

GOAL: Preventing Illegal Tobacco Sales To Minors

Tobacco Retail License (TRL) PROPOSED BEFORE CA LEGISLATION	CONSIDERATIONS	Additional Needs/Concerns/Input 6/7/16 MERCHANT DISCUSSION
<p>A TRL is required by all retailers selling tobacco in Plumas County, renewed annually.</p>		
<p>Retailers will pay a yearly licensing fee for the enforcement of TRL (\$400)</p>	<p>Fee reduction under consideration</p>	
<p>The TRL fee can be reduced to \$0.00 if retailer opts into and participates in a Healthy Retail Initiative. No retailer is required to participate.</p>	<p>The Healthy Retail Initiative will not be linked to the TRL fee.</p>	
<p>Clerks must be the legal age to buy tobacco in order to sell tobacco.</p>	<p>Clerks under 21 may sell tobacco under direct supervision of a person 21+ years.</p>	
<p>In lieu of the state law, criminal charges will not be issued against the clerk who sells, but rather owners of retail establishments will be responsible for illegal sales of tobacco in their stores through the fines & penalties.</p> <p>Within 5 years: 1 violation: \$500 fine 2 violation: \$1000 fine & 90-day license suspension 3 violation: \$1000 fine & 360-day license suspension</p>	<p>Open for discussion</p>	
<p>No set date TRL would go into effect</p>	<p>Suggest effective date of 1/1/2017, after education and technical assistance has been provided to retailers.</p>	
<p>All tobacco retailers are required to maintain a TRL</p>	<p>Locations where persons under 21 are prohibited will be exempt.</p>	

Plumas County Tobacco Retail Licensing: Answers for Retailers

The proposed Tobacco Retail License (TRL) ordinance will be heard on July 12, 2016 by the Plumas County Board of Supervisors.

Please review these FAQ's and call us at (530) 283-6358 with any additional questions or concerns.

How can a TRL help in Plumas?

Plumas County youth are being targeted by the tobacco industry to be their replacement smokers. We have higher youth smoking and tobacco access rates than many other counties in California. The purpose of a TRL is not to chastise retailers, but serves to create a safety net to protect our Plumas County youth from the tobacco industry.

- 72% of Plumas kids: It's "easy" to get cigarettes
- 29% of kids who smoke buy their own cigarettes
- 1 of every 4 stores in Plumas County sell to kids

We know retailers are not purposefully selling tobacco to youth, yet Plumas County's illegal sales rate is often 2-3 times higher than the state's average. The most successful method shown to reduce sales to youth is through tobacco retail licensing. Communities with strong TRL policies have reduced their illegal sales rates by an average of 403%. The goal of this TRL is to end tobacco sales to youth.

How will a tobacco retail licensing policy affect my store?

The storeowner, rather than the clerk, will be responsible for not illegally selling tobacco. While there are fees associated with the TRL, they can only be used to fund the TRL program itself.

What is this going to cost?

The cost of the TRL program will be split up among the retailers who sell tobacco in Plumas County, which would be around \$400 per retailer per year. Plumas County Public Health Agency plans to offer a Healthy Retail Initiative, which could reduce your TRL cost all the way down to \$0.00.

Isn't it the clerks responsibility not to sell to minors?

Currently, clerks are already punished under Penal Code 308, but this has not been effective at reducing illegal sales. Store owners are responsible for what happens in their stores.

How do I keep my staff from illegally selling tobacco?

Plumas County Public Health Agency staff are more than willing to show you some effective training techniques, or even to train your staff for you. Call them at (530) 283-6358 to set up an appointment.

My employees are under 21. Can they still sell tobacco?

Yes. The new law in California raises the legal age to buy tobacco to 21. In order to not disrupt your flow of business, the TRL language of who can sell tobacco will be similar to the requirements of who can sell alcohol.

When will this go into effect?

The ordinance would not take effect until January 1, 2017. PCPHA staff can help you navigate the TRL and new state laws regarding tobacco.

What's a Healthy Retail Initiative?

