

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF YOLO
AMENDING CHAPTER 15 OF TITLE 6 OF THE YOLO COUNTY CODE
REGARDING TOBACCO RETAILER PERMITTING

The Board of Supervisors of the County of Yolo hereby ordains as follows:

SECTION 1. Background and Findings.

In 2009, The FDA banned the sale of flavored cigarettes primarily because of their attraction to youth. Unfortunately, this ban does not apply to the many other flavored tobacco products including cigars, cigarillos, chewing tobacco, snus, electronic cigarettes, and e-juice. Colorful packaging and sweet flavors make flavored tobacco products more appealing to youth as seen by increased rates of first time youth smokers using flavored tobacco products. Additional strategies to limit the accessibility and the appeal to youth, such as minimal packaging size and zoning laws, have successfully decreased youth cigarette use and should be applied to both unflavored and flavored tobacco products. An ordinance that places the same restrictions on all tobacco products, not just cigarettes, is a vital step toward reducing the access of tobacco to Yolo County youth. In December 2015, the Board authorized the Health and Human Services Agency and County Counsel to amend the County’s current Tobacco Retail Licensing policy to include language that eliminates the sale of flavored tobacco products, including menthol flavor, creates a minimum packaging size for little cigars, and limits the number of tobacco retailers.

SECTION 2. Section 6-15.02 is amended to read as follows:

Sec. 6-15.02. Definitions.

As used herein:

- (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) “Cigar” means (1) any roll of tobacco wrapped entirely or in part in tobacco or in any substance containing tobacco; or (2) any paper or wrapper that contains tobacco and is designed for smoking or ingestion of tobacco products. For the purposes of this subsection, “cigar” includes, but is not limited to, tobacco products known or labeled as “cigar,” “cigarillo,” “tiparillo,” or “little cigar,”
- (c) “Department” means the Yolo County Health & Human Services Agency.
- (d) “Director” shall mean the Director of Yolo County Health & Human Services or her/his written designee.

(e) “Electronic smoking device” means an electronic device which can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic smoking device” includes any such electronic smoking 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.

(f) “Flavored Tobacco Product” means any Tobacco Product that contains a constituent that imparts a characterizing flavor to the tobacco product or smoke produced by the tobacco product, either by the addition of artificial or natural flavors or an herb or spice, including menthol, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee.

(g) “Person” means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

(h) “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.

(i) “Self-Service Display” means the open display of Tobacco Products or Tobacco Paraphernalia in a manner that is accessible 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.

(j) “Significant Tobacco Retailer” means any Tobacco Retailer whose principal or core business is selling Tobacco Products, Tobacco Paraphernalia, or both, as evidenced by any of the following: (i) twenty percent (20%) or more of floor area and display area is devoted to the sale or exchange of Tobacco products, Tobacco Paraphernalia, or both; (ii) fifty percent (50%) or more of completed sales transactions include a Tobacco Product or Tobacco Paraphernalia; or (iii) Sixty-seven percent (67%) or more of gross sales receipts are derived from the sale or exchange of Tobacco Products, Tobacco Paraphernalia, or both.

(k) “Smoking” means possessing a lighted Tobacco Product, lighted Tobacco Paraphernalia, or any other lighted weed or plant (including a lighted pipe, cigar, hookah pipe, or cigarette of any kind), or the lighting of a Tobacco Product, Tobacco Paraphernalia, or any other weed or plant (including a pipe, cigar, hookah pipe, or cigarette of any kind).

(l) “Tobacco Paraphernalia” means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette-rolling machines, and any other item designed for the smoking, preparation, storing, consumption or ingestion of Tobacco Products.

(m) “Tobacco Product” means: (1) any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; (2) 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, but does not include any product specifically approved by the United States Food

and Drug Administration for use in treating nicotine or tobacco product dependence; and (3) 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;

(n) “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, or who distributes free or low cost samples of Tobacco Products or Tobacco Paraphernalia, without regard to the quantity of tobacco, Tobacco Products, or Tobacco Paraphernalia sold or offered for sale, exchanged or offered for exchange, or distributed or offered for distribution. “Tobacco Retailing” means the doing of any of these things.

(o) “Tobacco Retailing Permit Hearing Authority“ or “Hearing Authority” means one or more persons assigned by the County Administrative Officer the responsibility of conducting a hearing pursuant to this Chapter, and may hereafter be referred to as the Hearing Authority. The County Administrative Officer shall assign hearing responsibility to any of the following: (1) County management personnel whom the County Administrative Officer finds to be qualified by training and experience to conduct such hearings; (2) Any person(s) qualified by training or experience whom the County Administrative Officer may employ or who are retained by contract to conduct such hearings; or (3) Administrative Law Judges assigned by the State Office of Administrative Hearings. The County Administrative Officer is hereby authorized to contract in the name of the County for the retention of hearing services at rates that do not exceed the financial limitations established by the County’s annual budget and contracting rules, regulations and policies.

(p) “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.

SECTION 3. Section 6-15.04 is amended to read as follows:

Sec. 6-15.04. Limits on Tobacco Retailer Permits.

