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ORDINANCE NO. 5211

AN ORDINANCE ADOPTING A NEW CHAPTER 8.68 TO TITLE 8 TO REGULATE TOBACCO RETAILERS FOR ALL PURPOSES WITHIN THE UNINCORPORATED AREAS OF THE COUNTY OF EL DORADO AND ESTABLISH A TOBACCO RETAIL LICENSE AND REPEAL URGENCY ORDINANCES 5192 AND 5197

THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 8.68 of Title 8 of the El Dorado County Ordinance Code entitled "Tobacco Retailers" is hereby added to read as follows:

"Chapter 8.68 Tobacco Retailers.

Sec. 8.68.010 - Purpose.

In enacting this Chapter, it is the intent of the Board of Supervisors to protect the health and welfare of the citizens of El Dorado County, especially youth, from the impacts of tobacco use. The findings containing the well documented negative health impacts of tobacco use supporting this Ordinance are detailed in Resolution Number 177-2024, adopted by the Board of Supervisors on October 22, 2024. This Chapter protects the public health and welfare by regulating tobacco retailers and requiring a tobacco retail license for operation, to help ensure regulatory oversight for the protection of the community's youth and in response to the recent expansion of tobacco retailers in the County.

Sec. 8.68.020 Definitions.

For the purposes of this Chapter:

"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.

“Cigar” means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or in any substance containing tobacco and weighing more than 4.5 pounds per thousand.

“Cigarette” means: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) any roll of tobacco wrapped in any substance containing tobacco, which, 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 subparagraph (1). Cigarettes as defined herein include cigarettes as defined in California Revenue and Taxation Code Section 30003, as amended from time to time.

“Consumer” means a Person who purchases a Tobacco Product for consumption and not for Sale to another.

“Coupon” means any voucher, rebate, card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.

“County” means the unincorporated territory of the County of El Dorado.

“Department” means the Environmental Management Department and any other agency or Person designated by the Department to enforce or administer the provisions of this Chapter.

“Flavored Tobacco Product” means any Tobacco Product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by an ordinary consumer either prior to, or during the consumption of, a Tobacco Product, including, but not limited to, any taste or smell relating to fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, molasses, or any candy, dessert, alcoholic beverage, herb, or spice. A public statement or claim made or disseminated by the manufacturer of a Tobacco Product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such Tobacco Product, that such Tobacco Product has a taste or smell other than tobacco shall constitute presumptive evidence that the Tobacco Product is a Flavored Tobacco Product.

“Full Retail Price” means the price listed for a Tobacco Product on its Packaging or on any related shelving, advertising, or display where the Tobacco Product is sold or offered for Sale, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

“Hearing Officer” means the same as set forth in 9.02.040 of the Code.

“Labeling” means written, printed, or graphic matter upon any Tobacco Product or any of its Packaging, or accompanying such Tobacco Product.

“Little Cigar” means any roll of tobacco other than a Cigarette wrapped entirely or in part in tobacco or any substance containing tobacco and weighing no more than 4.5 pounds per thousand. *“Little Cigar”* includes, but is not limited to, Tobacco Products known or labeled as small cigar, little cigar, or cigarillo.

“Manufacturer” means any Person, including any repacker or relabeler, who manufactures, fabricates, assembles, processes, or labels a Tobacco Product; or imports a finished Tobacco Product for sale or distribution into the United States.

“New Tobacco Product” means the same as set forth in 21 U.S.C. Section 387j(a)(1), as may be amended from time to time.

“Non-FDA Authorized Electronic Cigarettes” means an Electronic Cigarette that is:

- (1) A New Tobacco Product;
- (2) Requires premarket review under 21 U.S.C. Sec. 387j, as may be amended from time to time; and
- (3) Does not have a premarket review order under 21 U.S.C. Sec. 387j(c)(1)(A)(i), as may be amended from time to time.

“Package or 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 is Sold or offered for Sale to a Consumer.

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

“Pharmacy” means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for Sale, regardless of whether the retail establishment Sells other retail goods in addition to prescription pharmaceuticals.

“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.

“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.