Public Health will work with retailers that opt into the initiative to ensure their store is a healthy environment in regards to marketing illegal and unhealthy products to youth. This initiative will in no way limit what can be sold.

ORDINANCE NO. 16 – _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF PLUMAS, STATE OF CALIFORNIA, ADDING CHAPTER 14 OF TITLE 5 OF THE COUNTY CODE, “TOBACCO RETAILER LICENSING PROGRAM,” REQUIRING THE LICENSURE OF TOBACCO RETAILERS.

The Board of Supervisors of the County of Plumas, State of California, **DOES ORDAIN** as follows:

Section 1. Chapter 14 is hereby added to Title 5 of the Plumas County Code, with the title of Chapter 14 to read in full: “Tobacco Retailer Licensing Program”.

Section 2. The Board of Supervisors of the County of Plumas hereby finds and declares as follows:

WHEREAS, based in part on the information contained in this section, the Board of Supervisors finds that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the Plumas County; and

WHEREAS, the Board of Supervisors finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the Plumas County, to protect the health, safety, and welfare of our residents; and

WHEREAS, state law requires all tobacco retailers to be licensed by the Board of Equalization primarily to curb the illegal sale and distribution of cigarettes due to tax evasion and counterfeiting (Cal. Bus. & Prof. Code §§ 22970.1, 22972); and

WHEREAS, state law explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3); and

WHEREAS, California courts have affirmed the power of local governments to regulate business activity to discourage violations of law. See, e.g., *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal. App. 4th 697 (2010); and

WHEREAS, despite the state and Plumas County’s efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that:

- In California, 36.8 percent of high school students have smoked a whole cigarette by 14 years of age; and
- According to the 2013 California Healthy Kids Survey, 29 percent of Plumas County 11th grade students have tried cigarettes, and 15 percent currently use regularly; and

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

- 7.6 percent of California tobacco retailers surveyed were witnessed unlawfully selling to minors in 2013; and
- 24 percent of tobacco retailers surveyed in Plumas County sold tobacco products to minors in 2013; and

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

- A review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the ordinances were enacted, with an average decrease of 26 percent in the youth sales rate; and
- Over 90 percent of enforcement agencies surveyed in 2000 rated license suspension or revocation after repeated violations as an effective strategy to reduce youth access to tobacco; and

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

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

WHEREAS, Plumas County has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults; and

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

Section 3, Section 5-14.01 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.01. Definitions.

The following words and phrases, whenever used in this chapter, shall have the meanings defined in this section unless the context clearly requires otherwise:

(a) “Arm’s Length Transaction” means a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of the violations of this chapter is not an Arm’s Length Transaction.

(b) “Department” means the department or agency designated by the Board of Supervisors of the County of Plumas to enforce or administer the provisions of this chapter.

(c) “Electronic Smoking Device” means an electronic device that can be used to deliver an inhaled dose of nicotine, or other substances, including any component, part, or accessory of such a device, whether or not sold separately. “Electronic Smoking Device” includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor.

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

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

(f) “Self-Service Display” means the open display or storage of Tobacco Products or Tobacco Paraphernalia in a manner that is physically accessible in any way to the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of Self-Service Display.

(g) “Tobacco Paraphernalia” means any item designed for the consumption, use, or preparation of Tobacco Products.

(h) “Tobacco Product” means:

- (1) Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; or
- (2) Any Electronic Smoking Device; or
- (3) Notwithstanding any provision of subsections (1) and (2) to the contrary, any component, part, or accessory of a tobacco product, whether or not sold separately.

“Tobacco Product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other

therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

(i) “Tobacco Retailer” means any Person who sells, offers for sale, or does or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia. “Tobacco Retailing” shall mean the doing of any of these things. This definition is without regard to the quantity of Tobacco Products or Tobacco Paraphernalia sold, offered for sale, exchanged, or offered for exchange.

Section 4, Section 5-14.02 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.02. Requirements and Prohibitions.

