ORDINANCE NO. 1499
Series of 2020

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF TELLURIDE, COLORADO AMENDING TELLURIDE MUNICIPAL CODE TO REGULATE THE SALE AND DISTRIBUTION OF TOBACCO PRODUCTS BY ADDING CHAPTER 6 BUSINESS LICENSES AND REGULATIONS ARTICLE 7 TOBACCO

WHEREAS, tobacco use is the leading cause of preventable premature death in Colorado and continues to be an urgent public health concern; and

WHEREAS, youth and adults in the Town of Telluride continue to use tobacco products and experience tobacco-related harm at alarming rates; and

WHEREAS, research indicates that raising the minimum legal age for the sale of tobacco products is an effective strategy to reduce tobacco use among youth and young adults; and

WHEREAS, the licensing and regulation of businesses selling tobacco within the Town of Telluride will serve to protect the health and safety of residents and visitors; and

WHEREAS, the inclusion of policies prohibiting the retail sale of tobacco products to youth and young adults, sales of tobacco products using vending machines, and other means by which youth and young adults gain access to tobacco in the commercial setting, can limit their opportunities to obtain these products; and

WHEREAS, strong enforcement and monitoring of tobacco retailer compliance with regulations is necessary to reduce tobacco sales rates to youth and young adults after raising the minimum legal sales and purchase age to twenty-one years of age; and

WHEREAS, Town Council believes adoption of strict tobacco sales, use and distribution policies is necessary to protect the local and tourist population, particularly the population under twenty-one years of age, from tobacco-related morbidity and mortality;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF TELLURIDE, COLORADO as follows:

Section 1.

The Telluride Municipal Code is hereby amended at Chapter 6 adding Article 7 which is to read as provided in Exhibit A to this Ordinance, which exhibit is attached hereto and incorporated in full as an exhibit to this Ordinance.

Section 2.

The provisions of this ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

Section 3.

This ordinance shall not have any effect on existing litigation and shall not operate as an abatement of any action or proceeding now pending under or by virtue of the ordinances repealed or amended as herein provided and the same shall be construed and concluded under such prior ordinances.

Section 4.

This ordinance shall become effective upon the date of publication of notice of its passage in a newspaper of general circulation within the Town of Telluride.

Section 5.

A public hearing on the ordinance shall be held on the 7th day of January 2020 in the Town Council Chambers, Rebekah Hall, 113 West Columbia Avenue, Telluride, Colorado.

INTRODUCED, READ AND REFERRED to public hearing before the Town Council of the Town of Telluride, Colorado on the 10th day of December 2019.

TOWN OF TELLURIDE

DeLanie Young, Mayor

ATTEST

Tiffany Kavanaugh, Town Clerk

HEARD AND FINALLY ADOPTED by the Town Council of the Town of Telluride, Colorado this 7th day of January 2020.

TOWN OF TELLURIDE

DeLanie Young, Mayor

ATTEST

Tiffany Kavanaugh, Town Clerk

Approved as to form:

Kevin J. Geiger, Town Attorney

STATE OF COLORADO.....)
)
COUNTY OF SAN MIGUEL...) ss.
)
TOWN OF TELLURIDE.....)

I, Tiffany Kavanaugh, Town Clerk of the Town of Telluride, Colorado ("Town"), do hereby certify:

- The foregoing pages are a true and correct copy of an ordinance (the "Ordinance") passed and adopted by the Town Council (the "Council") of the Town at a regular meeting of the Council held on January 7, 2020.
- The Ordinance was duly moved and seconded and the Ordinance was adopted at the Town Council meeting of January 7, 2020 by an affirmative vote of the members of the Council as follows:

Name	"Yes"	"No"	Absent	Recused	Abstained
DeLanie Young, Mayor	✓				
Todd Brown, Mayor Pro Tem	✓				
Jessie Rae Arguelles	✓				
Lars Carlson	✓				
Adrienne Christy	✓				
Geneva Shaunette	✓				
Tom Watkinson	✓				

- The Ordinance was approved and authenticated by the signature of the Mayor, sealed with the Town seal, attested by the Town Clerk and recorded in the minutes of the Council.
- There are no bylaws, rules or regulations of the Council that might prohibit the adoption of said Ordinance.
- The members of the Council were present at the meeting and voted on the passage of such Ordinance as set forth above.

