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ORDINANCE NO.	5210	

# AN ORDINANCE ADDING TOBACCO RETAILER LAND USE REGULATIONS

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

<u>Section 1.</u> Chapter 130.40.340 of Title 130 of the El Dorado County Ordinance Code entitled "Tobacco Retailers" is hereby added to read as follows:

## "Chapter 130.40.340 Tobacco Retailers.

A. 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 setbacks of tobacco retailers from sensitives uses, especially those used by the County's youth, and limiting oversaturation of retailers in response to the recent expansion of tobacco retailers in the County. This Chapter shall apply to all unincorporated areas of the County, notwithstanding any adopted Specific or Local Area Plan.

# B. Definitions for purposes of this Chapter:

- "Person" means any natural person, partnership, cooperative association, corporation, personal
  representative, receiver, trustee, assignee, or any other legal entity.
- 2. "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.
- 3. "Sensitive Use" means any of the following:
  - a. Child day care facility licensed or authorized under the California Child Day Care Facilities
     Act (Health and Safety Code Section 1569.70 et seq.).
  - b. Licensed childcare home.
  - School as defined in Section 130.41.100.

- d. Youth-oriented facilities as defined in Section 130.41.100.
- e. Churches and community assembly uses as defined in Section 130.80.020.
- f. Parks as defined in Section 130.80.020.
- g. Public libraries.

## 4. "Tobacco Product" means:

- a. Any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means, including but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus;
- Any electronic device that delivers nicotine or tobacco, whether natural or synthetic, to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah; or
- c. Any component, part, or accessory of (1) or (2) whether or not any of these contains tobacco or nicotine, including but not limited to filters, rolling papers, blunt or hemp wraps, hookahs, mouthpieces, and pipes.
- d. "Tobacco Product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.
- "Tobacco Retailer" means any Person who Sells, offers for Sale, or does or offers to exchange for any form of consideration Tobacco Products. This definition is without regard to the quantity of Tobacco Products sold, offered for Sale, exchanged, or offered for exchange.
- C. Setbacks. No Tobacco Retailer shall be established within 1,500 feet from a:
  - 1. Sensitive Use.
  - 2. Another Tobacco Retailer.

Measurement shall be by a straight line from the nearest point of the property line of the parcel on which the Sensitive Use or Tobacco Retailer is located to the nearest point of the property line of the parcel on which the Tobacco Retailer is proposed to be located. A new adjacent use does not affect the continuation of an existing use that was permitted and legally established under the standards of this Chapter.

D. Nonconforming uses. Notwithstanding Section 130.61.050, a Conditional Use Permit shall only be required for changes or expansion of a nonconforming Tobacco Retailer use and not for changes or expansion of uses unrelated to Tobacco Products unless otherwise required.

#### E. Enforcement.

- 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 assesses for each Notice and Order issued for the same violation shall be as follows:
  - a. First violation: \$500.00.
  - b. Second violation: \$1,000.00.
  - c. Third or subsequent violation: \$2,000.00.
- 2. The County may recover the costs of abatement incurred in its code enforcement efforts, including administrative fines or fees, under Section 9.02.090.
- 3. All fines or costs collected under this Chapter shall be deposited into the General Fund and used for costs related to enforcement and administration of this Chapter.
- 4. 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 8.68."

<u>Section 2.</u> Section 130.22.020 of Title 130 of the El Dorado County Ordinance Code entitled "Allowed Used and Permit Requirements for Commercial Zones" is hereby amended to read as follows (additions in red):

## "Sec. 130.22.020 Matrix of Allowed Uses.

Uses are allowed in commercial zones subject to the requirements of this Title as designated in Table 130.22.020 (Allowed Uses and Permit Requirements for the Commercial Zones) below:

Table 130.22.020—Allowed Uses and Permit Requirements for the Commercial Zones

CPO: Commercial,	P	Allowed use (Article 4: Special Use Regulations)
Professional Office	A	Administrative permit required (130.52.010)
CL: Commercial, Limited	TUP	Temporary use permit required (130.52.060)
CM: Commercial, Main	CUP	Conditional Use Permit required(130.52.021)
Street	MUP	Minor use permit required (130.52.020)
CC: Commercial,	TMA	Temporary mobile home permit (130.52.050)
Community		Use not allowed in zone
CR: Commercial, Regional		