(a) The following locations are eligible to apply for a tobacco retailer license:

| RETAILER | STREET ADDRESS | CITY | ZIP |
|--------------------------|---------------------|----------|-------|
| ZAMORA MINI MARKET | 9920 CO RD 99 W | ZAMORA | 95698 |
| PILOT TRAVEL CENTER #168 | 30035 COUNTY RD #8 | DUNNIGAN | 95937 |
| FARMERS MARKET | 29020 COUNTY RD 6 | DUNNIGAN | 95937 |
| DUNNIGAN MARKET | 3660 COUNTY RD 99W | DUNNIGAN | 95937 |
| UNITED TRUCK STOP | 29770 COUNTY RD # 8 | DUNNIGAN | 95937 |
| DUNNIGAN CHEVRON | 4040 COUNTY RD 89 | DUNNIGAN | 95937 |
| EL CHINO MINI MARKET | 2501 COUNTY ROAD 88 | DUNNIGAN | 95937 |

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|----------------------------------|----------------------------|-----------------|-------|
| DUNNIGAN EXPRESS | 29029 COUNTY RD 6 | DUNNIGAN | 95937 |
| CASA RUIZ | 15190 STATE HIGHWAY 113 | WOODLAND | 95776 |
| WILLOW OAK GROCERY | 37030 HWY. 16 | WOODLAND | 95695 |
| HOLLAND MARKET | 52945 NETHERLAND AVE | CLARKSBURG | 95612 |
| ESPARTO SUPERMARKET | 17343 FREMONT ST | ESPARTO | 95627 |
| EL TORO FOODS - ESPARTO | 16939 YOLO AVE | ESPARTO | 95627 |
| ESPARTO GRAB & GO | 16814 FREMONT ST | ESPARTO | 95627 |
| M & M MINI MART | 16876 YOLO AVE | ESPARTO | 95627 |
| DOLLAR GENERAL STORE #16171 | 26875 STATE HIGHWAY 16 | ESPARTO | 95627 |
| GUY'S CORNER | 17776 COUNTY ROAD #89 | MADISON | 95653 |
| KNIGHTS LANDING GROCERY STORE | 9518 LOCUST ST | KNIGHTS LANDING | 95645 |
| WAYSIDE MARKET | 9696 LOCUST ST | KNIGHTS LANDING | 95645 |
| PLUG AND JUG MARKET | 9425 LOCUST ST | KNIGHTS LANDING | 95645 |

No License may be issued to authorize tobacco retailing except at the locations listed above where tobacco products are sold, offered for sale or exchanged.

(b) A tobacco retailer operating lawfully on the effective date of the ordinance codified in this chapter that would otherwise be eligible for a tobacco retailer license for any of the above locations for which a license is sought may receive or renew a license for that location so long as: (1) the license is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension); (2) the tobacco retailer is not closed for business or otherwise suspends tobacco retailing for more than 60 consecutive days; (3) the tobacco retailer does not substantially change the business premises or business operation; and (4) the tobacco retailer retains the right to operate under other applicable laws, including without limitation the zoning ordinance, building codes, or other applicable codes.

SECTION 4. Section 6-15.10 is amended to read as follows:

Sec. 6-15.10. Other Tobacco Retailing Requirements and Prohibitions.

(a) Each Proprietor shall prominently display each Permit at the location where Tobacco-Retailing is permitted by the Permit.

(b) In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a Permit issued, it shall be a violation of this Chapter for a Proprietor or Tobacco Retailer, or any of the Proprietor's or Tobacco Retailer's agents or employees, to:

(1) Violate any Federal, State or local law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

(2) Violate any Federal, State or local law regulating exterior, storefront, window, or door signage.

(c) 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.

(d) No Tobacco Retailer shall display Tobacco Products or Tobacco Paraphernalia by means of a Self-Service Display or engage in Tobacco Retailing by means of a Self-Service Display.

(e) 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 Flavored Tobacco Product.

(2) Any single Cigar packaged for individual sale where the price does not exceed five (\$5) dollars;

(2) Any number of Cigars fewer than the number contained in the manufacturer's original consumer packaging designed for retail sale to a consumer;

(3) Any package of Tobacco Product containing fewer than five Cigars.

SECTION 5. Severability.

If any section, sub-section, sentence, clause, or phrase of this ordinance is held by a court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance, and each section, sub-section, sentence, clause, and phrase hereof, irrespective of the fact that one or more sections, sub-sections, sentences, clauses, and phrases be declared invalid.

SECTION 6. Effective Date.

This ordinance shall take effect and be in force thirty (30) days after its passage, and prior to expiration of fifteen (15) days after its passage thereof, shall be published by title and summary only in the Davis Enterprise together with the names of members of the Board of Supervisors voting for and against the same.

Introduced at a regular meeting of the Board of Supervisors held on the 13th day of September, 2016, and passed and adopted by the Board of Supervisors of the County of Yolo, State of California, on the 27th day of September, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTENTION:

Jim Provenza, Chair
Yolo County Board of Supervisors

Attest: Julie Dachtler, Deputy Clerk
Yolo County Board of Supervisors

Approved as to Form:
Philip J. Pogledich, County Counsel

By: _____
Deputy (Seal)

By: Hope P. Welton
Hope P. Welton, Senior Deputy