Tiffany Kavanaugh, Town Clerk

TOWN OF TELLURIDE
SEAL
SAN MIGUEL COUNTY
COLORADO

EXHIBIT A

Chapter 6, Business Licenses and Regulations

Article 7 Tobacco

Section I: General

6-7-101 Findings and Purpose.

The purpose of this Article is to establish Tobacco Product Retail Licensing in the Town of Telluride to ensure compliance with the business standards and practices of the Town, to encourage responsible Tobacco Product Retailing, to discourage violations of Tobacco Product laws that prohibit the sale or distribution of Tobacco Products to young people and to reduce the likelihood that youth will become Tobacco Product users by prohibiting the sale of Tobacco Products to persons under twenty-one (21) years of age 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 to protect the health, safety and welfare of the residents of Telluride.

6-7-102 Incorporation of General Licensing Provisions.

The provisions of the Telluride Municipal Code shall apply to this Article except where they may be inconsistent with the provisions of this Article.

6-7-103 Definitions.

For purposes of this Article the following definitions shall apply:

"Accessory" means any product that is intended or reasonably expected to be used with or for the human consumption of a Tobacco Product(s); does not contain tobacco or nicotine and is not made or derived from tobacco or nicotine; and meets either of the following: (1) is not intended or reasonably expected to affect or alter the performance, composition, constituents, or characteristics of a tobacco or nicotine product; or (2) is intended or reasonably expected to affect or maintain the performance, composition, constituents, or characteristics of a tobacco or nicotine product but (a) solely controls moisture and/or temperature of a stored tobacco product; or (b) solely provides an external heat source to initiate but not maintain combustion of a tobacco product. Accessory includes, but is not limited to, carrying cases, lanyards and holsters.

"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 Article is not an Arm's Length Transaction.

"Business" means any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes.

"Cigar" means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any other substance containing tobacco. For purposes herein, cigar includes, but is not limited to Tobacco Products known or labeled as a "Cigar," "cigarillo," or "Little Cigar."

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) tobacco in any form that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging or labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(3) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph (1) of this definition.

(4) The term "cigarette" includes roll-your-own, i.e. any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

"Department" means the Telluride Marshals Department and any agency, individual or group designated by the Town to enforce the provisions of this Article.

"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 name or descriptor.

"Electronic Smoking Device Paraphernalia" includes, but is not limited to, cartridges, cartomizers, clearomizers, e-liquid, smoke juice, tips, atomizers, flavorings, flavor additives or flavor concentrates sold with the intent or reasonable expectation for use in an Electronic Smoking Device, Electronic Smoking Device batteries, Electronic Smoking Device chargers, and any other item specifically designed for the preparation, charging or use of Electronic Smoking Devices.

"Employee" means any Person who is employed or retained as an independent contractor by any Employer in consideration for direct or indirect monetary wages or profit, or any Person who volunteers his or her services for an Employer.

"Employer" means any Business that retains the service of one or more Employees.

"Good Cause" means for the purpose of refusing or denying a License under this Article:

(1) The applicant or Licensee has violated, does not meet, or has failed to comply with:

(a) any of the terms, conditions, or provisions of this Article; or

(b) a rule or regulation promulgated by the Licensing Authority pursuant to this Article; or

(2) The applicant or Licensee has failed to comply with:

(a) any terms or conditions of the License including, but not limited to, any special terms and conditions placed on the License at the time the License was issued or any terms or conditions subsequently modified by the Licensing Authority; or

(b) any special condition placed on the License in a prior disciplinary proceeding or that arose in the context of a prior disciplinary hearing.

"Licensing Authority" means the person(s) within the Town designated by the Town Council with responsibilities for administration of this Article, i.e. issuance, renewal and collection of fees.

"License" means a Tobacco Product Retail License issued under the provisions of this Article.

"Licensee" means a Person who has been issued a Tobacco Product Retail License under the provisions of this Article.