“Single-Use Electronic cigarette” means any single-use device or delivery system that is sold pre-filled with nicotine-containing liquid/substance, which is not refillable or rechargeable and is typically discarded once its contents have been used, and is designed to deliver nicotine to a person through aerosolized or vaporized form. This includes but is not limited to, single-use e-cigarettes, e-cigars, e-pipes, vape pens, or e-hookahs. Exempted from this definition are products approved by the Food and Drug Administration

(FDA) for sale as tobacco cessation aids or for other therapeutic purposes, and marketed solely for those approved uses.

“Tobacco Product” means the same as set forth in Section 130.40.340(B)(4) of the Code.

“Tobacco Retailer” means the same as set forth in Section 130.40.340(B)(5) of the Code.

“Tobacco Retailer License” or *“License”* means a valid license issued in conformance with this Chapter by the Department to a Proprietor to act as a Tobacco Retailer.

Sec. 8.68.030 General Requirements and Prohibitions.

- A. *Tobacco Retailer’s License Required.* Beginning April 1, 2025, it shall be unlawful for any Person to act as a Tobacco Retailer in the County without first obtaining and maintaining a valid Tobacco Retailer’s License for each location at which Tobacco Retailing 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 or Tobacco Retailing.
- C. *Display of License.* Each Tobacco Retailer shall prominently display the Tobacco Retailer License, and any other required license or permit applicable to the Tobacco Retailer, in a publicly visible location at the licensed location.
- D. *Minimum Legal Sale Age.* No person engaged in tobacco retailing shall sell a Tobacco Product to a person under the minimum age for sale of Tobacco Products as established by state law.
- E. *Positive Identification Required.* No Person engaged in Tobacco Retailing shall sell a Tobacco Product to another Person without first verifying by means of government-issued photographic identification that the recipient is at least the minimum age for Sale of Tobacco Products as established by state law.
- F. *Minimum Age for Persons Selling Tobacco.* All persons who engage in tobacco retailing must be at least the minimum legal sales age established by state law.
- G. *On-Site Sales.* All Sales of Tobacco Products to Consumers shall be conducted in-person at the licensed location. It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco Retailer’s agents or employees to Deliver Tobacco Products or to knowingly or recklessly Sell Tobacco Products to any Person that intends to Deliver the Tobacco Product to a Consumer in the County. For purposes of this subsection, *“Deliver”* means the commercial transfer of Tobacco Products to a Consumer at a location not licensed pursuant to this Chapter.

- H. *Product Placement Prohibition.* A Tobacco Retailer without a valid Tobacco Retailer License, including, for example, a Person whose Tobacco Retail License has been suspended or revoked, shall keep all Tobacco Products out of public view. The public display of Tobacco Products in violation of this provision shall constitute Tobacco Retailing without a license.

Sec. 8.68.040 Sale of Flavored Tobacco Products Prohibited.

A Tobacco Retailer or any of the Tobacco Retailer's agents or employees shall not Sell or offer for Sale, or possess with intent to Sell or offer for Sale, any Flavored Tobacco Product.

It shall be a rebuttable presumption that a Tobacco Retailer in possession of four (4) or more Flavored Tobacco Products, including, but not limited to, individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof, possesses flavored tobacco products with intent to Sell or offer for Sale.

Sec. 8.68.050 Sale of Single-Use Electronic Cigarettes and Non-FDA Authorized Electronic Cigarettes Prohibited.

- A. A Tobacco Retailer or any of the Tobacco Retailer's agents or employees shall not Sell or offer for Sale, or possess with intent to Sell or offer for Sale, any Single-Use Electronic Cigarettes.

It shall be a rebuttable presumption that a Tobacco Retailer in possession of four (4) or more Single-Use Electronic Cigarettes, including but not limited to, individual Single-Use Electronic Cigarettes, packages of Single-Use Electronic Cigarettes, or any combination thereof, possesses such Single-Use Electronic Cigarettes with intent to Sell or offer for Sale.

- B. A Tobacco Retailer or any of the Tobacco Retailer's agents or employees shall not Sell or offer for Sale, or possess with intent to Sell or offer for Sale, Non-FDA Authorized Electronic Cigarettes.

