

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 5, CHAPTER 5.104 OF THE STOCKTON MUNICIPAL CODE UPDATING TOBACCO RETAIL LICENSE REQUIREMENTS AND REGULATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION I. FINDINGS AND INTENT.

The failure of tobacco retailers to comply with all tobacco control laws, particularly the sale of tobacco products to minors, presents a threat to the public health, safety, and welfare. A local licensing program for tobacco retailers is intended to ensure that tobacco retailers comply with tobacco control laws and business standards of the City of Stockton and to protect the health, safety, and welfare of those persons who reside in, work in, and visit the City of Stockton.

State law explicitly authorizes cities to enact local tobacco retail licensing ordinances and allows for the suspension or revocation of a local license for a violation of any state tobacco control law. A requirement for a tobacco retail license will not unduly burden legitimate business activities of retailers who sell or distribute tobacco products to adults but will allow the City of Stockton to regulate the operations of lawful businesses to discourage violations of Federal, State, and local tobacco-related laws. The City of Stockton has a substantial interest in promoting compliance with Federal, State, and local laws intended to regulate tobacco sales and use; discouraging the illegal purchase of tobacco products by minors; promoting compliance with laws prohibiting sales of tobacco products to minors; and protecting children from being lured into illegal activity through the misconduct of adults.

On June 20, 2023, this Chapter was adopted by the City of Stockton, creating a tobacco retail license requirement and regulations. On March 4, 2025, the City of Stockton adopted a 45-day moratorium on the issuance of new tobacco retail licenses pursuant to this Chapter and on April 15, 2025, that moratorium was extended for an additional 10 months and 15 days. The moratorium was based on express findings by the City of Stockton that the recent proliferation of tobacco retailer businesses, specifically smoke shops, and the harmful effects of tobacco and other products sold at these establishments were negatively impacting the health, safety, and welfare of City residents, especially youth. Further, tobacco retailer businesses have also been a source of unlawful activities in the City, targets for theft and vandalism, and affiliated with the sale of illegal cannabis products and drug paraphernalia that encourage illegal activity. Since the adoption of the moratorium, City staff have continued to study the issue and proposed revisions to the existing Tobacco Retailer Ordinance to address the public health and safety threats created by smoke shops under the existing ordinance.

This Chapter is hereby amended to specifically address those findings and to continue to encourage responsible tobacco retailing and to discourage violation of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors or that prohibit the sale of flavored tobacco products, industrial hemp products containing intoxicating cannabinoids, and illegal cannabis. This Chapter does not expand or reduce the degree to which the acts regulated by Federal or State law are criminally proscribed or alter the penalties provided by such laws. Nothing in this Chapter shall be construed to penalize the

purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing.

SECTION II. AMENDMENT OF CODE.

Title 5, Chapter 5.104 of the Stockton Municipal Code is hereby amended and shall read as follows:

5.104.010. Purpose and application.

The purpose of this chapter is to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors or prohibit the sale of flavored tobacco products, industrial hemp products containing intoxicating cannabinoids, and illegal cannabis, but not to expand or reduce the degree to which the acts regulated by Federal and State law are criminally proscribed or to alter the penalties provided by such laws.

5.104.020. Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"Alcoholic beverage sales establishment" has the same meaning as "Alcoholic Beverage Sales Establishment" in SMC Section 16.80.040, which states "An establishment where alcoholic beverage sales activity occurs, including but not limited to: liquor stores, beer and wine stores, convenience markets, neighborhood specialty food markets, retail sales establishments, wine shops, service stations, taverns, clubs, cocktail lounges, ballrooms, cabarets, dance bars, piano bars, billiard or game parlors, bowling alleys, nightclubs, dance halls, cafes, bars, restaurants with bars, full-service restaurants, and fast food establishments."

"Applicant" means and includes any person or entity who submits an application for a tobacco retail license.

"Application" means the application submitted under SMC Section 5.104.040 for a tobacco retail license allowing the person or entity to engage in tobacco retailing at the designated premises.

"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 under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this chapter that occurred at the location, is presumed not to be an "arm's length transaction."

"Change of ownership" means a change of 50 percent or more of the ownership of the business within a 12-month period.

"Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol

beverage, herb, or spice.

“Convenience store” has the same meaning as “convenience stores” in SMC Section 16.240.020, which states, “Easy access retail stores selling a combination of alcohol, gasoline, and a range of merchandise to provide a variety of items primarily for the motoring public. Convenience stores shall comply with the standards for alcoholic beverage sales (off-sale) (Section 16.80.040) and for problem uses (Section 16.80.270).”

"Flavored tobacco product" means any tobacco product that imparts a characterizing flavor or produces a cooling sensation.

“Hookah” means a single or multi-stemmed water pipe that is often shaped like a bottle or small tank that is used for heating or vaporizing and then smoking tobacco, with the smoke drawn through the water before inhalation. It is also known as a shisha.