"License Fee" means the annual fee for a License calculated to include the Town's cost of administration of this Article, License education, inspections of Licensed premises, regular compliance checks with persons under the Minimum Legal Sales age, documentation of License violations (database management), and prosecutions of violations of Licenses.

"Little Cigar" means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco and weighing no more than three (3) pounds per thousand. "Little Cigar" includes, but is not limited to, any product known or labeled as a "small cigar," "cigarillo," or "Little Cigar."

"Manufacturer" means a Person who manufacturers, fabricates, assembles, processes or labels a Tobacco product or imparts a finished Tobacco Product for sale or distribution in the United States.

"Minimum Legal Sales Age" means twenty-one (21) years of age.

"Mobile Vending" means any sales other than at a fixed location.

"Packaging" means a pack, box, carton, or container of any kind or, if no other container, any wrapping, including cellophane, in which a Tobacco Product(s) is sold or offered for Sale to a consumer.

"Person" means any natural person, cooperative association, Employer, personal representative, receiver, trustee, assignee, or any other legal entity including a government agency.

"Sale" or "Sell" means any transfer, exchange, barter, gift, offer for sale or distribution for a commercial purpose in any manner or by any means whatsoever.

"Self-Service Display" means the open display or storage of Tobacco Products 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 or other coin-operated machine are forms of a self-service display.

"Tobacco Paraphernalia" means any item designed for the consumption, use, or preparation of Tobacco Products.

"Tobacco Product" means **(1)** any product that contains, is made of, or derived from tobacco or used to deliver nicotine or other substances intended for human consumption, whether smoked, heated, chewed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, bidis, snus, mints, hand gels, cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scraps, clippings, cutting, and sweepings of tobacco; **(2)** Electronic Smoking Devices; **(3)** notwithstanding any provision of Subsections (1) and (2) to the contrary, "Tobacco Product" includes any Component or Part, Accessory, or associated Tobacco Paraphernalia or Electronic Smoking Device Paraphernalia, whether or not sold separately, and any Electronic Smoking Device Paraphernalia, whether or not sold separately. Excluded from this definition is any product that contains marijuana and any product(s) specifically approved by the United States Food and Drug Administration for use in reducing, treating, or eliminating nicotine or tobacco

dependence or for other medical purposes when these products are being marketed and sold solely for such approved purpose.

"Tobacco Product Retailer" means any Person who sells, offers for sale, exchanges or offers

to exchange for any form of consideration, Tobacco Product, Component or Part, Accessory, Tobacco Paraphernalia or Electronic Smoking Paraphernalia without regard to the quantity of items sold, offered for sale, exchanged, or offered for exchange.

"Tobacco Product Retailing" means any Person who sells, offers for sale, exchanges or offers to exchange for any form of consideration, Tobacco Product, Component or Part, Accessory, Tobacco Paraphernalia or Electronic Smoking Paraphernalia without regard to the quantity of items sold, offered for sale, exchanged, or offered for exchange from any store, stand, booth, concession, outlet, vehicle, cart, vending machine, structure or any grounds or any other enterprise that Sells, offers for Sale, exchanges or offers for exchange for any form of consideration any Tobacco Product, Component or Part, Accessory, Tobacco Paraphernalia or Electronic Smoking Paraphernalia.

"Vending Machine" shall mean any mechanical, electrical, or electronic self-service device which, upon insertion of money, tokens, or any other form of payment dispenses product.

6-7-104 Time.

Time shall be calculated pursuant to Section 1-2-30 of this Code, Computation of Time.

6-7-105 No Private Duties, Cause of Action of Remedies.

Nothing contained in this Article shall be construed as creating, directly or indirectly, any duty between private persons, a private cause of action, or any private legal remedy.

Section II: Licensing Authority

6-7-201 Licensing Authority

Pursuant to the authority granted by C.R.S. §29-30-101 and §18-13-121 the Town Council hereby establishes a Tobacco Product Licensing Authority, which shall be handled by the position of Hearing Officer, which officer shall be appointed by Town Council resolution and serve at the pleasure of Town Council.

