

**ORDINANCE NO. NS-517.96**

**AN ORDINANCE OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CLARA  
AMENDING CERTAIN SECTIONS OF CHAPTER XXII OF DIVISION B11 OF THE  
COUNTY OF SANTA CLARA ORDINANCE CODE RELATING TO ENFORCEMENT  
AND PENALTIES FOR VIOLATIONS OF TOBACCO RETAIL REQUIREMENTS  
AND PROHIBITIONS**

Summary

This Ordinance amends provisions of Chapter XXII of Division B11 of the Ordinance Code governing permits for retailers of tobacco products to authorize denial of a permit to a Retailer whose permit was previously revoked; impose conditions on permits to facilitate enforcement; increase fines for violations; provide for impound and seizure of noncompliant products; require posting of public notice during any suspension; and clarify the existing prohibition on the sale of electronic cigarette products.

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

SECTION 1. Section B11-577 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Definitions is hereby amended to read as follows:

**Sec. B11-577. Definitions.**

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

- (a) Arm's Length Transaction means a Sale in good faith and for valuable consideration that reflects the fair market value in the open market between two or more informed and willing parties, neither of which is under any compulsion to participate in the transaction. A Sale between relatives, related companies or partners, or a Sale for which a significant purpose is avoiding the effect of the violations of this Chapter is not an Arm's Length Transaction.
- (b) Department means the County's Department of Environmental Health and any agency or Person designated by the Director of the Department of Environmental Health to enforce or administer the provisions of this Chapter.
- (c) Distribute or Distribution means the transfer, by any Person other than a common carrier, of a Tobacco Product to another Person for Sale or personal consumption.
- (d) Electronic Cigarette Products means any of the following products:

- (1) Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
  - (2) Any component, part, or accessory of such a device or delivery system that is used during its operation.
  - (3) Any flavored or unflavored liquid or substance containing nicotine, whether sold separately or sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.
  - (4) Any product for use in an electronic nicotine device or delivery system whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.
  - (5) Electronic Cigarette Products shall not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if sold separately. Electronic Cigarette Products shall 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 that product is marketed and sold solely for such approved use. See 21 U.S.C. § 387(a). As used in this subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.
- (e) Impound means the legal control exercised by the Department over the use, sale, disposal, or removal of any Tobacco Products.
  - (f) Ownership means possession of a ten percent or greater interest in the stock, assets, or income of a business, other than a security interest for the repayment of debt. Notwithstanding any other definition in this Code, an Owner means a Person who possesses Ownership.
  - (g) Permit means a valid permit issued by the Department to a Person to act as a Retailer.
  - (h) Retailer means any Person who Sells or Distributes Tobacco Products for any form of consideration, whether or not they possess a current Permit. Retailing shall mean the doing of any of these actions. This definition is without regard to the quantity of Tobacco Products Sold or Distributed.
  - (i) School means a public or private elementary, middle, junior high, or high school.

- (j) Tobacco Product means (unless specifically noted elsewhere) any product subject to Subchapter IX (21 U.S.C. § 387 et seq. (“Subchapter IX”) of the Federal Food, Drug, and Cosmetic Act. (See 21 U.S.C. § 387a(b) (products subject to Subchapter IX); 21 C.F.R. §§ 1100.1—1100.3 (tobacco products subject to Subchapter IX) and Electronic Cigarette Products. Products subject to Subchapter IX include, but are not limited to, cigarettes, cigarette tobacco, roll-your-own tobacco, smokeless tobacco, cigars, pipe tobacco, and waterpipe tobacco. Products that are not subject to Subchapter IX include accessories of Tobacco Products, such as, but not limited to, ashtrays, spittoons, and conventional matches and lighters that solely provide an external heat source to initiate but not maintain combustion of a Tobacco Product.

