobacco retailer fails to appear at a scheduled appeal hearing before the board of supervisors;
 - (4) On the date of the decision by the board of supervisors, if a tobacco retailer appears at a scheduled appeal hearing before the board of supervisors.

~~(g) During a period of license suspension, the tobacco retailer must remove from public view all tobacco products.~~

~~(Ords. 2017-01 § 12, 2003-01 § 3, 98-50 § 2).~~

~~(Ords. 2003-01 § 3, 98-50 § 2).~~

445-10.020 Enforcement.

The county may seek compliance with this chapter by any remedy allowed under this code, including, but not limited to, revocation (Section 445-10.016), suspension (Section 445-10.018), administrative fines (Chapter 14-12), criminal citations (Section 14-8.008), and any other remedy allowed by law.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.022 Service.

All notices or decisions required to be served by this chapter will be served either by the method specified in subsection (a) or by the method specified in subsection (b). The failure of a person to receive a properly addressed service shall not affect the validity of the proceedings.

- (a) Certified mail. Certified mail will be addressed to the tobacco retailer at the address shown on the license application. Service is deemed complete upon the deposit of the notice or decision, postage pre-paid, in the United States mail. Simultaneously, the same notice or decision may be sent by regular mail. If a notice or decision sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail on the date mailed.
- (b) Personal service. Personal service is deemed complete on the date the notice or decision is personally served.

(Ords. 2003-01 § 3, 98-50 § 2).

445-10.024 Display and advertisement without license.

- (a) A tobacco retailer without a valid tobacco retailer's license, including a tobacco retailer whose license has been suspended or revoked, shall keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products or tobacco paraphernalia while a license is suspended or revoked is a violation of Section 445-10.002.

- (b) A tobacco retailer without a valid tobacco retailer's license, including a tobacco retailer whose license has been suspended or revoked, may not display any advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution of these products from the tobacco retailer's location or that could lead a reasonable consumer to believe that these products can be obtained at that location.

(Ord. 2017-01 § 13).