(a) *Tobacco Retailer’s License Required.* It shall be unlawful for any Person to act as a Tobacco Retailer in Plumas County without first obtaining and maintaining a valid Tobacco Retailer’s License pursuant to this chapter for each location at which that activity is to occur. Tobacco Retailing without a valid Tobacco Retailer’s License is a nuisance as a matter of law.

(b) *Lawful Business Operation.* In the course of Tobacco Retailing or in the operation of the business or maintenance of the location for which a license issued, it shall be a violation of this chapter for a licensee, or any of the licensee’s agents or employees, to violate any local, state, or federal law applicable to Tobacco Products, Tobacco Paraphernalia, or Tobacco Retailing.

(c) *Display of License.* Each Tobacco Retailer license shall be prominently displayed in a publicly visible location at the licensed location.

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

(e) *Minimum Age for Persons Selling Tobacco.* No Person who is younger than the minimum age established by state law for the purchase or possession of Tobacco Products shall engage in Tobacco Retailing.

(f) *Self-Service Displays Prohibited.* Tobacco Retailing by means of a Self-Service Display is prohibited.

(g) *False and Misleading Advertising Prohibited.* A Tobacco Retailer without a valid Tobacco Retailer license or a Proprietor without a valid Tobacco Retailer license, including, for example, a Person whose license has been suspended or revoked:

- (1) Shall keep all Tobacco Products and Tobacco Paraphernalia out of public view. The public display of Tobacco Products or Tobacco Paraphernalia in violation of this provision shall constitute Tobacco Retailing without a

license under Section 5-14.12; and

- (2) Shall not display any advertisement relating to Tobacco Products or Tobacco Paraphernalia that promotes the sale or distribution of such products from the Tobacco Retailer's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

Section 5. Section 5-14.03 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.03. Mobile Vending of Tobacco Prohibited.

No license may issue to authorize Tobacco Retailing at other than a fixed location. For example, Tobacco Retailing by Persons on foot or from vehicles is prohibited.

Section 6. Section 5-14.04 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.04. Application Procedure.

(a) Application for a Tobacco Retailer's license shall be submitted in the name of each Proprietor proposing to conduct retail tobacco sales and shall be signed by each Proprietor or an authorized agent thereof.

It is the responsibility of each Proprietor to be informed regarding all laws applicable to Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's license. No Proprietor may rely on the issuance of a license as a determination by the County that the Proprietor has complied with all laws applicable to Tobacco Retailing. A license issued contrary to this chapter, contrary to any other law, or on the basis of false or misleading information supplied by a Proprietor shall be revoked pursuant to Sec. 5-14.11(d) of this chapter. Nothing in this chapter shall be construed to vest in any Person obtaining and maintaining a Tobacco Retailer's license any status or right to act as a Tobacco Retailer in contravention of any provision of law.

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

- (1) The name, address, and telephone number of each Proprietor of the business seeking a license.
- (2) The business name, address, and telephone number of the single fixed location for which a license is sought.
- (3) A single name and mailing address authorized by each Proprietor to receive all communications and notices (the "Authorized Address") required by, authorized by, or convenient to the enforcement of this chapter. If an Authorized Address is not supplied, each Proprietor shall be understood to consent to the provision of notice at the business address specified in

subparagraph (2) above.

- (4) Proof that the location for which a Tobacco Retailer's license is sought has been issued a valid state license for the sale of Tobacco Products, if the Tobacco Retailer sells products that require such license.
- (5) Whether or not any Proprietor or any agent of the Proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years.
- (6) Such other information as the Department deems necessary for the administration or enforcement of this chapter as specified on the application form required by this section.

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

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

Section 7. Section 5-14.05 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.05. Issuance of License.

Upon the receipt of a complete application for a Tobacco Retailer's license and the license fee required by this chapter, the Department shall issue a license unless substantial evidence demonstrates that one or more of the following bases for denial exists:

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

(b) The application seeks authorization for Tobacco Retailing for a Proprietor to whom this chapter prohibits a license to be issued.

(c) The application seeks authorization for Tobacco Retailing that is prohibited pursuant to chapter (e.g., mobile vending), that is unlawful pursuant to this Code, or that is unlawful pursuant to any other law.

