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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:

Section 1. 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 sensitive 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:
1. "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.
 - c. 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;
- b. 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.

5. *"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.

1. 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."

Section 2. 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, Professional Office CL: Commercial, Limited CM: Commercial, Main Street CC: Commercial, Community CR: Commercial, Regional	P	Allowed use (Article 4: Special Use Regulations)
	A	Administrative permit required (130.52.010)
	TUP	Temporary use permit required (130.52.060)
	CUP	Conditional Use Permit required(130.52.021)
	MUP	Minor use permit required (130.52.020)
	TMA	Temporary mobile home permit (130.52.050)
	---	Use not allowed in zone

CG: Commercial, General CRU: Commercial, Rural								
Use Type	CPO	CL	CM	CC	CR	CG	CRU	Specific Use Regulation
Commercial								
Animal Sales and Service: Kennel, Commercial	—	—	—	P	P	P	CUP	
Pet Grooming and Pet Stores	—	P	P	P	P	P	—	
Veterinary Clinic	—	P	P	P	P	P	P	
Automotive and Equipment: Fuel Sales	—	P	CUP	P	P	P	CUP	
Paint and Body Shops	—	—	—	CUP	—	P	CUP	
Repair Shops	—	—	—	CUP	CUP	P	CUP	
Sales and Rental	—	—	—	CUP	CUP	P	CUP	
Vehicle Storage	CUP	—	—	CUP	—	P	CUP	130.40.320
Banks and Financial Services	P	P	P	P	P	P	P	
Bars and Drinking Establishments	CUP	P	P	P	P	P	P	
Brewery Large Commercial	—	—	CUP	P	CUP	P	CUP	
Micro Brewery	CUP	CUP	CUP	CUP	P	P	P	
Brewpub	CUP	P	P	P	P	—	P	
Broadcasting and Recording Studio	P	—	P	P	P	P	—	
Building Supply Store	—	—	—	P	P	P	P	130.40.220
Business Support Services	—	—	P	P	P	P	P	
Child Day Care Center	A	A	A	A	A	CUP	P	130.40.110
Commercial Cannabis	—	—	—	Commercial Cannabis Use Permit required (See Article 4 - Special Use Regulations - Chapter 130.41 - Commercial Cannabis)			—	
Commercial Recreation: Arcade	—	P	P	P	P	P	P	
Indoor Entertainment	—	—	P	P	P	—	—	
Indoor Sports and Recreation	—	P	—	P	P	P	—	
Large Amusement Complex	—	—	—	CUP	CUP	—	—	
Outdoor Entertainment	—	—	CUP	CUP	CUP	—	CUP	
Outdoor Sports and Recreation	—	—	—	—	CUP	—	CUP	130.40.210
Contractor's Office: On-site	A	A	A	A	A	A	A	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 ⁶	P/CUP ⁶	P/CUP ⁶	P/CUP ⁶	P/CUP ⁶	P/CUP ⁶	P/CUP ⁶	130.40.140
Employer-sponsored Child Day Care Center	A	A	—	A	A	A	A	130.40.110
Food and Beverage Retail Sale	—	P	P	P	P	P	P	
Free Food Distribution Center	—	—	—	—	—	CUP	CUP	
Funeral and Internment Services	—	P	CUP	P	—	P	CUP	
Lodging Facilities:								130.40.170
Bed and Breakfast Inn	—	CUP	P	P	—	—	P	
Health Resort and Retreat Center	—	—	—	P	—	—	P	
Hotel and Motel	CUP	—	P	P	P	—	P	
Maintenance and Repair	—	—	CUP	P	P	P	P	
Medical Services:								
Hospital	CUP	—	—	P	CUP	CUP	—	
Clinic	CUP	P	P	P	P	—	P	
Long-Term Care Facility	—	CUP		P	—	—	CUP	
Mobile/Manufactured Home Sales Lots	—	—	—	A	—	P	—	130.40.220
Offices:								
Professional	P	P	P	P	CUP	P	P	
Medical	P	P	P	P	CUP	P	P	
Recycling Facilities	—	—	—	P/A	—	P/A	CUP	130.40.280
Restaurant	CUP	P	P	P	P	P	P	
Retail Sales and Service:								
Indoor Sales	—	P	P	P	P	P	P	
Outdoor Sales	—	CUP	CUP	P	CUP	P	P	130.40.220
Temporary Outdoor Sales	A/TUP	TUP ¹	TUP ¹	A/TUP	A/TUP	A/TUP	A/TUP	
Personal Services	P/CUP	P	P	P	P	P	P	
Property Services	—	P	—	P	—	P	P	
Specialized Education and Training	P	P	P	P	—	CUP	—	130.40.230
Storage, Self	—	—	—	CUP	—	P	CUP	130.40.320
Tobacco Retail	—	P	P	P	P	P	P	130.40.340
Trade School:								
Indoor	CUP	CUP	—	CUP	—	P	CUP	
Outdoor	—	—	—	—	—	CUP	CUP	
Winery:								
Production	—	—	CUP	—	—	P	P	
Full-service Facilities	—	P	CUP	P	—	P	P	
Industrial								
Laundries, Commercial	—	CUP	—	CUP	—	P	P	
Light Manufacturing:	—	—	CUP ²	CUP	—	P	CUP	

