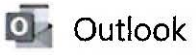


PUBLIC COMMENT
BOS Revd 3/21/25
#25 25-036625



Board Item 25-0366: Potential Amendments to Tobacco Retailer Ordinance

From Leticia Ramirez <lramirez@thatchlaw.com>

Date Fri 3/21/2025 1:05 PM

To BOS-District I <bosone@edcgov.us>; BOS-District II <bostwo@edcgov.us>; BOS-District III <bosthree@edcgov.us>; BOS-District IV <bosfour@edcgov.us>; Brooke Laine <Brooke.Laine@edcgov.us>

Cc BOS-Clerk of the Board <edc.cob@edcgov.us>; AD-EDCCAO <edccao@edcgov.us>; Michael Tooley <michael@tooleyoil.com>; David Tooley <david@tooleyoil.com>; Marc Strauch <marc.s@strauchco.com>; Ryan Hooper <rhooper@thatchlaw.com>

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LTR - Comment on Board Item 25-0366.pdf;

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Hon. Board of Supervisors,

Our office represents local businesses in unincorporated El Dorado County directly affected by the County's Tobacco Retailers Ordinance. We provide the attached letter on their behalf which details potential amendments to the Ordinance to address its significant negative impacts on local businesses.

We appreciate your time and attention to this matter and look forward to the Board's discussion next week.

Thank you.

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March 21, 2025

VIA ELECTRONIC MAIL

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Re: Board Agenda Item 25-0366 - Potential Amendment to County's Tobacco Retailers Ordinance

Dear Honorable Members of the El Dorado County Board of Supervisors:

We submit this letter on behalf of our clients Tooley Oil, Strauch & Company, and Cameron Park Petroleum Inc., regarding the El Dorado County ("County") Board of Supervisors ("Board") consideration of potential amendments to the County's Tobacco Retailers Ordinance ("Ordinance"), codified as Chapter 8.68 of the County Code. As owners of local gas stations and convenience stores that sell tobacco products in the unincorporated County area, we are pleased to hear that the County is considering amending the Ordinance to address unintended consequences negatively impacting our clients' businesses.

By way of introduction, our clients are local family-owned businesses that have owned and operated gas stations in El Dorado County for many years. In fact, the principal of Strauch & Company is a resident of El Dorado County. First established in 1978, Tooley Oil is a second-generation family-owned business that prides itself on customer service and state-of-the-art facilities. Strauch & Company was established in 1990 and owns and operates various gas stations and convenience stores in El Dorado County that embody its core values of safety, innovation, respect, teamwork, and excellence.

The operation of any local business is subject to many regulations; however, the sale of tobacco is one of the most heavily regulated activities at the federal, state, and, more recently, local levels. As a result, both businesses are active members of local chambers of commerce and engage in various civic and community activities; however, our clients were unaware of the Board's proposal to adopt a tobacco retail licensing ordinance that would impact a significant source of sales revenue and their operations. Had our clients known of the proposed ordinance, they would have certainly engaged with the County and provided input at that time.

Our clients were first informed of the Ordinance after its adoption in November 2024. Upon reviewing its content at their request, we identified various provisions problematic for existing tobacco retailers. At the end of February, we provided the County Administrator's Office with a summary of the revisions we proposed to lessen the existing Ordinance's negative impacts on local businesses. The proposed amendments are enclosed for your review. Our clients also met with representatives from the Office of the County Chief Administrative Officer, Economic Development, and some Board offices to share their perspectives on potential amendments to the existing Ordinance.

We want to highlight two of the most impactful revisions we are proposing: allowing "grandfathered" businesses to transfer their tobacco retailer license to new owners and "grandfathering" businesses with pending development applications on file as of the date the County's interim tobacco moratorium took effect (January 30, 2024). These revisions are needed for multiple reasons.

First, the existing Ordinance requires any person who sells tobacco to obtain a "Tobacco Retailer License" and establishes a limit on the amount of tobacco retailer licenses available based on the County's population at a rate of one retailer per 2,500 residents under the "excessive density" limitation. However, it exempts businesses open for business and operating as tobacco retailers as of December 5, 2024 from this limitation, thereby "grandfathering" these businesses (Section 8.68.070 D). This is important because the existing amount of tobacco retailers exceeds the number allowed under the Ordinance. However, these businesses would lose their grandfathered status if they sold or transferred their business to another individual (Section 8.68.110). The practical impact of this non-transferability clause is to decrease the value of an existing local retail business selling tobacco because, upon sale, a new owner would lose a significant revenue source due to their inability to sell tobacco.