“Intoxicating Cannabinoid” means delta-8 tetrahydrocannabinol (THC), delta-9 tetrahydrocannabinol (THC), delta-10 tetrahydrocannabinol (THC), tetrahydrocannabinolic acid (THCA), and the following THC or comparable cannabinoids, including but not limited to any metabolites, derivatives, salts, isomers, and any salt or acid of an isomer of:

- (1) Delta-5 tetrahydrocannabinol (THC);
- (2) Delta-6 tetrahydrocannabinol (THC);
- (3) Delta-6a tetrahydrocannabinol (THC);
- (4) Delta-7 tetrahydrocannabinol (THC);
- (5) Delta-10a tetrahydrocannabinol (THC);
- (6) Delta-11 tetrahydrocannabinol (THC);
- (7) Delta-11-Hydroxy- tetrahydrocannabinol (THC);
- (8) Exo-tetrahydrocannabinol;
- (9) 1-pentyl-3-(1-naphthoyl)indole (JWH-018);
- (10) 1-butyl-3-(1-naphthoyl)indole (JWH-073);
- (11) 1-pentyl-3-(4-methoxynaphthoyl)indole (14-JWH-200);
- (12) 1-pentyl-3-(2-methoxynaphthoyl)indole (JWH-250);
- (13) 1-pentyl-3-(4-chloronaphthoyl)indole (JWH-398);
- (14) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497);
- (15) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)6a,7,10,10a-tetrahydrobenzo[c] chromen-1-ol (HU-210);
- (16) (6a,10a)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydro-6H-benzo[c]chromen-1-ol (HU-211);
- (17) All tetrahydrocannabivarin (THCV), including but not limited to delta-8 tetrahydrocannabivarin and similar;

- (18) All metabolites of tetrahydrocannabinol (THC), including but not limited to 11hydroxy-THC, 3-hydroxy-THC, and 7- hydroxy-THC;
- (19) Any combination of the compounds, including but not limited to hexahydrocannabiphorol-O-ester and this list;
- (20) All hydrogenated forms of tetrahydrocannabinol (THC), including but not limited to hexahydrocannabinol (HHC), hexahydrocannabiphorol (HHCP), and hexahydrocannabihexol (HHCH);
- (21) All hydrogenated forms of hexahydrocannabinol (HHC) including but not limited to 8-hydroxyhexahydrocannabinol, 10-hydroxyhexahydrocannabinol;
- (22) All ester forms of tetrahydrocannabinol (THC), including but not limited to delta8 THC-O-acetate, delta-9 THC-O-acetate, and hexahydrocannabinol-Oacetate;
- (23) Analogues of tetrahydrocannabinols with alkyl chain of four or more carbon atoms, including but not limited to tetrahydrocannabiphorols (THCP), tetrahydrocannabioctyls, tetrahydrocannabihexols (THCH), tetrahydrocannabidiol (THC-JD), and tetrahydrocannabutols;
- (24) Tetrahydrocannabinol acetate (THC-O);
- (25) N-(1-Amino-1-methyl-ethyl)-5-fluoropentyl-1-naphthalen-2-yl-1H-indole-3carboxamide (XRL-11 &15);
- (26) N-(1-Amino-1-methyl-ethyl)-5-fluoropentyl-1-naphthalen-2-yl-1H-indole-3carboxamide (UR-144);
- (27) N-(1-Amino-1-methyl-ethyl)-5-fluoropentyl-1-naphthalen-2-yl-1H-indole-3carboxamide (FUB-144);
- (28) N-(1-Amino-1-methyl-ethyl)-5-fluoropentyl-1-naphthalen-2-yl-1H-indole-3carboxamide (AMB-FUBINACA);
- (29) (3-[(1R,4R)-Isopropyl-2-methyl-1,3-benzodioxol-5-yl]-N-(2,4-dimethyl-3methylbenzoyl)-N-methyl-1,2,3,4-tetrahydroisoquinolin-6-amine) (THJ-220); and
- (30) (3-[(1R,4R)-Isopropyl-2-methyl-1,3-benzodioxol-5-yl]-N-(2,4-dimethyl-3methylbenzoyl)-N-methyl-1,2,3,4-tetrahydroisoquinolin-6-amine) (RCS-4).

"Licensee" means and includes the holder of a tobacco retail license and any person required to have a tobacco retail license under this chapter, whether or not such person is actually so licensed.

"Loitering" means the act of remaining upon posted property without the permission of the owner or person in lawful possession.

"Person" means and includes any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity.

"Playground" means an active recreational area with a variety of facilities, including equipment for younger children, as well as court and field games. Playground does not include play areas located on the site of residential homes or private facilities.

"Premises" means any building or portion of any building where the licensed tobacco retailing

occurs.

"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 10 percent 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 has, or can have, sole or shared control over the day-to-day operations of a business.

"Retail store" has the same meaning as "retail stores" in SMC Section 16.240.020, which states: "Stores and shops selling goods or merchandise, not specifically listed under another land use, to the general public for personal or household consumption and rendering services incidental to the sale of goods."

"School" means any public or private academic school for students in kindergarten through 12th grade, nursery school, preschool, or daycare facility.

"Smoke shop" means a tobacco retailer that utilizes 25% or more of its retail sales space for the sale, display, marketing, or exchange of tobacco, tobacco products, or tobacco paraphernalia or holds itself out to the public as a smoke shop, or as determined by the Chief of Police, or designee, based on a totality of the circumstances, including but not limited to the onsite inventory of the business.

"Smoking lounge" means a tobacco retailer that is dedicated in whole or in part to the purchase and onsite consumption of tobacco products, including but not limited to establishments known variously as cigar lounges, hookah lounges, tobacco clubs, tobacco bars, etc.

"Tobacco product" means: (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, aerosolized, vaporized, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis, kreteks, snuff, e-liquids, or vape juice; (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to the person using the device, including, but not limited, to electronic cigarette (or "e-cigarette"), electronic cigar (or "e-cigar"), electronic pipe (or "e-pipe"), vape pen, electronic hookah (or "e-hookah"), cigars, or pipes, whether or not the device or component is sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for use as a tobacco cessation product where such product is marketed and sold solely for such an approved purpose.