It shall be a rebuttable presumption that a Tobacco Retailer in possession of four (4) or more Non-FDA Authorized Electronic Cigarettes, including but not limited to, individual Non-FDA Authorized Electronic Cigarettes, packages of Non-FDA Authorized Electronic Cigarettes, or any combination thereof, possesses such Non-FDA Approved Electronic Cigarettes with intent to Sell or offer for Sale.

Sec. 8.68.060 Tobacco Product Pricing and Packaging.

- A. *Packaging and Labeling.* No Tobacco Retailer shall Sell any Tobacco Product to any Consumer unless such product: (1) is sold in the original Manufacturer's Packaging intended for Sale to Consumers; (2) conforms to all applicable federal Labeling requirements; and (3) conforms to all applicable child-resistant packaging requirements.

B. *Display of Price.* The price of each Tobacco Product offered for Sale shall be clearly and conspicuously displayed to indicate the price of the product.

C. *Prohibition of Tobacco Coupons, Discounts, Samples or Promotional Items.* No Tobacco Retailer shall:

1. Honor or redeem, or offer to honor or redeem, a Coupon to allow a Consumer to purchase a Tobacco Product for less than the Full Retail Price;
2. Sell any Tobacco Product to a Consumer through a multiple-Package discount or otherwise provide any such product to a Consumer for less than the Full Retail Price in consideration for the purchase of any Tobacco Product or any other item; or
3. Provide any free or discounted item to a Consumer in consideration for the purchase of any Tobacco Product.
4. Distribute free or nominally priced Tobacco Products.

D. *Minimum Package Size for Little Cigars and Cigars.* No Tobacco Retailer shall Sell to a Consumer:

1. Any Little Cigar unless it is sold in a Package of at least twenty (20) Little Cigars; or
2. Any Cigar unless it is sold in a Package of at least at least six (6) Cigars; provided, however, that this subsection shall not apply to a Cigar that has a price of at least \$10.00 per Cigar, including all applicable taxes and fees.

E. *Minimum Prices for Cigarettes, Little Cigars, and Cigars.* No tobacco retailer shall sell:

1. Cigarettes at a price that is less than \$10.00 per package of 20 cigarettes, including all applicable taxes and fees;
2. Little cigars at a price that is less than \$10.00 per package of little cigars, including all applicable taxes and fees; or
3. Cigars at a price that is less \$5.00 per cigar, including all applicable taxes and fees.
4. The minimum prices established in this section shall be adjusted April 1 of each year beginning 2026 (percent change in the annual average, not seasonally adjusted) in proportion with the Consumer Price Index: All urban consumers for all items for the West Region statistical area as reported by the United States Bureau of Labor Statistics or any successor to that index. The Department shall provide notice of the April 1 adjustment by publicly posting the adjusted minimum prices on the County website by the preceding March 1.

Sec. 8.68.070 Limits on Eligibility for a Tobacco Retailer License.

- A. *Mobile Vending*. No license may be issued to authorize Tobacco Retailing at other than a fixed address store front or other permanent type of structure, including, but not limited to, Tobacco Retailing by Persons on foot or from vehicles.
- B. *Pharmacies*. No license may be issued, and no existing license may be renewed, to authorize Tobacco Retailing in a Pharmacy.
- C. *Tobacco Retailer Operating Lawfully*. A Tobacco Retailer operating lawfully on the date this ordinance is adopted that is ineligible to receive or renew a Tobacco Retailer's License pursuant to Subsections A or B above may apply for and receive a one-time, non-renewable license for the location pursuant to the standard licensing application procedure.
- D. Excessive Density. The issuing of a license is limited as follows:
1. No license may be issued to authorize Tobacco Retailing if the number of licenses issued exceeds one (1) retailer per two thousand-five hundred (2,500) inhabitants of the County.
 2. For the purposes of this subsection, the total population of the County shall be determined by the most current published total available from the U.S. Census Bureau or the California State Department to Finance, whichever has been more recently updated, as of the date the license application is filed.
 3. Exception. A Tobacco Retailer that meets all of the following requirements shall be exempt from the excessive density limitation and may receive or renew a license so long as it is otherwise eligible:
 - i. On the effective date of this ordinance, the Tobacco Retailer is open for business and operating as a Tobacco Retailer;
 - ii. On the effective date of this ordinance, the Tobacco Retailer maintains a valid tobacco retailer's license issued by the State of California's Board of Equalization, if the tobacco retailer sells products that require such license;
 - iii. The License issued pursuant to this Chapter is timely obtained and is renewed without lapse or permanent revocation (as opposed to temporary suspension);
 - iv. The Tobacco Retailer has not violated this Chapter or any other tobacco control law four (4) or more times within the previous five-year period;
 - v. The Tobacco Retailer is not closed for business or otherwise suspends tobacco retailing for more than sixty (60) consecutive days;