6-7-202 Powers of Licensing Authority

(a) The Licensing Authority shall have the following powers:

(1) To issue or deny Tobacco Product Retail License applications and renewals of the same within the Town.

(2) To impose sanctions on any License issued by the Licensing Authority on its own motion or on complaint by the Town or by any person for any violation by the Licensee after investigation and public hearing at which the Licensee shall be afforded an opportunity to be heard.

(3) To issue approvals and disapprovals as provided in this Article.

(4) To conduct hearings, grant or deny motions, make findings and orders, administer oaths, and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing which it is authorized to conduct.

(5) To control the mode, manner and order of all proceedings and hearings.

(6) To adopt rules, procedures and policies for its own proceedings.

(7) To adopt rules and policies for filing applications and requests.

(8) To adopt application forms and submission requirements, including a requirement that applications, complaints, and other documents be filed in a digital format approved by the Licensing Authority and to refuse applications, complaints and other documents not filed in the approved digital format.

(9) To perform any act that the Licensing Authority is authorized to perform under this Article.

(10) To perform any other act that may be implied or necessary to carry out any act that the Licensing Authority is authorized to perform under this Article.

(b) In the event that any person, in the immediate presence of the Licensing Authority or within its sight or hearing, while the Licensing Authority is in session during a hearing, commits a direct contempt of the Licensing Authority by speech, gesture, or conduct which disobeys a lawful order of the Licensing Authority, shows gross disrespect to the Licensing Authority tending to bring the Licensing Authority into public ridicule, or substantially interferes with the Licensing Authority's proceedings, the Licensing Authority may hold such person in contempt. Contemptuous conduct by any principal, registered manager, or employee shall be imputed to the Licensee.

(c) The Licensing Authority may impose the following sanctions for contempt:

(1) Removal of the person committing the contempt from the proceedings, the hearing room and its environs;

(2) Public censure, which shall be made a matter of the Licensee's record and may be used as an aggravating factor in determining any fine, suspension, or revocation;

(3) A prohibition against the individual or Licensee introducing into the record testimony, documents, exhibits, or other evidence;

(4) An order striking, disregarding and refusing to consider pleadings, applications, documents, objections, testimony, exhibits, or other evidence or arguments already introduced by such person;

(5) A fine, enforced by suspension of the License until the fine is paid;

(6) Default of any motion, complaint, or other action then pending against the Licensee; or

(7) Denial of any application by the Licensee then pending before the Licensing Authority.

6-7-203 Appeal of Licensing Authority Decisions

Actions taken by the Licensing Authority are subject to an appeal on the record directly to the Telluride Town Council. Appeal to the Telluride Town Council must be applied for within fourteen (14) days after the date of the decision. Failure to file a timely appeal to the Telluride Town Council shall constitute the failure to exhaust administrative remedies for the purpose of judicial review. Following an appeal decision by the Telluride Town Council, the decision is subject to review by the Telluride Municipal Court. Any person applying to the Court for review of a Telluride Town Council appeal decision shall be required to pay the cost of preparing a transcript of proceedings before the Licensing Authority and the Telluride Town Council whenever such transcript is furnished by the Town pursuant to the Court order.

Section III: Licenses

6-7-301 License Requirements and Prohibitions

(a) License Required.

It shall be unlawful for any person to act as a Tobacco Product Retailer in the Town without first obtaining and then maintaining a valid Tobacco Product Retail License pursuant to this Article for each location where the activity is to occur.

(b) Display of License.

Tobacco Product Retail License shall be prominently displayed on the premises of the Licensee in a publicly visible location.

(c) Lawful Business Operation.

In the course of Tobacco Product 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 Article for a Licensee, or any of the Licensee's agents or employees, to violate any local, state, or federal law applicable to Tobacco Product Retailing.

(d) Minimum Legal Sales Age Signage Requirements.

Signage is required on the Licensed premises indicating that Tobacco Products shall not be sold to any person under twenty-one (21) years of age. The signage shall be prominently displayed at all entrances and other prominent locations on the premises.

(e) Minimum Legal Age to Sell Tobacco Products.