"Tobacco paraphernalia" means any item designed or marketed for the consumption, use, or preparation of a tobacco product.

"Tobacco retailer" means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

"Tobacco retailer- Ancillary" means a tobacco retailer that is a retail store as defined by SMC Title 16 that utilizes less than 250 sq. ft. of its total space, or where the total space is 250 sq. ft. or less that utilizes less than 5 sq. ft., for the sale, display, marketing, or exchange of tobacco, tobacco products, or tobacco paraphernalia.

"Tobacco retailer- Exempt" means a tobacco retailer that is a retail store as defined in SMC Title 16 at a fixed premises that utilizes less than 5% of the retail sales space for tobacco retailing and utilizes 10% or more of the retail sales space for the sale and display of fresh

food, including agricultural products like fresh fruits and vegetables; nuts; minimally processed prepared foods; fresh meat, fish, or poultry; juice and dairy products; and fresh baked goods, breads, and cereals.

"Tobacco retailer- General" means a tobacco retailer that does not meet the definition of Tobacco retailer- Ancillary, Exempt, Smoke shop, or Smoking lounge.

"Tobacco retailing" means engaging in any of those activities of a tobacco retailer.

5.104.030. City issued tobacco retail license required.

- A. It shall be unlawful for any person to act as a tobacco retailer, engage in tobacco retailing, or allow tobacco retailing in the City without first obtaining and maintaining a valid tobacco retail license pursuant to the provisions of this chapter for each fixed location at which tobacco retailing is to occur.
- B. This section applies regardless of whether a person holds a valid cigarette and tobacco retailer's license from the California Department of Tax and Fee Administration (CDTFA).
- C. Nothing in this chapter shall be construed to grant any person or entity obtaining a tobacco retail license any status other than the right to act as a tobacco retailer at the location in the City identified on the face of the tobacco retail license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition of limitation on indoor smoking made applicable to business establishments by Section 6404.5 of the Labor Code.

5.104.040. License application.

- A. Every person who proposes to act as a tobacco retailer, engage in tobacco retailing, or allow tobacco retailing in the City shall submit an application for a license to the City in writing on forms provided by the City.
- B. An application shall be for a fixed location. If an applicant is proposing to conduct tobacco retailing at more than one fixed location, then they shall submit a separate application for each location.
- C. Each application shall be submitted under oath, in duplicate, and shall contain such information pertinent to the business as the City may require. Such information to be provided shall include, but not be limited to, the following:
 - 1. The true name, address, and telephone number of each proprietor;
 - 2. The business name, address, and telephone number of the fixed location for which a license is sought;
 - 3. The type of tobacco retail license sought: Tobacco retailer- Ancillary, Exempt, General, Smoke shop, or Smoking lounge.
 - 4. Any other type of business operation that the licensee operates on the premises: retail store (the specific type), convenience store, or alcoholic beverage establishment.

5. A site plan showing the layout of the premises, including but not limited to the contiguous area where tobacco retailing will take place and areas where tobacco products will be stored.
6. Whether or not any proprietor has previously been issued a license pursuant to this chapter that is, or was at any time, suspended, revoked, or cited for violation of any part of this chapter, and, if so, the dates of the suspension period, the date of revocation, or date of the violation; and
7. Whether or not any proprietor has been cited by law enforcement for selling tobacco products without a required tobacco retail license.
8. Whether or not any proprietor has been cited by law enforcement for selling, offering for sale, or possessing with the intent to sell flavored tobacco products.
9. Such other information as any department director deems necessary for the administration or enforcement of this chapter.
10. For Tobacco retailer- Smoke shop license applications:
 - a. The applicant shall also submit a security plan for review and approval by the Police Department that includes video surveillance, physical security, and a uniformed security personnel deployment plan.
 - b. Once City staff receives the application and required security plan, the original shall be transmitted to the Chief of Police who shall initiate an investigation into the applicant's business background and moral character as the Chief deems necessary for the protection of the public welfare. The Chief of Police shall approve the application unless, as the result of such investigation, the applicant's character or business responsibility is found to be unsatisfactory, or if the applicant has been convicted of any violation of this title, a felony, a misdemeanor involving moral turpitude, or a violation of any narcotics law. However, if, in the opinion of the Chief of Police, an applicant's prior criminal conviction is such that it would not render the applicant unsuitable to engage in the business of operating a Tobacco retailer- Smoke shop or otherwise endanger the public welfare, the Chief of Police, in their discretion, may approve the application. The Chief of Police shall return the approved application to the Administrative Services Officer, who shall, upon payment of the license fee herein prescribed deliver the license to the applicant. If the Chief of Police disapproves the application, the reasons for such disapproval shall be noted on the application and the application shall be returned to the Administrative Services Officer. The Administrative Services Officer shall notify the applicant of the disapproval and that no license will be issued.
- D. The applicant shall pay a nonrefundable application fee in an amount as may be fixed and established from time to time by resolution of the City Council. Thereafter, if a tobacco retail license is granted, the licensee shall pay an annual fee in an amount as may be fixed and established by City Council resolution.
- E. The applicant must provide a statement to the City to the effect that the applicant understands and agrees that any business or activity conducted or operated under any license issued under such application shall be operated in full conformity with all applicable laws of the United States of America, the State of California, the County of

San Joaquin, and the laws and regulations of the City applicable thereto, and that any violation of any such laws or regulations in such place of business, or in connection therewith, may render any tobacco retail license therefor subject to immediate suspension or revocation.