Ceramic Products	—	—	CUP ²	CUP	—	P/CUP ³	CUP	
Lightweight Nonferrous Metal Casting Foundry	—	—	CUP ²	CUP	—	P/CUP ³	CUP	
Mineral Exploration and Mining	See Table 130.29.070.1 (Mineral Exploration and Mining)							
Printing and Publishing	—	—	—	CUP	—	P	—	
Research and Laboratory Services	P	—	—	P	—	P	P	
Storage Yard, Equipment and Material:								
Permanent	—	—	—	—	—	P	CUP	130.40.320
Temporary	TUP	—	—	TUP	TUP	TUP	TUP	
Wholesale Storage and Distribution	—	—	—	CUP	—	P	CUP	
Agricultural								
Nursery, Commercial Retail	—	P	CUP	CUP	—	P	P	
Packing: Off -site Products	—	CUP	—	—	—	P	P	
Residential								
Caretaker Unit:								130.40.120
Permanent	A	A	A	A	A	A	A	
Temporary	TMA	TMA	TMA	TMA	TMA	TMA	TMA	
Child Day Care Home ^{5, 6}								130.40.110
Small Family Day Care Home	—	A	—	A	—	—	A	
Large Family Day Care Home	—	A	—	A	—	—	A	
Community Care Facility:								
Small or Large	CUP	P	—	P	—	—	P	
Dwelling (as Part of a Mixed Use Development)	Permitted by Design Review (See Section 130.52.030—Design Review Permit in Article 5—Planning Permit Processing, of this Title)							
Emergency Shelter	—	—	—	CUP	—	P	—	
Employee Housing:								130.40.120
Commercial Caretaker, Permanent	A	A	A	A	A	A	A	
Commercial Caretaker, Temporary	TMA	TMA	TMA	TMA	TMA	TMA	TMA	
Construction	—	—	—	—	—	A	A	130.40.190. B.5
Home Occupation ⁴	See Table 130.40.160.1 (Home Occupation Use Matrix)							
Transitional Housing:								130.40.360
Large, only	—	—	—	CUP	—	A	—	
Recreation and Open Space								
Golf Course	—	—	—	CUP	—	—	CUP	
Marina:								
Motorized Craft	—	—	—	CUP	—	CUP	CUP	
Non-Motorized Craft	—	—	—	P	—	—	P	

Parks:								130.40.210
Day Use	A	A	A	A	A	—	A	
Nighttime Use	CUP	CUP	CUP	CUP	CUP	—	—	
Snowplay Area	—	—	—	CUP	—	CUP	CUP	
Special Events, Temporary	TUP	TUP	TUP	TUP	TUP	TUP	TUP	
Swimming Pool, Public	—	CUP	—	CUP	—	—	—	130.40.210
Tennis Courts, Public	—	CUP	—	CUP	—	—	—	
Trail Head Parking and Staging Area	—	—	—	CUP	—	CUP	P	
Civic								
Cemeteries	—	—	—	CUP	—	CUP	—	
Churches and Community Assembly								
Indoor	CUP	CUP	P	P	—	CUP	CUP	
Outdoor	CUP	CUP	CUP	CUP	CUP	—	CUP	
Community Services:								
Intensive	—	—	—	CUP	CUP	CUP	CUP	
Minor	P	P	P	P	P	—	P	
Schools:								130.40.230
College and University	P	—	CUP	P	CUP	—	—	
Elementary and Secondary, Private	CUP	—	CUP	CUP	—	—	—	
Transportation								
Airports, Airstrips and Heliports	—	—	—	CUP	—	CUP	CUP	
Intermodal Facility	CUP	CUP	CUP	CUP	CUP	P	—	
Parking Lot	P	P	P	P	P	P	P	
Utility and Communications								
Communication Facilities	A/CUP	A/CUP	A/CUP	A/CUP	A/CUP	A/CUP	A/CUP	130.40.130
Public Utility Service Facilities:								130.40.250
Intensive	CUP	—	—	CUP	CUP	CUP	CUP	
Minor	P	P	P	P	P	P	P	
Wind Energy Conversion System	See Table 130.40.390.1 (WECS Use Matrix)							130.40.390

NOTES:

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

Section 3. Effective Date. 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 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 5. Severability. 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:

ATTEST

Kim Dawson

Clerk of the Board of
Supervisors

Ayes: Hidahl, Turnboo, Parlin, Laine

By 
Deputy Clerk

Noes: None

Recused: Thomas


George Turnboo, Second Vice-Chair, Board of Supervisors

**APPROVED AS TO FORM
DAVID LIVINGSTON
COUNTY COUNSEL**

By:  (JBB)

Title: Deputy County Counsel