A person under the age of twenty-one (21) who possesses or handles Tobacco Products as part of that individual's employment at a Tobacco Product Retailer does not commit a violation of this Section so long as such individual does not sell or provide Tobacco Products to a person under the age of 21.

(f) Self-Service Displays Prohibited.

Tobacco Product Retailing by means of a Self-Service Display is prohibited.

(g) Packaging.

No Tobacco Product Retailer shall sell Tobacco Products to any Person unless such product is sold in the original Manufacturer's Packaging intended for sale to consumers.

6-7-302 Limits on Tobacco Product Retail License Eligibility.

(a) Mobile Vending. No License may issue to authorize Tobacco Product Retailing at a location other than a fixed location.

(b) Under-Age Applicant. An applicant under twenty-one (21) years of age is ineligible to obtain a Tobacco Product Retail License.

6-7-303 Application Procedure.

(a) Each application shall be submitted in the name of each Person seeking to conduct Tobacco Product Retailing and shall be signed by the same or an authorized agent thereof.

(b) It is the responsibility of each applicant to be informed regarding all laws applicable to Tobacco Product Retailing, including those laws affecting the issuance of a Tobacco Product Retail License.

(c) No applicant may rely on the issuance of a License as a determination by the Town that the applicant has complied with all laws applicable to Tobacco Product Retailing.

(d) A License issued contrary to this Article, contrary to any other law, or on the basis of false or misleading information supplied by an applicant shall be revoked.

(e) Nothing in this Article shall be construed to vest in any person obtaining and maintaining a Tobacco Product Retail License any status or right to act as a Tobacco Product Retailer in contravention of any provision of law.

(f) All Tobacco Product Retail License applications shall be submitted on a form supplied by the Licensing Authority and shall contain, at a minimum, the following information:

> **(1)** The name, mailing address, email address, and telephone number of each applicant seeking a License;
>
> **(2)** The business name, physical address, and telephone number of the single fixed location where a License is sought.
>
> **(3)** A name and mailing address authorized by each applicant authorized to receive all communications and notices (the "authorized address") required by, authorized by, or convenient to the enforcement of this Article. If an authorized address is not supplied, each applicant shall be understood to consent to the provision of notice at the business address specified in subparagraph (2) above.

(g) A Tobacco Product Retailer shall inform the Town in writing of any change in the information submitted on the application for a License within ten (10) business days of a change.

6-7-304 Issuance of a License.

Upon the receipt of a completed application for a Tobacco Product Retail License and the paid License Fee pursuant to this Article, the Licensing Authority 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 Article.

(b) The application seeks authorization for License at a location where this Article prohibits issuance of Tobacco Product Retail License.

(c) The application seeks authorization for a License for an applicant for whom this Article prohibits a License to be issued.

(d) The application seeks authorization for Tobacco Product Retailing that is prohibited pursuant to this Article, that is unlawful pursuant to these regulations or that is unlawful pursuant to any other law.

6-7-305 License Fees.

(a) The annual License Fee for applications filed in 2020 shall be One Hundred Seventy-Five dollars ($175.00) and shall thereafter be established annually by Resolution of Town Council.

> **(1)** The License Fee shall be calculated so as to recover the direct and indirect costs of administration and enforcement of this Article, including, for example, issuing a License, administration of the Licensing program, retailer education and training, retailer inspection, compliance checks, community outreach and

education, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Article.

(2) License Fees are nonrefundable except as may be required by law.

6-7-306 License Term, Renewal and Expiration.

(a) The term of a License is one year.

(b) Renewal of License. A License is invalid if the License Fee has not been timely paid in full or if the term of the License has expired.

(c) Each Tobacco Product Retailer shall apply for the renewal of the License and submit the applicable License Fee no later than thirty (30) days prior to expiration of the term of the License.

(d) Expiration of License. A License that is not timely renewed shall expire at the end of its term. To renew a License not timely renewed pursuant to Subsection (c) above, the applicant must:

(1) submit the License Fee and application renewal form; and

(2) submit a signed affidavit affirming that the applicant:

(i) has not sold and will not sell any Tobacco Product(s) after the License expiration date and before the License is renewed; or

(ii) has waited the period of time required by this Article for Tobacco Product Retailing without a valid License before seeking renewal of the License.