- F. The applicant must provide a copy of any valid current permit or license from the California Department of Tax and Fee Administration or any other applicable tobacco retail licensing agency, where the applicant is required to obtain any such permit or license in order to lawfully engage in tobacco retailing in the State of California and/or in the County of San Joaquin.
- G. The burden of proving qualifications to receive such a license is at all times on the applicant. An applicant must accept all risks of adverse public notice, publicity, embarrassment, criticism, financial loss, or all other actions and consequences which may result from activities with respect to reviewing, processing, and approving or disapproving any application. A waiver of any claims for damages against the City or its agents resulting therefrom shall be presumed upon the filing of an application for a tobacco retail license.
- H. Each applicant shall be responsible for providing truthful, complete, and accurate information and for signing the license application.
- I. The applicant shall submit written documentation stating that the property owner of the real property upon which the tobacco retailing is to be conducted is fully aware of the property's intended use. Documentation is to include the name, address, and contact telephone number for the property owner.
- J. The applicant must provide a statement to the City that the applicant will hold harmless, indemnify, and defend the City against all claims and litigation arising from the issuance of the tobacco retail license, including, without limitation, any claims and litigation arising from the establishment, operation, or ownership of the tobacco retailer.
- K. An application shall not be deemed complete until all the information required in subsections A through J have been provided to the City and the required fees and any applicable business tax required by any provision of this code have been paid.
- L. The application for a license pursuant to this chapter shall not authorize the maintenance, operation, or conduct of tobacco retailing until such license has been granted. The issuance of a business license pursuant to Title 5 of the Stockton Municipal Code shall not authorize the maintenance, operation, or conduct of a tobacco retailer until the license required by this chapter has been lawfully granted.

5.104.050. Business license.

- A. Nothing herein shall constitute a waiver of the requirements of Title 5 of the Stockton Municipal Code requiring issuance and possession of a valid business license.
- B. Tobacco retail licensees shall maintain a valid business license that identifies tobacco retail sales on the business license. Failure to do so shall constitute a violation of this Chapter.

5.104.060. Issuance and renewal of license; grounds for denial.

- A. Upon the receipt of an application for a license and the applicable fee, the City shall issue a tobacco retail license unless any of the following exist:
1. The application is incomplete or inaccurate.
 2. The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this chapter; provided, however, this subsection shall not constitute a basis for denial of a license if either or both of the following apply:
 - a. The applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction.
 - b. It has been more than five years since the most recent license for that location was revoked.
 3. The application seeks authorization for tobacco retailing that is unlawful pursuant to this code, or that is unlawful pursuant to any other local, State, or Federal law.
 4. Making any false statements in the application or as to any other information presented as part of the application process.
 5. Evidence of current or prior unlawful or nuisance-creating operation in this or another jurisdiction.
 6. The proposed location does not comply with section 5.104.070.
 7. Any exemption granted to a tobacco retailer pursuant to subsections (A)(6)(a)-(d) and (A)(7)(a)-(c) of this section or section 5.104.070 shall cease to apply if a tobacco retailer fails to timely renew the tobacco retail license pursuant to this chapter or shall cease to apply if the tobacco retail license is revoked pursuant to this chapter.
 8. The City is in possession of information that the applicant or his agents or employees has violated any local, State, or Federal tobacco control law within the preceding 30-day period.
 9. The applicant does not have a valid current permit or license from the California Department of Tax and Fee Administration or any other applicable tobacco retail licensing agency, where the applicant is required to obtain any such permit or license in order to lawfully engage in tobacco retailing in the State of California and/or in the County of San Joaquin.
- B. If the City does not approve a license or renewal of a license, the City shall notify the applicant of the specific grounds for the denial in writing. The notice shall be served personally, by regular mail, or by certified mail not later than five days after the denial. If notice is delivered by mail, it shall be addressed to the applicant at the address as it appears on the application. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States mail without extension of time for any reason. In lieu of mailing, the notice may be served personally by delivering to the person to be

served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of the notice to any person designated in the California Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

- C. The denial of a tobacco retail license or renewal of a license may be appealed. Notice of such appeal, in writing stating the grounds for such appeal, and admitting or denying those determinations of the City included in the denial notice, shall be filed with the Chief of Police, or designee, within 10 days of the giving of the denial notice as specified in subsection B above. Upon failure to file the notice of appeal within the 10-day period, the action of the City in denying such tobacco retail license or renewal of such license shall be final and conclusive. If the notice of appeal is filed in timely order, accompanied by payment of an appeal fee in an amount as may be established from time to time by resolution of the City Council, the Chief of Police, or designee, shall refer the matter to the City Attorney for scheduling of an administrative appeal hearing in accordance with the provisions of Chapter 1.44 of this code.
- D. Notwithstanding Section 5.104.070, in the event a tobacco retailer files a timely appeal from the denial of the renewal of a license pursuant to subsection C above, the tobacco retailer may continue to operate under the existing license pending the appeal decision. The determination of the administrative hearing officer shall be final.