SECTION 2. Section B11-578 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Requirements and prohibitions is hereby amended to read as follows:

**Sec. B11-578. Requirements and prohibitions.**

- (a) Permit required. It shall be unlawful for any Person to act as a Retailer in an unincorporated area of the County without first obtaining and maintaining a Permit pursuant to this Chapter for each location at which Retailing occurs.
- (b) Lawful business operation. It shall be a violation of this Chapter for any Retailer to violate any local, state, or federal law applicable to Tobacco Products or the Retailing of such Tobacco Products.
- (c) Display of Permit. Each Permit shall be prominently displayed in a publicly visible place at the location identified in the Permit.
- (d) Notice of minimum age for purchase of Tobacco Products. Retailers shall post conspicuously, at each point of purchase, a notice stating that selling Tobacco Products to anyone under 21 years of age is illegal and subject to penalties. Such notice shall be subject to the approval of the Public Health Department.
- (e) Positive identification required. No Retailer shall Sell or Distribute a Tobacco Product to another individual without first examining the individual’s identification to confirm that the individual is at least the minimum age required under state law to purchase and possess the Tobacco Product.
- (f) Minimum age for individuals selling Tobacco Products. No individual who is younger than the minimum age established by State law for the purchase or possession of Tobacco Products shall engage in Retailing.
- (g) False and misleading advertising prohibited. A Retailer without a Permit:

- (1) Shall keep all Tobacco Products out of public view.
  - (2) Shall not display any advertisement relating to Tobacco Products that promotes the Sale or Distribution of such products from the Retailer's location or that could lead a reasonable consumer to believe that Tobacco Products can be obtained at that location.
- (h) Limitation on storefront advertising. No more than 15 percent of the square footage of the windows and clear doors of a physical storefront used for Retailing Tobacco Products shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. However, this latter requirement of this subsection (h) shall not apply to an establishment where there are no windows or clear doors, or where existing windows are located only at a height that precludes a view of the interior of the premises by an individual standing outside the premises.
- (i) Flavored Tobacco Products.
- (1) No Retailer shall Sell a Tobacco Product containing, as a constituent or additive, an artificial or natural flavor or aroma (other than tobacco) or an herb or spice, including but not limited to strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, mint, menthol, or coffee, that is a characterizing flavor or aroma of the Tobacco Product, smoke, or vapor produced by the Tobacco Product.
  - (2) A Tobacco Product shall be subject to a rebuttable presumption that the product is prohibited by paragraph (1) of this subsection if:
    - (A) the product's manufacturer or any other Person associated with the manufacture or Sale of Tobacco Products makes or disseminates public statements or claims to the effect that the product has or produces a characterizing flavor or aroma, other than tobacco; or
    - (B) the product's label, labeling, or packaging includes a statement or claim—including any text and/or images used to communicate information—that the product has or produces a characterizing flavor or aroma, other than tobacco.
- (j) Vending machines prohibited. No Tobacco Product shall be Sold or Distributed to the public from a vending machine or appliance, or any other coin or token operated mechanical device designed or used for vending purposes, including, but not limited to, machines or devices that use remote control locking mechanisms.

- (k) Prohibition on Sale or Distribution of Tobacco Products to individuals under 21. No Retailer shall Sell or Distribute any Tobacco Product to any individual who is under 21 years of age.
- (l) Prohibition on Sale or Distribution of Electronic Cigarette Products. No Person in the County, whether or not issued a Permit, shall Sell or Distribute Electronic Cigarette Products.

SECTION 3. Section B11-581 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Permit issuance, denial, and revocation is hereby amended to read as follows:

**Sec. B11-581. Permit issuance, denial, and revocation.**

- (a) Upon the receipt of a complete application for a Permit, the application fee, and the annual Permit fee, the Department shall issue a Permit unless substantial evidence demonstrates that one or more of the following bases for denial exists:
  - (1) The information presented in the application is inaccurate or false.
  - (2) The application seeks authorization for Retailing at a location for which this Chapter prohibits issuance of a Permit.
  - (3) The application seeks authorization for Retailing by a Person to whom this Chapter prohibits issuance of a Permit.
  - (4) The application seeks authorization for a Retailer whose Permit has previously been revoked or who has otherwise violated any provision of this Chapter within the last 60 months.
  - (5) The application seeks authorization for Retailing that is prohibited pursuant to this Chapter (e.g., mobile vending, Electronic Cigarette Products) or that is unlawful pursuant to any other law.
  - (6) The application seeks authorization for Retailing by a Retailer who has failed to pay any fees, penalties, or reinspection fees required by this Chapter.
- (b) A Permit shall be revoked if the Department finds that one or more of the bases for denial of a Permit under this section existed at the time application was made or at any time before the Permit issued. Such a revocation shall be without prejudice to the filing of a new Permit application.
- (c) A Permit shall be permanently revoked if the Retailer has committed violations as specified in section B11-588(c).