Section 8. Section 5-14.06 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.06. License Renewal and Expiration.

(a) *Renewal of License.* A Tobacco Retailer's license is invalid if the appropriate fee has not been timely paid in full or if the term of the license has expired. The term of a Tobacco Retailer

license is one year. Each Tobacco Retailer shall apply for the renewal of his or her Tobacco Retailer's license and submit the license fee no later than thirty days prior to expiration of the term.

(b) *Expiration of License.* A Tobacco Retailer's license that is not timely renewed shall expire at the end of its term. To renew a license not timely renewed pursuant to subparagraph (a), the Proprietor must:

- (1) Submit the license fee and application renewal form; and
- (2) Submit a signed affidavit affirming that the Proprietor:
 - (i) has not sold and will not sell any Tobacco Product or Tobacco Paraphernalia after the license expiration date and before the license is renewed; or
 - (ii) has waited the period of time required by Sec. 5-14.12(a) of this chapter for Tobacco Retailing without a valid license before seeking renewal of the license.

Section 9. Section 5-14.07 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.07. Licenses Nontransferable.

(a) A Tobacco Retailer's license may not be transferred from one Person to another or from one location to another. A new Tobacco Retailer's license is required whenever a Tobacco Retailing location has a change in Proprietor(s).

(b) Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and license ineligibility periods shall continue to apply to a location unless:

- (1) the location has been transferred to new Proprietor(s) in an Arm's Length Transaction; and
- (2) the new Proprietor(s) provide the County with clear and convincing evidence that the new Proprietor(s) have acquired or are acquiring the location in an Arm's Length Transaction.

Section 10. Section 5-14.08 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.08. Conditional Privilege.

Nothing in this chapter shall be construed to grant any Person obtaining and maintaining a Tobacco Retailer's license any status or right other than the limited conditional privilege to act as a Tobacco Retailer at the location in the County identified on the face of the permit. For example, nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of, any

other provision of applicable law, including but not limited to, any provision of this Code, or any condition or limitation on smoking in an enclosed place of employment pursuant to California Labor Code section 6404.5. For example, obtaining a Tobacco Retailer's license does not make the retailer a "retail or wholesale tobacco shop" for the purposes of California Labor Code section 6404.5.

Section 11. Section 5-14.09 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.09. Fee for License.

The fee to issue or to renew a Tobacco Retailer's license shall be established from time to time by resolution of Board of Supervisors. The fee shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this chapter. Fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

Tobacco retailers may be eligible for a reduced licensing fee if their retail location complies with one or more standards, making it a "healthy retailer" as determined by the Plumas County Healthy Retail Initiative Survey. The Plumas County Healthy Retail Initiative Survey is conducted annually by the Plumas County Public Health Agency to assess the current state of the retail environment. Information about healthy and unhealthy options available in the retail locations are tracked through time in a database maintained by the Plumas County Public Health Agency. This information is used, among other purposes, to determine Tobacco Retailer License fees and rates and to encourage health equity in retail environments throughout Plumas County.

Section 12. Section 5-14.10 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.10. 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 may designate any number of additional Persons to monitor compliance with this chapter.

(b) The Department shall be funded to inspect each Tobacco Retailer one time per twelve month period. Nothing in this paragraph shall create a right of action in any licensee or other Person against the County or its agents.

(c) The County shall not enforce any law establishing a minimum age for Tobacco Product purchases or possession against a Person who otherwise might be in violation of such law because of the Person's age (hereinafter "Youth Decoy") if the potential violation occurs when:

- (1) the Youth Decoy is participating in an inspection supervised by a peace officer, code enforcement official, or the Person designated by the County to monitor compliance with this chapter; or

- (2) the Youth Decoy is acting as an agent of a Person designated by the County to monitor compliance with this chapter; or
- (3) the Youth Decoy is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Plumas County Public Health Agency or the California Department of Health Services.

Section 13. Section 5-14.11 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.11. Fines; Suspension or Revocation of License.