5.104.070. Locational requirements for tobacco retail license locations.

- A. The locational criteria identified in subsections B-E below do not apply to the following tobacco retailers:
 - 1. Any business with a City-issued license to operate as a:
 - a. Tobacco retailer -Exempt; or
 - b. Tobacco retailer- Ancillary.
 - 2. Any tobacco retailer operating lawfully on the day before the effective date of City of Stockton Ordinance 2023-06-20-1502; or
 - 3. Any location that satisfies both of the following:
 - a. A tobacco retailer was lawfully operating at the location on the day before the effective date of City of Stockton Ordinance 2023-06-20-1502, or a tobacco retailer was lawfully operating at the location pursuant to subsection 4 of this section; and
 - b. Either: (a) The location has since been a licensed tobacco retail location, without interruption, except that the most recently issued license for the location may have expired no more than six months from the date of the present application, or (b) the present application has been submitted less than one year since the effective date of City of Stockton Ordinance 2023-06-20-1502.
 - 4. Any location that was a qualified development project, as defined below, before the effective date of City of Stockton Ordinance 2023-06-20-1502. A "qualified development project" for purposes of this section is one where a land use permit or entitlement application has been determined by the Community Development

Department to be complete before the effective date of City of Stockton Ordinance 2023-06-20-1502, and said land use permit or entitlement application has not expired pursuant to SMC Section 16.96.020(B).

- B. Tobacco retailer- General: Shall not be located within 600 feet of any of the following, as measured in a straight line from the parcel boundary of these locations to the boundary lines of the parcel of the tobacco retail license applicant's proposed business location.:
 - 1. Residential zone or use;
 - 2. A public or private academic school for students in kindergarten through 12th grade, nursery school, preschool, or childcare facility;
 - 3. Public park, playground, recreational area, or youth facility;
 - 4. Religious facilities;
 - 5. Drug abuse, or alcohol recovery/treatment facility; or
 - 6. Any other tobacco retailer-general or tobacco retailer-smoke shop.
- C. Tobacco retailer- Smoke shop: Shall not be located within 1,000 feet of any of the following, as measured in a straight line from the parcel boundary of these locations to the boundary lines of the parcel of the tobacco retail license applicant's proposed business location.:
 - 1. Residential zone or use;
 - 2. A public or private academic school for students in kindergarten through 12th grade, nursery school, preschool, or childcare facility;
 - 3. Public park, playground, recreational area, or youth facility;
 - 4. Religious facilities;
 - 5. Drug abuse, or alcohol recovery/treatment facility; or
 - 6. Any other tobacco retailer-general or tobacco retailer-smoke shop.
- D. Tobacco retailer- Smoking Lounge: Shall not be located within 600 feet of any of the following, as measured in a straight line from the parcel boundary of these locations to the boundary lines of the parcel of the tobacco retail license applicant's proposed business location.:
 - 1. Residential zone or use;
 - 2. A public or private academic school for students in kindergarten through 12th grade, nursery school, preschool, or childcare facility;
 - 3. Public park, playground, recreational area, or youth facility;
 - 4. Religious facilities;
 - 5. Drug abuse, or alcohol recovery/treatment facility; or

6. Any other tobacco retailer-general or tobacco retailer-smoke shop.

5.104.080. Annual renewal of tobacco retail license.

A tobacco retail license shall be valid for one year from the date of issuance, unless earlier suspended or revoked. Any person that holds a tobacco retail license may renew their license for the succeeding year by applying for said new license and paying the required fees, in accordance with this chapter between the first day of the month following the expiration date and the last day of that month. A license for which an application or fee for renewal is received or postmarked after the last day of that month shall not be renewed. A license that has been revoked or is subject to revocation proceedings shall not be renewed.

5.104.090. Inspection of licensed premises.

- A. Law enforcement may conduct scheduled or unannounced inspections of tobacco retail licensees' premises during posted business hours or of any location where there is evidence of tobacco retailing activities or evasion of cigarette or tobacco products tax and violations of Revenue and Taxation Code section 30165.1 may be discovered.
- B. If law enforcement finds a violation(s) of this chapter at any time, then law enforcement may require a reinspection to confirm that any violations have been corrected.
- C. Any law enforcement inspection of tobacco retail licensees' premises may include all areas identified in the licensee's application as well as any area within or around the premises that law enforcement reasonably believes is relevant to determining compliance with this chapter.
- D. Refusal to allow an inspection pursuant to this section is in violation of this chapter.
- E. A fee shall be charged for all inspections in an amount as may be fixed and established from time to time by resolution of the City Council. That fee shall include the cost for a standard inspection and, additionally, allow for the collection of additional time charged at an identified hourly rate if inspectors seize items pursuant to this chapter.

5.104.100. License nontransferable.

A license is nontransferable.

- A. If a licensee changes business location:
 - a. The licensee must obtain a new license prior to acting as a tobacco retailer at the new location.
 - b. Any applicable exemptions from locational criteria pursuant to Section 5.104.070(A)(2)-(4) shall not apply to the new license.
- B. If a licensee changes ownership:
 - a. The licensee must obtain a new license reflecting the new owner(s) within 30 days of the ownership change or stop acting as a tobacco retailer.
 - b. Any applicable exemptions from locational criteria pursuant to Section 5.104.070(A)(2)-(4) shall not apply to the new license.

5.104.110. Display of license.

Each license shall be prominently displayed in a publicly visible location at the licensed premises.

5.104.120. Grounds for suspension or revocation of a tobacco retail license.

In addition to any other remedy authorized by law, a license shall be suspended or revoked as provided in this section.

A. A license may be suspended or revoked pursuant to this subsection A if the Chief of Police, or designee, finds that the licensee, or his or her agents or employees, has or have violated this chapter, any State or local law relating to the sale of tobacco products to a minor, including without limitation California Penal Code Section 308, or any State or local law relating to the sale of flavored tobacco products, including, without limitation, California Health and Safety Code Section 104559.5 and Business and Professions Code Section 22974.8; provided, however, violations by a licensee at one location may not be accumulated against other locations of that same licensee, nor may violations accumulated against a prior licensee at a licensed location be accumulated against a new licensee at the same licensed location. The Chief of Police, or designee, may concurrently make multiple findings of prior violations within any five year period; in which case, suspensions provided for in this subsection A shall run concurrently.