- vi. The Tobacco Retailer does not substantially change the business premises or business operation related to Tobacco Products; and
- vii. The Tobacco retailer conscientiously retains the right to operate under other applicable laws including the County Code of Ordinances.

Sec. 8.68.080 Application Procedure.

- A. Application. An application for a License shall be filed with the County prior to use of the property for Tobacco Retail. License applications shall be on the forms provided by the County and shall contain the following information:
- 1. The name, address, and telephone number, of each Proprietor of the business that is seeking the License.
 - 2. Each Proprietor proposing to conduct retail tobacco Sales shall be listed on the application, which shall be signed by each Proprietor or an authorized agent thereof.
 - 3. The business name, address, telephone number, and parcel number of the single fixed location for which the License is sought.
 - 4. If Proprietor is different from the property owner, a signed consent form from the property owner acknowledging use of the property for Tobacco Retail. The consent form shall include the property owner's name, address, and telephone number.
 - 5. A property map or survey of the parcel for which the Tobacco Retail License is sought.
 - 6. 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 and deemed to consent to the provision of notice at the business address specified in subparagraph (3) above.
 - 7. 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.
 - 8. 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 (5) years.

9. A signed affidavit affirming that the proprietor has not sold and will not sell any tobacco product without a license required by this Ordinance.
 10. Evidence of a valid business license issued by the County in accordance with Title 5 of this Code.
 11. An acknowledgement from each Proprietor that (a) the Proprietor has read all regulations pertaining to the operation of Tobacco Retailing, including those laws affecting the issuance of a Tobacco Retailer's License and (b) issuance of a License is not indicative that the Proprietor has complied with all laws applicable to Tobacco Retailing.
 12. Such other information as the County deems necessary for the administration or enforcement of this Chapter as specified on the application form required by this section.
- B. Application fee. An application for a Tobacco Retail License shall be accompanied by an annual, non-refundable fee established by resolution of the Board of Supervisors; provided, however, the fee shall be no greater than necessary to defer the cost incurred by the County in administering the provisions of this chapter.
- C. Notice of information changes. 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 (10) business days of a change. Failure to notify the Department in conformance with this provision is a violation of this Chapter.
- D. 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 7921.000 *et seq.*) or any other applicable law.

Sec. 8.68.090 Issuance of License.

- A. *Issuance of the License.* Within a reasonable period of time from receipt of a complete application for a Tobacco Retailer's license and the license application fee required by this Chapter, the Department shall approve an application that is in full compliance with the requirements of this Chapter unless substantial evidence demonstrates a basis for denial exists.
- B. 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 Section 8.68.150 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.
- C. *Denial of the Application.* The Department may deny an application for a tobacco retailer's license based on substantial evidence of any of the following:

1. The information presented in the application is incomplete or false. Intentionally supplying false information shall be a violation of this Chapter;
2. The application seeks authorization for Tobacco Retailing at a location for which this Chapter prohibits a license to be issued;
3. The application seeks authorization for Tobacco Retailing for a Proprietor to whom this Chapter prohibits a license to be issued; or
4. The application seeks authorization for Tobacco Retailing that is prohibited pursuant to this Chapter or that is unlawful pursuant to this Code including, without limitation, the zoning ordinance, building code, and business license tax ordinance, or that is unlawful pursuant to any other law.

Sec. 8.68.100 License Renewal and Expiration.