(a) *Suspension or Revocation of License for Violation.* In lieu of or in addition to any other penalty authorized by law, a Tobacco Retailer's license shall be suspended or revoked if any court of competent jurisdiction determines, or the Department finds based on a preponderance of the evidence, after the licensee is afforded notice and an opportunity to be heard, that the licensee, or any of the licensee's agents or employees, has violated any of the requirements, conditions, or prohibitions of this chapter or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any provision of Section 5-14.02 above.

- (1) Upon a finding by the Department of a first violation of this chapter at a location within any sixty-month period, a fine of \$500 shall be issued to the Proprietor(s).
- (2) Upon a finding by the Department of a second violation of this chapter at a location within any sixty-month period, the license shall be suspended for ninety days and a fine of \$1,000 shall be issued to the Proprietor(s).
- (3) Upon a finding by the Department of a third violation of this chapter at a location within any sixty-month period, the license shall be suspended for one year and a fine of \$1,000 shall be issued to the Proprietor(s).

(b) *Appeal of Suspension or Revocation.* A decision of the Department to suspend or revoke a license is appealable to the Plumas County Board of Supervisors. If such an appeal is timely made, it shall stay enforcement of the appealed action. An appeal to the Plumas County Board of Supervisors is not available for a revocation made pursuant to subsection (d) below.

(c) *Appellate Process.* Except as otherwise provided by law, any decision made appealable to the Plumas County Board of Supervisors pursuant to this chapter shall be subject to the following requirements and procedures.

- (1) Any appeal must be in writing, shall state the specific reasons therefore and the grounds asserted for relief and the specific relief requested, and shall be filed with the Clerk of the Board of Supervisors within ten (10) calendar days of personal service of the notice of the action being appealed, or within fifteen (15) calendar days of mailing if the notice is only served by mail. If

any Person to whom the notice of violation was given does not file a written appeal within the time and in the manner set forth above, the right to review of the Department's determination shall be deemed to have been waived, and the Department's decision shall be final.

If a written appeal is filed within the time and in the manner set forth above, the matter shall be heard by the Plumas County Board of Supervisors.

- (2) Not later than fifteen (15) days after receipt of the appeal, the Clerk of the Board of Supervisors shall provide written notice to the parties of the date, time, and place of the hearing, in the manner specified above for a notice of revocation.
- (3) The provisions of the Administration Procedure Act (commencing with Section 11500 of the Government Code of the State) shall not be applicable to such hearing, nor shall formal rules of evidence in civil or criminal judicial proceedings be so applicable.

A record of the hearing shall be made by any means, including electronic recording, so long as a reasonably accurate and complete written transcription of the proceedings can be made. Technical rules of evidence shall not apply to the hearing, but relevant evidence may be admitted and given probative effect only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

A decision of the Plumas County Board of Supervisors shall be supported by substantial evidence. The Plumas County Board of Supervisors shall sustain the Department's decision if the Plumas County Board of Supervisors finds that any lawful basis for the Department's action exists.

- (4) Following the conclusion of the hearing, the Plumas County Board of Supervisors shall prepare a written decision that either grants or denies the appeal, contains findings of facts and conclusions of law, and includes notification that the time limit within which a judicial review shall be sought is governed by Code of Civil Procedure Section 1094.6. Notice of the written decision, including a copy thereof, shall be filed with the Clerk of the Board of Supervisors and served upon all parties not later than ten (10) business days following the date on which the hearing is closed.

The written decision of the Plumas County Board of Supervisors shall be the final decision of the County, and shall become final upon the date that notice thereof is mailed to the appellant by certified mail.

- (5) Any determination of the Plumas County Board of Supervisors shall be subject to judicial review pursuant to Code of Civil Procedure Section 1094.5.

(d) *Revocation of License Wrongly Issued.* A Tobacco Retailer's license shall be revoked if the Department finds, after the licensee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a license under Sec. 5-14.05 existed at the time application was made or at any time before the license issued. The decision by the Department shall be the final decision of the County. Such a revocation shall be without prejudice to the filing of a new license application.