1. Upon a finding by the Chief of Police, or designee, of a first violation for:
 - a. Selling tobacco products to minors or selling flavored tobacco (unless the licensee is a smoking lounge selling allowed flavored tobacco) within any five year period, the license shall be suspended for 30 days.
 - b. Knowingly concealing any flavored tobacco or product that if ingested or inhaled would produce intoxication, including but not limited to cannabis, psilocybin, mushrooms containing psychoactive compounds like psilocybin and psilocin, kratom, nitrous oxide, nitrates including amyl nitrite, aerosols including deodorant, hairspray, or spray paints, or volatile solvents including paint removers and cleaning products with the intent to evade or avoid compliance with this chapter within any five year period, the license shall be suspended for 30 days.
 - c. Any other first violation, the license may be suspended for up to 30 days.
2. Upon a finding by the Chief of Police, or designee, of a second violation for:
 - a. Selling tobacco products to minors or selling flavored tobacco (unless the licensee is a smoking lounge selling allowed flavored tobacco) within any five year period, the license shall be suspended for 60 days.
 - b. Knowingly concealing any flavored tobacco or product that if ingested or inhaled would produce intoxication, including but not limited to cannabis, psilocybin, mushrooms containing psychoactive compounds like psilocybin and psilocin, kratom, nitrous oxide, nitrates including amyl nitrite, aerosols including deodorant, hairspray, or spray paints, or volatile solvents including paint removers and cleaning products with the intent to evade or avoid compliance with this chapter within any five year period, the license shall be suspended for

60 days.

- c. Any other second violation, the license may be suspended for up to 60 days.
- 3. Upon a finding by the Chief of Police, or designee, of each additional violation for:
 - a. Selling tobacco products to minors or selling flavored tobacco (unless the licensee is a smoking lounge selling allowed flavored tobacco) within any five year period, the license shall be revoked.
 - b. Knowingly concealing any flavored tobacco or product that if ingested or inhaled would produce intoxication, including but not limited to cannabis, psilocybin, mushrooms containing psychoactive compounds like psilocybin and psilocin, kratom, nitrous oxide, nitrates including amyl nitrite, aerosols including deodorant, hairspray, or spray paints, or volatile solvents including paint removers and cleaning products with the intent to evade or avoid compliance with this chapter within any five year period, the license shall be revoked.
 - c. Any other third violation, the license shall be suspended for up to 90 days for each violation or be revoked.
- B. A license may be suspended by the Chief of Police, or designee, if the Chief of Police, or designee, find that, based on ascertainable facts, the operation of the tobacco retailer substantially aggravates the crime problems in the City, makes law enforcement unduly difficult, or is detrimental to the public health, safety, or welfare of the City.
- C. A license may be revoked if the Chief of Police, or designee, finds that:
 - 1. A tobacco retailer has failed to pay, when due and payable, any of the fees or taxes required within 10 days after written notice of such failure;
 - 2. A tobacco retailer has made any fraudulent statements as to a material fact on an application form or as to any other information presented as part of the application process; or
 - 3. A tobacco retailer commits any act that would have constituted grounds for denial of an application for a tobacco retail license, unless the license shall be revoked pursuant to subsection A.
- D. If the Chief of Police, or designee, suspends or revokes a license, written notice of the suspension or revocation shall be served upon the licensee within five days of the suspension or revocation in the manner prescribed in Section 5.104.060(B). The notice shall contain:
 - 1. A brief statement of the specific grounds for such suspension or revocation;
 - 2. A statement that the licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of Section 5.104.110, within 10 days of the date of service of the notice; and
 - 3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.

- E. A licensee for whom a license suspension is in effect, or whose license has been revoked, must cease all tobacco retailing and remove all tobacco products and tobacco paraphernalia from public view at the address that appears on the suspended or revoked license.

5.104.130. Tobacco retail sales without a tobacco retail license.

Upon a finding by the Chief of Police, or designee, that a person is currently or has engaged in tobacco retailing without the required tobacco retail license, that person must immediately cease all tobacco retailing and the Chief of Police, or designee, may require removal of all other tobacco products and tobacco paraphernalia from the premises and/or may seize of any tobacco products and tobacco paraphernalia as well as any hemp-derived food, beverages, and dietary supplements intended for human consumption that contain any detectable amount of intoxicating cannabinoids.

5.104.140. Appeal from suspension or revocation of tobacco retail license.

- A. The action of the Chief of Police, or designee, in revoking or suspending a tobacco retail license may be appealed. Notice of such appeal, in writing stating the grounds for such appeal, and admitting or denying those determinations of the Chief of Police, or designee, included in the notice, shall be filed with the Chief of Police, or designee, within 10 days after the revocation or suspension of the license. Upon failure to file the notice within the 10-day period, the action of the City in revoking or suspending such tobacco retail license shall be final and conclusive. If the notice of appeal is filed in timely order, accompanied by payment of an appeal fee in an amount as may be established from time to time by resolution of the City Council, the Chief of Police, or designee, shall refer the matter to the City Attorney for scheduling of an administrative appeal hearing in accordance with the provisions of Chapter 1.44 of this code.
- B. In the event a tobacco retailer files a timely appeal pursuant to this section, the effective date of the decision shall be stayed pending the appeal decision. The determination of the administrative hearing officer shall be final.