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 (1) year. Each Tobacco Retailer shall renew annually their Tobacco Retailer's license by submitting their annual license fee no later than thirty (30) days prior to expiration of the term to avoid a lapse in their License.

Sec. 8.68.110 License Nontransferable.

- A. *Nontransferable License.* 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), or a Person issued a License changes a business location for Tobacco Retailing.
- B. *Prior Violations.* 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 pursuant to Sections 8.68.150 and 8.68.170 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.

Sec. 8.68.120 License Conveys a Limited, 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. 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, including without limitation the zoning ordinance, building codes, and business license tax ordinance.

Sec. 8.68.130 Permits and Fees Not Exclusive.

The License and fees required by this chapter shall be in addition to any license, permit, or fee required under any other chapter of this Code. The issuance of any License pursuant to this chapter shall not relieve the Proprietor or property owner of the obligation to comply with all other applicable provisions of this Code.

Sec. 8.68.140 Compliance Monitoring.

Compliance Monitoring. Compliance with this Chapter shall be monitored by the Department. The County may designate any number of additional Persons to monitor compliance with this chapter. All licensed premises must be open to inspection by County staff or designated persons during regular business hours.

- A. *Inspections.* The Department shall inspect each Tobacco Retailer at least one (1) or more times per twelve (12) month period.
- B. Nothing in this paragraph shall create a right of action in any licensee or other Person against the County or its agents.

Sec. 8.68.150 Suspension or Revocation of License.

- A. *Suspension or Revocation of License for Violation.* In addition to any other penalty authorized by law, a Tobacco Retailer's License may 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 law designated in Section 8.68.030 above.
- B. Time Period of Suspension of License.
 - 1. Upon a finding by the Department of a first violation of this Chapter at a location, the License shall be suspended for thirty (30) days.
 - 2. Upon a finding by the Department of a second violation of this Chapter at a location within any sixty (60) month period, the License shall be suspended for ninety (90) days.
 - 3. Upon a finding by the Department of a third violation of this Chapter at a location within any sixty (60) month period, the License shall be suspended for one (1) year.

4. Upon a finding by the Department of four or more violations of this Chapter at a location within any five (5) year period, the License shall be revoked. If a License is revoked, the Retailer shall not be eligible for a new License for a period of five (5) years after the effective date of revocation.
- C. *Revocation of License Wrongly Issued*¹. 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 Section 8.68.090 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.
- D. *Appeal*. Any suspension or revocation of a license under this section may be appealed pursuant to Sec. 8.68.160.

Sec. 8.68.160 Appeals.

- A. *Appeal of Denial, Suspension or Revocation*. A decision of the Department to deny, suspend or revoke a license is appealable by written request submitted to the Director of the Department within ten days of mailing of the Department's decision to deny, suspend or revoke a license. If such an appeal is timely made, it shall stay enforcement of the appealed action.
- B. *Appeal Hearing Procedures*.
1. If an appeal is timely made, the County shall serve written notice of the date, time, and place for the hearing on the requesting party. The written notice shall be served either by first class mail or by personal service on the requesting party. The hearing shall be scheduled not less than 15 calendar days, nor more than 60 calendar days from receipt by the County of the request for a hearing.
 2. The Hearing Officer will preside over the hearing and conduct the hearing according to the rules normally applicable to administrative hearings and in accordance with Section 9.02.350 et seq. of this Code. The Hearing Officer shall render a decision within 30 calendar days of the hearing based upon its findings proven by a preponderance of the evidence. A written decision will be mailed by first class mail to the Proprietor or licensee at the last known mailing address provided by that party. Deposit of the decision in the U.S. Postal Service is presumptive evidence that the party or party's agent has received notice of the decision.
 3. The decision rendered by the Hearing Officer shall be a final administrative decision.

Sec. 8.68.170 Tobacco Retailing Without a License.

- A. In addition to any other penalty authorized by law, if 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:

- B. Time Period of Ineligibility.
 - 1. After a first violation of this section by a Tobacco Retailer at a location, 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 (30) days have passed from the date of the violation.
 - 2. After a second violation of this section by a Tobacco Retailer at a location within any five (5) year 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 (90) days have passed from the date of the violation.
 - 3. After of a third or subsequent violation of this section by a Tobacco Retailer at a location within any five (5) year 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 five (5) years have passed from the date of the violation.