CG: Commercial, General CRU: Commercial, Rural								
Use Type	СРО	CL	СМ	СС	CR	CG	CRU	Specific Use Regulation
Commercial			ALLE					
Animal Sales and Service:								
Kennel, Commercial	-	-		Р	P	Р	CUP	
Pet Grooming and Pet	V9	P	Р	Р	P	Р	_	
Stores								
Veterinary Clinic		P	Р	Р	Р	Р	Р	
Automotive and Equipment:								
Fuel Sales	-	Р	CUP	Р	Р	Р	CUP	
Paint and Body Shops		_		CUP	— <u> </u>	Р	CUP	
Repair Shops		19—	_	CUP	CUP	Р	CUP	
Sales and Rental	_	3	-	CUP	CUP	Ρ	CUP	
Vehicle Storage	CUP	-	-	CUP		P	CUP	130.40.320
Banks and Financial Services	Р	Р	P	Р	Р	Р	P	
Bars and Drinking	CUP	P	Р	P	Р	P	Р	
Establishments							500	
Brewery								
Large Commercial	3 <u>5</u>	D <u>anish</u>	CUP	P	CUP	P	CUP	
Micro Brewery	CUP	CUP	CUP	CUP	Р	Р	Р	70.75
Brewpub	CUP	Р	Р	Р	P		Р	
Broadcasting and Recording	Р	_	Р	Р	Р	Р	9	
Studio			7.00				1	
Building Supply Store	_	_	1—	Р	Р	Р	Р	130.40.220
Business Support Services	_	-	Р	Р	Р	Р	Р	
Child Day Care Center	Α	Α	Α	Α	Α	CUP	Р	130.40.110
Commercial Cannabis	=	_	_	Permit Article	required ( 4 - Special	_		
				130.41	Regulations - Chapter 130.41 - Commercial Cannabis)			
Commercial Recreation: Arcade		P	P	P	P	P	Р	
Indoor Entertainment	_	_	Р	Р	Р	_	_	
Indoor Sports and Recreation	-	Р	_	Р	Р	Р	-	
Large Amusement Complex	_	_	-	CUP	CUP	_	_	
Outdoor Entertainment	0	<del>-</del>	CUP	CUP	CUP	-	CUP	
Outdoor Sports and Recreation		_	-	_	CUP	_	CUP	130.40.210
Contractor's Office: On-site	A	А	А	Α	А	А	А	130.40.190
Off-site	TUP	_	TUP	TUP	TUP	TUP	TUP	-