(e) Fines and interest upon proceeds of fines shall be used exclusively to fund the tobacco retail licensing program and the healthy retail initiative. Fines are nonrefundable except as may be required by law.

Section 14. Section 5-14.12 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.12. Tobacco Retailing Without a Valid License.

(a) In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Department finds based on a preponderance of evidence, after notice and an opportunity to be heard, that any Person has engaged in Tobacco Retailing at a location without a valid Tobacco Retailer's license, either directly or through the Person's agents or employees, the Person shall be ineligible to apply for, or to be issued, a Tobacco Retailer's license as follows:

- (1) After a first violation of this section at a location within any sixty-month period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until thirty days have passed from the date of the violation.
- (2) After a second violation of this section at a location within any sixty-month period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until ninety days have passed from the date of the violation and a fine of \$500 shall be issued to the Proprietor.
- (3) After of a third or subsequent violation of this section at a location within any sixty-month period, no new license may issue for the Person or the location (unless ownership of the business at the location has been transferred in an Arm's Length Transaction), until one year has passed from the date of the violation and a fine of \$1,000 shall be issued to the Proprietor.

(b) Tobacco Products and Tobacco Paraphernalia offered for sale or exchange in violation of this section are subject to seizure by the Department or any peace officer and shall be forfeited after the licensee and any other owner of the Tobacco Products and Tobacco Paraphernalia seized is given reasonable notice and an opportunity to demonstrate that the

Tobacco Products and Tobacco Paraphernalia were not offered for sale or exchange in violation of this chapter. The decision by the Department may be appealed pursuant to the procedures set forth in Section 5-14.11(c). Forfeited Tobacco Products and Tobacco Paraphernalia shall be destroyed after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

- (c) For the purposes of the civil remedies provided in this chapter:
 - (1) each day on which a Tobacco Product or Tobacco Paraphernalia is offered for sale in violation of this chapter; or
 - (2) each individual retail Tobacco Product and each individual retail item of Tobacco Paraphernalia that is distributed, sold, or offered for sale in violation of this chapter;

shall constitute a separate violation of this chapter.

Section 15. Section 5-14.13 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.13. Additional Remedies.

- (a) The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- (b) Whenever evidence of a violation of this chapter is obtained in any part through the participation of a Person under the age of eighteen years old, such a Person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this chapter and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.
- (c) Violations of this chapter are subject to a civil action brought by the District Attorney, punishable by a civil fine not less than \$250 and not exceeding \$1,000 per violation.
- (d) Violations of this chapter may, in the discretion of the District Attorney, be prosecuted as infractions or misdemeanors when the interests of justice so require.
- (e) Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- (f) Violations of this chapter are hereby declared to be public nuisances.
- (g) In addition to other remedies provided by this chapter or by other law, any violation of this chapter may be remedied by a civil action brought by the District Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal code enforcement proceedings, and suits for injunctive relief.

Section 16. Section 5-14.14 of Chapter 14 of Title 5 of the Plumas County Code is hereby added to read as follows:

Sec. 5-14.14. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this chapter, or its application to any other person or circumstance. The Board of Supervisors of the County of Plumas hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 17. Sections 3 through 16 of this ordinance, which amend the Plumas County Code, shall be codified. The remainder of the ordinance shall not be codified.

Section 18. The County finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment).

Section 19. This ordinance shall be published, pursuant to Section 25124 (a) of the Government Code of the State of California, before the expiration of fifteen days after the passage of the ordinance, once, with the names of the supervisors voting for and against the ordinance, in the Feather River Bulletin, a newspaper of general circulation in the County of Plumas.

Section 20. This ordinance shall become effective thirty (30) days after its date of final adoption.

The foregoing ordinance was introduced at a regular meeting of the Board of Supervisors on the ____ day of _____, 2016, and passed and adopted by the Board of Supervisors of the County of Plumas, State of California, on the ____ day of _____, 2016, by the following vote:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

ATTEST:

Chair, Board of Supervisors

Clerk of said Board of Supervisors