5.104.150. Following revocation.

Within 60 days of a final determination revoking a tobacco retail license, either by the Chief of Police or their designee or the determination of the administrative hearing officer following a timely appeal, the retailer shall contact the Director of Finance of the City, or their designee, to correct the content of the business license to remove tobacco retailing pursuant to the requirements of SMC Chapter 5.04.

5.104.160. Operating regulations and conditions.

- A. The provisions of this section shall constitute terms and conditions applicable to each tobacco retail license issued under this chapter.
- B. The provisions of this section shall also constitute operating regulations that are applicable to each holder of a tobacco retail license issued pursuant to this chapter.
- C. It shall be unlawful for any tobacco retailer required to be licensed under this chapter, whether or not such tobacco retailer is actually so licensed under this chapter, to violate any of the provisions of this chapter.

- D. All tobacco retailers shall remain in compliance with the Stockton Municipal Code and all other local, State, and Federal laws at all times.
- E. Tobacco retail licenses are for a specific, fixed location.
- F. Tobacco retailing shall only be conducted within the licensed premises and shall not be conducted from the parking lot, vehicle, or any storage container or area that is not part of the approved premises.
- G. Clerks selling tobacco products must be at least 21 years of age.
- H. Any tobacco products or products prohibited by this chapter that are located within the premises or in areas adjacent to the premises that the retailer has reasonable access to, including without limitation the parking lot, vehicles, or any storage containers, shall be considered inventory intended for sale by the retailer.
- I. Tobacco products shall only be displayed within the contiguous area shown on the site plan submitted with the application or as revised as part of an annual renewal.
- J. A tobacco retail license shall maintain legal possession of the premises (e.g., ownership, lease) that was approved by the City with the application for the tobacco retail license.
- K. No more than 20 percent of windows or clear doors at the premises where tobacco retailing occurs shall bear advertising or other signage of any sort.
- L. All tobacco retailers shall:
 - 1. Pay all City-imposed fines, penalties, and fees by the deadlines provided for by City officials;
 - 2. Allow for immediate access to a City, county, or State official that is authorized to regulate tobacco control ordinances under this chapter or any State, county, or City law or regulation to the premises and on-premises records during regular business hours or hours of apparent operation;
 - 3. Prevent loitering, public drinking, and public use of cannabis or other criminal behavior on and around the premises, including parking areas. "No Loitering" signs shall be prominently posted in a readily visible manner on no less than one exterior wall. The tobacco retailer's operators or employees shall ask persons loitering for longer than 15 minutes to leave the area and contact law enforcement officials for enforcement of applicable trespassing and loitering laws if persons requested to leave fail to do so;
 - 4. Prevent any condition constituting a nuisance on the premises, including parking areas;
 - 5. Remove all graffiti or other signs of vandalism within 48 hours of knowledge of the graffiti or vandalism;
 - 6. Maintain a clean and orderly premises to ensure public health and safety meet the highest standards.
 - 7. Shall operate consistently with the site plan provided with the license application, including ensuring that tobacco retailing is maintained within a contiguous area.

M. Tobacco retailer – Smoke shops:

1. Shall operate pursuant to their Police Department approved security plan for the premises.
2. Shall operate only between 6:00 a.m. and 2:00 a.m.
3. Shall not operate as part of a business or in the same business space as an alcoholic beverage sales establishment.

N. Tobacco retailer- Smoking lounges shall also:

1. Only allow persons 21 years or older on the premises at any time.
2. Shall not operate as part of a business or in the same business space as an alcoholic beverage sales establishment.

O. The provisions of this chapter are intended to provide a minimum level of public health, safety, and welfare protection at businesses engaging in tobacco retailing. Nothing in this chapter is intended nor shall prevent the City from imposing more stringent, site-specific operating requirements and conditions through other applicable permitting and approval processes. In the event of a conflict between an operating regulation set forth in this chapter and a requirement or condition contained in any other applicable permit or approval, the more stringent or restrictive requirement shall apply.

5.104.170. Lawful business operation.

In the course of tobacco retailing or in the operation of the business or maintenance of the premises for which a tobacco retail license is issued, it shall be a violation of this chapter for any tobacco retailer to violate any Federal, State, or local law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing.

5.104.180. Prohibition on sale of flavored tobacco products; Exception.

- A. It is unlawful, a violation of this chapter, and a violation of any tobacco retail license to store, display, sell, list or offer for sale, or possess with the intent to sell or list or offer for sale, any flavored tobacco product except as allowed in subsection C. There is a rebuttable presumption that a tobacco product is a flavored tobacco product if a manufacturer or its agents or employees has made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, or images on the product's labeling or packaging that are used to expressly or impliedly communicate that a tobacco product has a characterizing flavor.
- B. It is a violation of this chapter and a violation of any tobacco retail license to knowingly conceal any flavored tobacco product with the intent to evade or avoid compliance with this chapter.
- C. Tobacco retailer- Smoking lounges licensed pursuant to this chapter may sell the following flavored tobacco products only for on-site consumption: flavored premium cigars with a wholesale price of \$12 or more, flavored loose-leaf pipe tobacco, flavored shisha/hookah tobacco.