Distillery, Craft	CUP	CUP	CUP	CUP	P	P	P	
Drive-Through Facility	P/CUP <sup>6</sup>	130.40.140						
Employer-sponsored Child	Α	A		Α	A	A	Α	130.40.110
Day Care Center								
Food and Beverage Retail	_	Р	Р	Р	Р	Р	Р	
Sale								
Free Food Distribution	-	<u> </u>	<del>-</del>	-	_	CUP	CUP	
Center								
Funeral and Internment	_	P	CUP	P	_	P	CUP	
Services						-		120 10 170
Lodging Facilities:  Bed and Breakfast Inn		CUP	P	P	l		P	130.40.170
Health Resort and Retreat	<del> </del>		P	P	1=	Ξ	P	
Center			_		la La	-	-	
Hotel and Motel	CUP	_	Р	Р	Р		Р	
Maintenance and Repair	_	t	CUP	P	P	P	P	
Medical Services:						<u> </u>	· ·	
Hospital	CUP	_	_	P	CUP	CUP	_	
Clinic	CUP	Р	Р	Р	Р		P	
Long-Term Care Facility		CUP		Р		M	CUP	
Mobile/Manufactured	_		_	Α	_	Р		130.40.220
Home Sales Lots								
Offices:	Р	Р	Р	Р	CUP	Р	Р	
Professional	200							
Medical	Р	Р	Р	P	CUP	Р	Р	
Recycling Facilities	_		_	P/A	_	P/A	CUP	130.40.280
Restaurant	CUP	Р	Р	Р	Р	Р	Р	
Retail Sales and Service:								
Indoor Sales		Р	Р	Р	Р	Р	Р	
Outdoor Sales								
		CUP	CUP	Р	CUP	Р	Р	130.40.220
Temporary Outdoor Sales	A/TUP	TUP <sup>1</sup>	TUP <sup>1</sup>	A/TUP	A/TUP	A/TUP	A/TUP	
Personal Services	P/CUP	P	Р	Р	Р	Р	Р	
Property Services	_	Р		P		Р	<u>P</u>	
Specialized Education and	Р	Р	Р	P	_	CUP	-	130.40.230
Training			5400				4.15	
Storage, Self			_	CUP		Р	CUP	130.40.320
Tobacco Retail		P	P	P	Р	Р	Р	130 40.340
Trade School:	CLID	CHD		CLID		D	CITE	
Indoor	CUP	CUP		CUP	_	P	CUP	
Outdoor Winery:		_	_		_	CUP	CUP	
Production			CUP	_	_	Р	Р	
Full-service Facilities		<u>–</u>	CUP	P		P	P	
Industrial		•	201	19	-			
Laundries, Commercial	_	CUP	_	CUP	_	Р	Р	
Light Manufacturing:	_	<del>-</del>	CUP <sup>2</sup>	CUP		P	CUP	717
LIGHT WIGHTGLACTUINIS.			COF	COF			COL	

Ceramic Products	7	T	CUP <sup>2</sup>	CUP	т.	P/CUP <sup>3</sup>	CUP	· ·
	-	+	CUP <sup>2</sup>		<del> </del>		CUP	
Lightweight Nonferrous	_	_	COP	CUP	-	P/CUP <sup>3</sup>	COP	İ
Metal	1		5					
Casting Foundry	1	1 400 00	070 4 (44)	1	1	100000	L	
Mineral Exploration and	See Tab	ole 130.29.	0/0.1 (Mi	neral Explo	oration an	d Mining)		
Mining	-	1	т -	T	_	1_	17.5	
Printing and Publishing		1	<u> </u>	CUP		Р		<u> </u>
Research and Laboratory	P	-	1-	P	-	P	Р	V .
Services								
Storage Yard, Equipment							l	
and Material:	1	1					l	
Permanent						Р	CUP	130.40.320
Temporary	TUP		_	TUP	TUP	TUP	TUP	
Wholesale Storage and	_	_	-	CUP	_	P	CUP	
Distribution								
Agricultural			v		251100 TO			
Nursery, Commercial Retail	T-	P	CUP	CUP	_	Р	P	
Packing: Off -site Products	-	CUP	_	]	1-	Р	Р	
Residential	1111							
Caretaker Unit:	T			T -	T			130.40.120
Permanent	A	A	I <sub>A</sub>	A	I <sub>A</sub>	A	A	2001.101220
Temporary	TMA	TMA	TMA	TMA	TMA	TMA	TMA	
Child Day Care Home <sup>5, 6</sup>	TIVIA	HVIA	114174	1 IVIX	Tivia	177.7	114174	130.40.110
Small Family Day Care	l	A	L_	A	l		Α	130.40.110
Home	-	^	_	^	-		^	
	-	Α		A		-	Α	-
Large Family Day Care Home		A	_	^	_	_	^	1
	-			-				
Community Care Facility:	CUP	P		P			P	1
Small or Large			<u>                                     </u>		120 52	020 - David		
Dwelling (as Part of a Mixed							gn Kevie	w Permit in
Use Development)	Article 5	—Plannin; T	g Permit P	rocessing,	of this lit	-		<del></del>
Emergency Shelter			_	CUP	_	P		<del></del>
Employee Housing:	Α	Α	Α	Α	Α	Α	Α	130.40.120
Commercial Caretaker,				1			Ŕ	1
Permanent								
Commercial Caretaker,	TMA	TMA	TMA	TMA	TMA	TMA	TMA	
Temporary								<u> </u>
Construction	-	_	e —	_	-	Α	Α	130.40.190.
								B.5
Home Occupation <sup>4</sup>	See Tabl	e 130.40.1	160.1 (Hon	ne Occupa	tion Use N	/latrix)		
Transitional Housing:	(1) +							
	1_	_	_	CUP		A	=	130.40.360
Large, only								***************************************
Recreation and Open Space	·							
	FE	-	[_	CUP	<u> </u>		CUP	T
Recreation and Open Space	=	_		CUP	-	<u> -</u>	CUP	
Recreation and Open Space Golf Course	_	_		CUP		CUP	CUP	