SECTION 4. Section B11-582 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Permit term, renewal, and expiration is hereby amended to be titled and to read as follows:

**Sec. B11-582. Permit term, conditions, renewal, and expiration.**

- (a) Term of Permit. The term of a Permit is one year. A Permit is invalid upon expiration.
- (b) Conditions of Permit. As conditions of Permit issuance and retention, Retailer shall:
  - (1) Allow Compliance Inspections as described in Section B11-586 and expressly consent to inspection of all areas and records of a Retailer's business required to effectuate the purpose of this Chapter, including unlocking and allowing access to any area of Retailer's business requested by any individual authorized to monitor and facilitate compliance with this Chapter.
  - (2) Comply with any order of the Department to impound any product not authorized to be sold by this Chapter and cooperate with any Departmental seizure of any product, subject to appeal of those actions.
  - (3) Failure to comply with these Permit conditions may result in Permit suspension or revocation as described in Section B11-588.
- (c) Renewal of Permit. The Department shall renew a Permit upon timely payment of the annual Permit fee provided that the Retailer complies with this Chapter, as amended. The Department may, in its discretion, agree to renew any expired Permit within the three-month period following expiration if the Retailer pays the annual Permit fee and applicable late charges. For every calendar month, or fraction thereof, that a Retailer fails to renew an expired Permit, a late charge equal to 20 percent of the annual Permit fee shall be assessed. A Permit renewed within three calendar months of expiration shall be treated as if timely renewed.
- (d) Issuance of Permit after revocation or expiration of Permit. To apply for a new Permit more than three calendar months after expiration of a Permit or following revocation of a Permit that was wrongly issued, a Retailer must submit a complete application for a Permit, along with the application fee and annual Permit fee. The Department shall issue a Permit pursuant to the requirements of Section B11-581 of this Chapter.

SECTION 5. Section B11-585 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Fees is hereby amended to read as follows:

**Sec. B11-585. Fees.**

The Department shall not issue or renew a Permit before full payment of any applicable fees. The Board of Supervisors shall, from time to time, establish by resolution the fees to issue

or to renew a Permit. The fees shall be calculated so as to recover the cost of administration of this Chapter, including, for example, issuing a Permit, administering the Permit program, Retailer education, and routine Retailer inspection and compliance, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees and interest earned from such fees shall be used exclusively to fund administration and enforcement of this Chapter.

SECTION 6. Section B11-586 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Compliance monitoring is hereby amended to read as follows:

**Sec. B11-586. Compliance monitoring.**

- (a) Compliance with this Chapter shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this Chapter. The County Executive may designate any number of additional individuals to monitor and facilitate compliance with this Chapter.
- (b) The Department or other individuals designated to enforce the provisions of this Chapter shall monitor each Retailer at least once per 12-month period to determine if the Retailer is complying with all laws applicable to Retailing, other than those laws regulating underage access to Tobacco Products. Nothing in this paragraph shall create a right of action in any Retailer or other Person against the County or its agents.
- (c) Any Retailer found to be in violation of this Chapter shall pay all costs related to enforcement to ensure Retailer's compliance with this Chapter, including but not limited to fees for reinspection to determine compliance after a violation, enforcement costs, litigation costs, and attorneys' fees in any administrative or civil matter in which the County prevails pursuant to Division A1 of this Code.

SECTION 7. Section B11-587 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Prevention of underage sales is hereby amended to read as follows:

**Sec. B11-587. Prevention of underage sales.**

- (a) The Public Health Department, Department of Environmental Health, or other departments or individuals designated to enforce the provisions of this Chapter shall monitor each Retailer at least twice per 12-month period to determine whether the Retailer is conducting business in a manner that complies with laws regulating youth access to Tobacco Products. Nothing in this paragraph shall create a right of action in any Retailer or other Person against the County or its agents.
- (b) The County shall not enforce any law establishing a minimum age for Tobacco Product purchases against an individual who otherwise might be in violation of such law because of the individual's age ("Youth Decoy") if the potential violation occurs when:

- (1) The Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement official of the County;
- (2) The Youth Decoy is acting as an agent of a Department or individual designated by the County to monitor compliance with this Chapter; or
- (3) The Youth Decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the County or the California Department of Public Health.