Sec. 8.68.180 Public Nuisance; Enforcement; Administrative Penalties.

- A. Violations of this Chapter are hereby declared to be public nuisances. The Department shall have the authority to enforce a violation of any provision of this chapter pursuant to Chapter 9.02 of this Code.
- B. Any violation of this Chapter is subject to enforcement under Chapter 9.02, except that, notwithstanding Section 9.02.210, a violation of this Chapter is a misdemeanor and the fine assessed for each Notice and Order issued for the same violation shall be as follows:
 - 1. First violation: \$500.00.
 - 2. Second violation: \$1000.00.
 - 3. Third or subsequent violation: \$2,000.00.
- C. The County may recover the costs of abatement incurred in its code enforcement efforts, including administrative fines or fees, under Section 9.02.090.
- D. All fines or costs collected under this Chapter shall be deposited into the Department's enforcement penalty fund and used for costs related to enforcement and administration of this Chapter.

- E. These sections in no way limit the ability of the County to pursue any enforcement mechanism authorized in the El Dorado County Code or any other civil remedy, including enforcement under Chapter 130.40.340.

Sec. 8.68.190 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 (18) 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. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall also constitute a violation of this Chapter.
- D. For the purposes of the civil remedies provided in this Chapter, each individual retail Tobacco Product that is distributed, sold, or offered for Sale in violation of this Chapter shall constitute a separate violation of this Chapter.
- E. All Tobacco Retailers are responsible for the actions of their employees relating to the sale, offer to sell, and furnishing of Tobacco Products at the retail location. The sale of any Tobacco Product by an employee shall be considered an act of the Tobacco Retailer.

Sec. 8.68.200 Other Laws.

This Chapter does not intend and shall not be interpreted to regulate any conduct where the regulation of such conduct has been preempted by the United States or the State of California.

Sec. 8.68.210 Exceptions.

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 2. Adoption of this Ordinance is Not a Project under the California Environmental Quality Act (CEQA).

This Ordinance is not a “project” within the meaning of Public Resources Code Section 21065 and CEQA Guidelines Sections 15060(c)(2) and 15378 because the regulations of tobacco retailers do not have the potential of resulting in a direct or reasonably foreseeable indirect physical change in the environment.

Even if the adoption of this ordinance were a project, it would be categorically exempt from CEQA under CEQA Guidelines Section 15308 because the ordinance adopts a regulatory process for the protection of the environment and there are no unusual circumstances under CEQA Guidelines Section 15300.2, and under the “common sense” exemption in CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that adoption of this ordinance would have a significant effect on the environment.

Section 3. Severability.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4. Repeal of Urgency Ordinance.

This Ordinance, in conjunction with the companion ordinance adding tobacco retailer land use regulations, establishes regulations of tobacco retailers and, therefore, Urgency Ordinance Nos. 5192 and 5197, are repealed. Urgency Ordinance Nos. 5192 and 5197, set to expire on January 30, 2025, established a temporary moratorium on tobacco retailer applications for all purposes within the unincorporated areas of the County of El Dorado pending the study and development of reasonable regulations, adopted pursuant to California Constitution Article XI, Section 7, and Government Code Section 65800 et seq., particularly Section 65858 and other applicable law.

Section 5. Effective Date.

Pursuant to California Government Code Section 25123, this ordinance shall become effective 30 days from the date of final passage. Excepting Section 8.68.070, Limits on Eligibility for a Tobacco Retailer License, which shall be enforceable upon the effective date of this ordinance, enforcement of this ordinance shall begin April 1, 2025.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the _____ day of _____, 2024, by the following vote of said Board:

ATTEST

Kim Dawson

Clerk of the Board of Supervisors

Ayes:

By _____
Deputy Clerk

Noes:

Absent:

Wendy Thomas, Chair, Board of Supervisors

APPROVED AS TO FORM
DAVID LIVINGSTON
COUNTY COUNSEL

By: _____

Title: Deputy County Counsel