6-7-307 License Non-Transferrable.

(a) A Tobacco Product Retail License shall not be transferred from one Person to another or from one location to another. A new License is required whenever a Tobacco Product Retail location has a change in owner(s) in an Arm's Length Transaction.

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

(1) the location has been transferred to new business owner in an Arm's Length Transaction; and

(2) the new business owner(s) provide the Town with clear and convincing evidence that the new business owner(s) has acquired or is acquiring the location in an Arm's Length Transaction.

6-7-308 License Conveys a Limited, Conditional Privilege.

(a) Nothing in this Article shall be construed to grant any person obtaining or maintaining a Tobacco Product Retail License any status or right other than the limited conditional privilege to act as a Tobacco Product Retailer at the location in the Town identified on the face of the License. Nothing in this Article 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 Article.

(b) The Town may adopt and promulgate rules and regulations, in addition to those contained herein. Such rules and regulations, when promulgated, shall have the same force and effect as if incorporated in this Article.

6-7-309 Compliance Monitoring.

(a) Compliance with this Article shall be monitored by the Department. In addition, any peace officer may enforce the penal provisions of this Article. The Town may designate any number of additional persons to monitor compliance with this Article.

(b) The Department shall inspect each Licensee at least two (2) times per twelve (12) month period. Nothing in this paragraph shall create a right of action in a Licensee or other person against the Town or its agents.

(c) The Town shall not enforce any law establishing a Minimum Legal Sales Age for Tobacco Product purchases against a person who otherwise might be in violation of such law because of the person's age (hereinafter "Under-Aged Operative") if the potential violation occurs when:

(1) the Under-Aged Operative is participating in an inspection supervised by the Department, or person(s) designated by the Town to monitor compliance with this Article;

(2) the Under-Aged Operative is acting as an agent of a person(s) designated by the Town to monitor compliance with this Article; or

(3) the Under-Aged Operative is participating in an inspection funded in part, either directly or indirectly through subcontracting, by the Department.

Section IV: Prohibited Activity

6-7-401 Minimum Legal Sales Age.

(1) It shall be unlawful for any Person to sell, give, deliver or furnish any Tobacco Product to anyone who has not reached twenty-one (21) years of age.

(2) It shall be unlawful for any Person to permit or allow the person's agent, servant, officer or employee to sell, give, deliver or furnish any Tobacco Product to anyone who has not reached twenty-one (21) years of age.

6-7-402 Minimum Legal Purchase Age

It shall be unlawful for any Person under the age of twenty-one (21) to purchase or attempt to purchase any Tobacco Product from a Tobacco Product Retailer.

Section V Sanctions, Penalties and Enforcement

6-7-501 Suspension and Revocation of License.

(a) The following shall be grounds for suspension or revocation of the Licensee's License(s):

(1) A violation by a Licensee or a Licensee's officers, agents, or employees of any of the provisions of this Article, or any laws of the State of Colorado or ordinances of the Town of Telluride relating to the sale or furnishing of tobacco or cigarettes to minors, or the storage or display of cigarettes or tobacco products, including, without limitation C.R.S. §18-13-121;

(2) Violations of any conditions imposed by the Town or Licensing Authority in connection with the issuance or renewal of the License;

(3) Failure to pay state or local taxes that are related to the operation of the business associated with the License;

(4) Loss of right to possession to the Licensed premises;

(5) Fraud, misrepresentation or a false statement of material fact contained in the original or renewal License application.

(b) The Department shall commence suspension or revocation proceedings by petitioning the Licensing Authority to issue an order to the Licensee to show cause why the License should not be suspended or revoked. The Licensing Authority shall issue such an order to show cause if the petition demonstrates that probable cause exists to determine that one or more grounds exist pursuant to Subsection (a) to suspend or revoke the License. The order to show cause shall set the matter for a public hearing before the Licensing Authority.