SECTION 8. Section B11-588 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Penalties for a violation by a retailer with a permit is hereby amended to be titled and to read as follows:

**Sec. B11-588. Penalties for violations by a Retailer with a permit.**

- (a) Administrative fine. In addition to any other penalty authorized by law, a Retailer shall pay a fine if the Retailer or the Retailer's agents or employees violate any of the requirements, conditions, or prohibitions of this Chapter. The amount of the administrative fine for each violation of this Chapter shall be as follows:
  - (1) A fine not to exceed \$1,000 for each violation identified during the first instance in which the Retailer has committed a violation or violations;
  - (2) A fine not to exceed \$2,500 for each violation identified during a subsequent instance if the Retailer has committed a previous violation or violations within a 60-month period; and
  - (3) A fine not to exceed \$5,000 for each violation identified during a subsequent instance after the Retailer twice committed a previous violation or violations within a 60-month period.
- (b) Permit suspension. In addition to any other penalty authorized by law, the Department may suspend a Permit if the Department demonstrates that the Retailer or any of the Retailer's agents or employees has violated any of the requirements, conditions, or prohibitions of this Chapter. The period of the suspension shall be as follows:
  - (1) A suspension not to exceed 30 calendar days for an initial violation.
  - (2) A suspension not to exceed 180 calendar days if a Retailer commits a violation or violations during two instances within a 60-month period.
  - (3) When a Permit is suspended based on a violation of this Chapter, the Department shall post a placard at the physical location used for Retailing Tobacco Products

to notify the general public of the suspension. The placard shall be:

- (A) Posted in the front window of the storefront used for Retailing Tobacco Products within five feet of the front door; or
  - (B) Posted in a display case mounted on the outside front wall of the physical location used for Retailing Tobacco Products within five feet of the front door; or
  - (C) Posted in a location approved by the Director to ensure proper notice to the general public and to patrons of the physical location used for Retailing Tobacco Products.
  - (D) Once attached to a building or structure, a placard is not to be removed, altered, or covered until done so by an authorized representative of the Department or upon written notification from the Department.
- (c) Permanent permit revocation. In addition to any other penalty authorized by law, the Department shall permanently revoke a Permit if a Retailer commits a violation or violations during three instances within a 60-month period.
  - (d) Waiver or reduction of fines and penalties for first violation. The Department may, in its sole discretion, waive or reduce any fines and penalties for a Retailer's first violation of this section if the Retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Department's waiver of penalties for a first violation, the violation will be considered in determining the fines and suspension periods or revocation for any future violation. This subsection shall not apply to any violation involving a law regulating youth access to Tobacco Products.
  - (e) Corrections period. The Department shall have discretion to allow a Retailer a period of time to correct any violation of any requirement, condition, or prohibition of this Chapter, other than a violation of a law regulating youth access to Tobacco Products. If the Department exercises its discretion to provide a corrections period, and a Retailer's violation is corrected within the time allowed for correction, no penalty shall be imposed under this section.
  - (f) Written notice of penalties. Whenever a fine is issued and/or a Permit is suspended or revoked based on a violation of this Chapter, the Department shall provide the Retailer written notice of the violation and the fine and suspension or revocation, including when the suspension or revocation shall take effect.
  - (g) Appeals. Any penalties imposed under this section may be appealed pursuant to Section B11-590 of this Chapter.
  - (h) A timely appeal shall stay enforcement of the appealed penalties until the final

administrative decision of the County is issued.

SECTION 9. Section B11-589 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Penalties for retailing without a permit is hereby amended to read as follows:

**Sec. B11-589. Penalties for retailing without a permit.**

- (a) Administrative fine. In addition to any other penalty authorized by law, Retailer shall pay a fine if the Department demonstrates that the Retailer has engaged in Retailing at a location without a valid Permit, either directly or through the Retailer's agents or employees. The amount of the administrative fine for each violation of this Chapter shall be as follows:
  - (1) A fine not to exceed \$2,500 for each violation identified during the first instance in which the Retailer has committed a violation or violations without a valid permit;
  - (2) A fine not to exceed \$5,000 for each violation identified during a subsequent instance if the Retailer has committed a previous violation or violations within a 60-month period without a valid permit; and
  - (3) A fine not to exceed \$10,000 for each violation identified during a subsequent instance after the Retailer twice committed a previous violation or violations within a 60-month period without a valid permit.
- (b) Time period for Permit ineligibility. The ineligibility period shall be as follows:
  - (1) For an initial violation of this Chapter without a valid permit, no new Permit may be issued to the Retailer or the location (unless Ownership of the business at the location has been transferred in an Arm's Length Transaction) until 30 calendar days have passed from the date of the violation.
  - (2) If a Retailer commits a violation or violations during two instances within a 60-month period without a valid permit, no new Permit may be issued to the Retailer or the location (unless Ownership of the business at the location has been transferred in an Arms Length Transaction) until one year has passed from the date of the second violation.
  - (3) If a Retailer commits a violation or violations during three instances within a 60-month period without a valid permit, the Retailer and the location (unless Ownership of the business at the location has been transferred in an Arm's Length Transaction) shall be permanently ineligible for a permit.

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- (c) Waiver or reduction of fines and penalties for first violation. The Department may, in its sole discretion, waive or reduce any fines and penalties for a Retailer's first violation of this section if the Retailer admits the violation in writing and agrees to forego a hearing on the allegations. Regardless of the Department's waiver of penalties for a first violation, the violation will be considered in determining the fines and suspension periods or revocation for any future violation. This subsection shall not apply to any violation involving a law regulating youth access to Tobacco Products.
- (d) Written notice of penalties. Whenever a fine is issued and/or a Permit is suspended pursuant to this section, the Department shall provide the Retailer written notice of the fine and suspension, including when the suspension shall take effect.
- (e) Appeals. Any penalties imposed under this section may be appealed pursuant to Section B11-590 of this Chapter. A timely appeal shall stay enforcement of the appealed penalties until the final administrative decision of the County is issued.

SECTION 10. Section B11-590 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Appeals is hereby amended to read as follows:

**Sec. B11-590. Appeals.**

- (a) Any Retailer served with a written notice of violation may request an administrative hearing to appeal the existence of the violation, the amount of the fine, the length of a suspension, a revocation of a Permit, the sustained impoundment of Tobacco Products, and/or seizure of Tobacco Products by returning a completed hearing request form to the Office of the County Hearing Officer within ten days from the date of the written notice of penalties.
- (b) The Retailer shall include the following in or with the hearing request form:
  - (1) A statement indicating the reason the Retailer contests the written notice of penalties;
  - (2) Any evidence the Retailer wants the Hearing Officer to consider;
  - (3) An advance deposit of the amount of any fine challenged; and
  - (4) The address of the Retailer and, if available, an email address that can be used for contact and correspondence by the Office of the County Hearing Officer and the Department. The Retailer may request service of notice by mail.
- (c) The hearing request form shall be deemed filed on the date received by the Office of the County Hearing Officer. A timely appeal shall stay enforcement of the appealed penalties while the appeal is ongoing.

- (d) After receiving a timely hearing request form, the Office of the County Hearing Officer shall notify the Department as soon as practicable and then shall schedule an administrative hearing. The Office of the County Hearing Officer shall provide the Retailer and the Department at least ten calendar days' written notice of the date, time, and place of the administrative hearing and the name of the Hearing Officer who will conduct the hearing. The notice shall be given to the Retailer either by email, if requested, or by first class mail, postage prepaid.
- (e) Between the time the Retailer requests the administrative hearing and the time of the Hearing Officer's decision, the Retailer, the Department, and each of their representatives shall not engage in ex parte communications with the Office of the County Hearing Officer or the Hearing Officer regarding the matters at issue in the hearing.
- (f) The hearing shall be conducted by the Hearing Officer on the date, time, and place specified in the notice to the Retailer. A Retailer's failure to appear at the hearing shall constitute an abandonment of the hearing request and a failure to exhaust administrative remedies as a precedent to judicially challenge the existence of the violation and the imposition of the fine and suspension.
- (g) At the hearing, the Retailer and the Department shall have the opportunity to present evidence, including witnesses, relevant to the Hearing Officer's determination of the matter. Neither the provisions of the Administrative Procedure Act (Government Code Section 11500 et seq.) nor the formal rules of evidence in civil or criminal judicial proceedings shall apply to such hearing. The Hearing Officer may admit any evidence, including witnesses, relevant to the determination of the matter, except as otherwise provided in section B11-591(c).
- (h) The written notice of penalties and any other reports prepared by or for the Department concerning the violation shall be admissible and accepted by the Hearing Officer as prima facie evidence of the violation and the facts stated in those documents.
- (i) The Hearing Officer may continue the hearing from time to time, in his or her sole discretion, to allow for its orderly completion. After receiving the evidence submitted at the hearing, the Hearing Officer may further continue the hearing and request additional information from either the Department or the Retailer.
- (j) After considering the evidence and testimony submitted the Hearing Officer shall issue a written decision regarding the matters properly raised in the request for administrative hearing. The Hearing Officer's decision shall:
  - (1) Be based on a preponderance of the evidence.
  - (2) Include a statement of the reasons for the decision.