5.104.190. Prohibition on sale of items for the purpose of intoxication.

- A. It is violation of this chapter, and a violation of any tobacco retail license for any tobacco retail license to store, display, sell, or list for sale any product that if ingested or inhaled would produce intoxication, including but not limited to cannabis, psilocybin, mushrooms containing psychoactive compounds like psilocybin and psilocin, kratom, nitrous oxide, nitrates including amyl nitrite, aerosols including deodorant, hairspray, or spray paints, or volatile solvents including paint removers and cleaning products.
- B. It is a violation of this chapter, and a violation of any tobacco retail license for any tobacco retail license to store, display, sell, or list for sale hemp-derived food, beverages, and dietary supplements intended for human consumption that contain any detectable amount of intoxicating cannabinoids as follows:
 - 1. To anyone under 21 years of age; or
 - 2. In a package containing more than five servings.
- C. It is a violation of this chapter and a violation of any tobacco retail license to knowingly conceal any product that if ingested or inhaled would produce intoxication, including but not limited to cannabis, psilocybin, mushrooms containing psychoactive compounds like psilocybin and psilocin, kratom, nitrous oxide, nitrates including amyl nitrite, aerosols including deodorant, hairspray, or spray paints, or volatile solvents including paint removers and cleaning products with the intent to evade or avoid compliance with this chapter.
- D. This prohibition does not apply hemp-derived cannabidiol ("CBD") products that contain no detectable intoxicating cannabinoid.

5.104.200. Penalties for Violations.

- A. A violation of any of the provisions of this chapter may be charged as a misdemeanor for each day such violation continues.
- B. Any violation of this chapter may also be remedied by a civil action brought by the City Attorney. The City may recover for reasonable attorneys' fees and costs of suit in any civil litigation brought by the City Attorney to remedy any violation of this chapter.
- C. A violation of any of the provisions of this chapter may also result in the issuance of civil penalties pursuant to Chapter 1.40 which allows for civil penalties of up to \$1,000.00 per violation per day not to exceeding \$100,000.00 per parcel or structure for any related series of violations in a year.
- D. A violation of any of the provisions of this chapter may also result in the issuance of administrative citations pursuant to Chapter 1.32. Notwithstanding the penalty amounts found at Section 1.32.050 of this code, administrative penalties for violations of this chapter shall be as follows:
 - 1. \$1,000.00 for a first violation within any five year period.
 - 2. \$2,000.00 for a second violation within any five year period.
 - 3. \$3,000.00 for each additional violation within any five year period.
- E. Multiple violations of this chapter discovered during the same inspections may be deemed to collectively constitute a "first violation" for purposes of this section or,

alternatively, each violation discovered may be counted separately and, thus, a single inspection may result in the first, second, and additional violations.

1. However, if one of the violations discovered during an inspection is for sales of tobacco products or other products constituting a violation of this chapter to a minor, then that violation shall always be counted as a separate violation for purposes of this section.
- F. A violation of any of the provisions of this chapter may also result in the suspension or revocation of the tobacco retail license pursuant to Section 5.104.120 of this chapter.
- G. A violation of any of the provisions of this chapter may also result in the seizure of all products displayed, sold, listed, or offered for sale, or possessed with the intent to sell or list or offer for sale, pursuant to Section 5.104.210 of this chapter.
- H. Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter is hereby declared a public nuisance and may be summarily abated by the City.

5.104.210. Seizure of products.

- A. Pursuant to this Chapter, the Chief of Police, or designee, may seize any tobacco products or tobacco paraphernalia, flavored tobacco products, or any products that are on display, sold, listed or offered for sale, or possessed with the intent to sell or list or offer for sale that constitute a violation of this Chapter.
- B. Within five (5) business days of seizure, the Chief of Police, or designee, will personally serve a property receipt itemizing the items seized to the person present at the time of the seizure or to the owner of the business and/or property where the items were seized.
- C. Within ten (10) days from the last date a property receipt was served on any person, any person having any right, title, or ownership interest in the seized items may file a request with the Chief of Police, or designee, for the release or recovery of the seized items on the basis that the items were erroneously or illegally seized. Any such request shall include the following:
1. The requestor's right, title, or ownership interest in the seized items;
 2. The basis upon which the requester asserts that the Police erroneously or illegally seized the items, including any arguments and supporting documentation.
 3. Whether the requestor has a valid California State tobacco retail license pursuant to which they could legally sell some or all of the seized items.
 4. Whether the requestor has applied for or taken action to reinstate a suspended Tobacco Retailer License pursuant to this Chapter that would result in their ability to sell some or all of the seized items legally.
- D. The Chief of Police will consider timely filed requests to determine whether to grant the request.

1. If the Chief of Police grants the request as to some or all of the items seized, then the Chief of Police will promptly return the identified items to the requestor.
 2. If the Chief of Police denies the request as to some or all of the items seized, then the Chief of Police will respond in writing to the requestor explaining the basis for the denial.
- E. The Chief of Police's determination on timely filed requests for the release or recovery of seized times is final.
- F. If no request is timely filed or the request is denied by the Chief of Police, or designee, then the property seizure will be final and the seized items deemed forfeited. At that time, the Chief of Police, or designee, may destroy the seized items.

5.104.211. Administrative Guidelines.

The City Manager may establish and amend administrative guidelines as needed to administer this chapter, implement the licensing process, or introduce additional or modified licensing requirements if they are consistent with the purpose, application, and requirements of this chapter. The reasoning of such administrative guidelines shall be documented in writing by the City Manager or their designee. Such administrative guidelines shall have the force of law, and shall be enforceable in the same manner and to the same extent as the provisions of this chapter.

SECTION III. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this article or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this article or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION IV. EFFECTIVE DATE.

This ordinance shall take full force and effect 30 days after its passage.

ADOPTED: _____

EFFECTIVE: _____

CHRISTINA FUGAZI
Mayor of the City of Stockton

ATTEST:

KATHERINE ROLAND, CMC, CPMC
City Clerk of the City of Stockton