(c) The Town Clerk shall give notice of the public hearing no later than thirty (30) days prior to the hearing by mailing the same in writing to the Licensee at the address contained in the License application. At the hearing, the Licensee shall have the opportunity to be heard, to present evidence and witnesses, and to cross examine witnesses presented by the Department. The Licensing Authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the Licensing Authority is authorized to conduct. The standard of proof at such hearings shall be a preponderance of the evidence. The burden of proof shall be upon the Department.

(d) In determining whether a License should be suspended or revoked, and in determining whether to impose conditions in the event of a suspension, the Licensing Authority shall consider the following factors:

(1) The nature and circumstances of the violation;

(2) Corrective action, if any, taken by the Licensee;

(3) Steps taken by the Licensee before the violation occurred to prevent the violation from occurring;

(4) Whether the violation was committed or permitted by an Employer, manager or Employee;

(5) Prior violations, if any, by the Licensee;

(6) The likelihood of recurrence of the violation;

(7) Whether the violation was willful;

(8) Previous sanctions, if any, imposed on the Licensee.

(e) The Licensing Authority shall consider the following non-binding guidelines in determining whether to suspend or revoke a License and, in the case of a suspension, the length of the suspension. The purpose of these guidelines to provide consistent treatment of violations of this Article. The actual sanction imposed upon a Licensee for any violation may vary from the guidelines when warranted by the specific facts and circumstances of the case.

(1) For a first offense within a one-year period, suspension for seven days.

(2) For a second offense within a one-year period, suspension for 30 days.

(3) For a third or subsequent offense within a one-year period, revocation of the License.

6-7-502 Penalties

(a) Any person who sells, gives, or otherwise supplies any Tobacco Products to a person under the age of twenty-one (21) commits an offense and upon conviction thereof, shall result in the assessment of a non-criminal penalty in the following amounts:

(1) A fine of $100.00 for the 1st offense,

(2) A fine of $300.00 for the 2nd offense; and

(3) A fine of $600.00 for the 3rd offense; and

(4) A summons for the 4th offense and any subsequent offense(s).

(b) Any person under the age of twenty-one (21) who purchases or attempts to purchase any Tobacco Products commits an offense and upon conviction thereof, may result in the assessment of a non-criminal penalty in the following amounts:

(1) A fine of $50.00 for the 1st offense or a summons with a fine up to $1,000.00,

(2) A fine of $150.00 for the 2nd offense or a summons with a fine up to $1,000.00; and

(3) A fine of $300.00 for the 3rd offense and any subsequent offense(s) or a summons with a fine up to $1,000.00;

except that, following the issuance of a non-criminal penalty the Court may permit the person to participate in a tobacco or vaping education program to reduce the penalty. The Court may also allow such person to perform community service and be granted credit against the non-criminal penalty fine and court costs at the rate of $10.00 for each hour of work performed, for up to fifty percent of the non-criminal penalty amount, fine and court costs.

(c) A Tobacco Product Retailer is responsible for the actions of its agents and employees regarding the sale of Tobacco Products. A conviction pursuant to Subsection (a) above shall constitute prima facie evidence of a Tobacco Product Retailer's violation of this Subsection. The illegal sale of any Tobacco Products to a person under the age of twenty-one (21) at the Tobacco Product Retailer's store shall result in the assessment of a non-criminal penalty to the Tobacco Product Retailer in the following amounts:

(1) A minimum fine of $100.00 for the 1st violation or a summons with a fine up to $1,000.00;

(2) A minimum fine of $300.00 for the 2nd second violation or a summons with a fine up to $1,000.00;

(3) A minimum fine of $600.00 for the 3rd third violation and any subsequent violation(s) or a summons with a fine up to $1,000.00.

6-7-503 Enforcement.

(a) The remedies provided by this Article are cumulative and in addition to any other remedies available at law or in equity.

(b) Causing, attempting, permitting, aiding, abetting, or concealing a violation of any provision of this Article is unlawful and shall cause the offender to be subject to the general penalty provisions of the Telluride Municipal Code §1-4-10(a)(2).

(c) In addition to other remedies provided by this Article or by other law, any violation of this Article may be remedied by a non-criminal action brought by the Municipal Prosecutor, including, for example, administrative or judicial nuisance abatement proceedings, code enforcement proceedings, and suits for injunctive relief.