- (3) Be issued within 20 calendar days of the close of the hearing.
- (4) Be served on both the Retailer and the Department. The decision shall be given to the Retailer either by email, if requested, or by first class mail, postage prepaid.
- (k) Based on the Hearing Officer's decision, the Office of the County Hearing Officer shall promptly refund to the Retailer any amount of the advance fine deposit the Department is not entitled to and shall provide the remainder to the Department.
- (l) The Hearing Officer's written decision shall constitute the final administrative decision of the County.

SECTION 11. Section B11-591 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to Enforcement is hereby amended to read as follows:

**Sec. B11-591. Enforcement.**

- (a) Any violation of this Chapter is hereby declared to be a public nuisance.
- (b) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- (c) Whenever evidence of a violation of this Chapter is obtained in any part through the participation of an individual under the age of 21 years old, such an individual shall not be required over his or her objection to appear or give testimony in any civil or administrative process brought to enforce this Chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (d) Violations of this Chapter may be remedied by a legal action brought by the County pursuant to Division A1 of this Code. For the purposes of the civil remedies provided in this Chapter, each day on which a product is offered for Sale in violation of this Chapter, and each individual retail product that is Sold or Distributed in violation of this Chapter, shall constitute a separate violation of this Chapter.
- (e) Impoundment.
  - (1) Based upon inspection findings or other evidence, the Department may impound Tobacco Products that are suspected of being or found to be offered for sale or distribution in violation of this Chapter. The Department may affix a label to the product that shall be removed only by the Department following final written determination by the Department as described below.
  - (2) No impounded Tobacco Products shall be used, removed, disposed, or offered for sale unless the impoundment has been released. The decision by the Department may be appealed pursuant to the procedures set forth in Section B11-590.

- (3) Within 30 days of final determination whether impounded products are authorized for sale under this Chapter, the Department shall release the impounded materials or order that unauthorized, impounded product shall be destroyed and properly disposed of at the cost of the Retailer.
  
- (f) Seizure. Tobacco Products offered for sale in violation of this Chapter are subject to seizure by the Department and shall be forfeited after the Retailer of the Tobacco Products seized is given reasonable notice and an opportunity to demonstrate that the Tobacco Products were not offered for sale in violation of this Chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Section B11-590. Forfeited Tobacco Products shall be destroyed and properly disposed of at the cost of the Retailer after all internal appeals have been exhausted and after the time in which to seek judicial review pursuant to Section B11-590 of this Chapter has expired.
  
- (g) All Retailers are responsible for the actions of their employees relating to compliance with this Chapter. The sale, offer to sell, or furnishing of any Tobacco Products by an employee shall be considered an act of the Retailer.
  
- (h) The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

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SECTION 12. Section B11-592 of Chapter XXII of Division B11 of the Ordinance Code of the County of Santa Clara relating to No conflict with federal or state law is hereby amended to be titled and to read as follows:

**Sec. B11-592. Interpretation.**

- (a) Nothing in this Chapter shall be interpreted or applied so as to create any requirement, power, or duty that is preempted by, or in conflict with, federal or state law, rules, or regulations.
- (b) Nothing in this Chapter shall be construed to penalize the purchase, use, or possession of a Tobacco Product by any Person not engaged in the retailing of such products.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Clara, State of California, on SEP 13 2022 by the following vote:

**CHAVEZ, ELLENBERG, LEE**  
AYES: **SIMITIAN, WASSERMAN**

NOES: **NONE**

ABSENT: **NONE**

ABSTAIN: **NONE**



MIKE WASSERMAN, President  
Board of Supervisors

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

ATTEST:



TIFFANY LENNEAR  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



SONIA WILLS  
Deputy County Counsel

2691023