Parks:		Ţ	1		T	1		130.40.210
Day Use	Α	Α	Α	Α	Α	-	Α	
Nighttime Use	CUP	CUP	CUP	CUP	CUP	2007	1	
Snowplay Area	* <b>_</b>	_	R-	CUP	_	CUP	CUP	
Special Events, Temporary	TUP	TUP	TUP	TUP	TUP	TUP	TUP	
Swimming Pool, Public	1	CUP	_	CUP	_	_	5—4	130.40.210
Tennis Courts, Public		CUP	_	CUP	-	-	-	
Trail Head Parking and Staging Area		-	_	CUP	1	CUP	Р	
Civic			And the					
Cemeteries	<b>—</b>		_	CUP	_	CUP	<b>—</b>	
Churches and Community Assembly Indoor	CUP	CUP	P	Р		CUP	CUP	
Outdoor	CUP	CUP	CUP	CUP	CUP	I —	CUP	
Community Services:	_	_	_	CUP	CUP	CUP	CUP	
Minor	P	Р	Р	P	P	-	P	-
Schools: College and University	Р		CUP	Р	CUP	_	_	130.40.230
Elementary and Secondary, Private	CUP	_	CUP	CUP	-	-	_	
Transportation	_					5.5.	100	
Airports, Airstrips and Heliports		_	-	CUP	_	CUP	CUP	
Intermodal Facility	CUP	CUP	CUP	CUP	CUP	Р		
Parking Lot	P	Р	Р	Р	Р	Р	Р	
<b>Utility and Communications</b>		27075						
Communication Facilities	A/CUP	A/CUP	A/CUP	A/CUP	A/CUP	A/CUP	A/CUP	130.40.130
Public Utility Service Facilities: Intensive	CUP	_	-	CUP	CUP	CUP	CUP	130.40.250
Minor	Р	Р	Р	Р	Р	Р	Р	
Wind Energy Conversion See Table 130.40.390.1 (WECS Use Matrix) System								130.40.390

# NOTES:

- <sup>1</sup> Excluding Subsection 130.40.220.E (Garage Sales) in Article 4 (Specific Use Regulations) of this Title.
- <sup>2</sup> Limited to small-scale, artisanal production of goods (See Article 8 (Glossary: "Light Manufacturing") of this Title.
- <sup>3</sup> CUP for larger scale, 'general industrial' use.
- <sup>4</sup> As part of the residential component of a mixed use development.
- <sup>5</sup> As a rental of an existing legal nonconforming residential structure.
- <sup>6</sup> CUP required when adjacent to any residential zoned lot or residential use.
- <sup>7</sup> Must meet the setback requirements of Chapter 130.40.340 and licensing requirements of Chapter 8.68.

<u>Section 3.</u> <u>Effective Date.</u> Pursuant to California Government Code Section 25125, the amendments to this ordinance shall become effective 30 days from the date of final passage.

Section 4. 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 CEA 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.

<u>Section 5.</u> <u>Severability.</u> If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and every section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

PASSED AND ADOPTED by the Board of Supervisors of the County of El Dorado at a regular meeting of said Board, held on the 22nd day of October \_, 2024, by the following vote of said Board: Ayes: Hidahl, Turnboo, Parlin, Laine ATTEST Kim Dawson Clerk of the Board of Supervisors Noes: None Recused: Thomas George Turnboo, Second Vice-Chair, Board of Supervisors APPROVED AS TO FORM **DAVID LIVINGSTON** COUNTY COUNSEL (JBB

Title: Deputy County Counsel