Second, the existing Ordinance only grandfathers businesses that were open for business and operating as tobacco retailers on the date the Ordinance took effect, December 5, 2024, and fails to acknowledge that there are businesses with pending development applications in the County processing pipeline that submitted their entitlement applications prior to January 30, 2024 with the understanding that the sale of tobacco was permissible and that there were no County tobacco regulations in place. The affected businesses have spent considerable time and resources going through the development process, including application and processing fees and consultant costs for architectural, engineering, legal, and environmental review services. Their investments were based on the County regulations in effect on the date they submitted their development applications, which allowed them to sell tobacco without any County restrictions. Amending the Ordinance to also grandfather these businesses would remedy an oversight and eliminate an unintended consequence of this regulation.

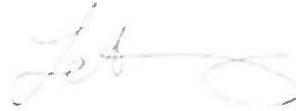
In addition to the two significant issues discussed above, our clients also support the proposed revisions pertaining to clarifying what violations may result in the loss of a license and revising the carding requirement to be consistent with federal law and other operational

County of El Dorado
Honorable Board Members
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requirements. These proposed revisions, along with the others, seeks to strike a balance between the County's desire to restrict youth access to tobacco and tobacco products, while also supporting local businesses. Combined, the proposed revisions seek to ensure that existing businesses that have invested significant time and resources in establishing in the County, and who comply with the Ordinance, can continue to rely on revenue from the sale of tobacco to sustain their operations. Our proposed amendments are consistent with similar amendments to tobacco retail licensing ordinances adopted by other local jurisdictions.

We appreciate your time and attention to our proposed revisions to the Ordinance. The Board's efforts on this important issue are laudable, and we believe the proposed revisions align with those efforts. If you have any questions about this letter, please contact us at the information provided above.

Very truly yours,



LETICIA M. RAMIREZ

LMR/sfy

Encl: Summary of Proposed Revisions to County's Tobacco Retailer Ordinance

Cc: Kim Dawson, Board Clerk, edc.cob@edegov.us
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Summary of Proposed Revisions to County's Tobacco Retailer Ordinance

Revised February 28, 2025

The proposed revisions to the El Dorado County Tobacco Retailer Ordinance seek to: (1) allow tobacco retailer businesses with active licenses as of April 1, 2025 ("Grandfathered Businesses") to 1) change proprietors; (2) make the ordinance consistent with other jurisdictions (e.g. Vallejo); and (3) enact provisions to allow Grandfathered Businesses to retain their status as long as they do not violate the ordinance to preserve the value of their business. A tobacco retailer will lose their "grandfathered" status if: they move locations or have four or more violations within a five-year period (not counting one administrative violation).

1. Definitions

- a. Delete definition of "Arm's-length transaction" since no longer relevant.

2. Exceptions to Excessive Density Limitation (Section 8.68.070)

- a. Amend subsection D.3 to clarify which retailers are exempt from the density requirements, provide more clarity, ensure internal consistency in the regulatory ordinance and between the regulatory and land use ordinances as it relates to expanding a non-conforming use, and allow grandfathered retailers the opportunity to transfer their businesses. This language is similar to the Vallejo TRL Ordinance. The proposed amendments are as follows:

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. The first tobacco retailer's license for the location is issued by April 1, 2025 and is renewed without lapse or permanent revocation (as opposed to temporary suspension); ~~On the effective date of the ordinance from which this chapter is derived, the tobacco retailer is open for business and operating as a tobacco retailer;~~
- ii. ~~On the effective date of the ordinance from which this chapter is derived, 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 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 690 consecutive days. A suspension for more than 90 consecutive days or a closure of a tobacco retailing for more than 90 consecutive days due to a transfer to a new proprietor or a Conditional Use Permit issued pursuant to Chapter 130.40.340(D) shall not constitute a lapse in a location's tobacco retailer license;
- vi. The tobacco retailer does not substantially change the ~~business premises or business operation related to tobacco products;~~ A substantial change to the business includes the following circumstances in A through B:

- A. The business moves to a new location; or
 - B. The Department has determined that four or more violations of this Chapter of occurred at the location within a 60-month period. For purposes of this provision, a first violation of sections 8.68.030(C) [Display of License]; 8.68.030(E) [Positive Identification], and 8.68.060 [Tobacco product pricing and packaging] shall not be counted as a violation.
 - C. Obtaining a Conditional Use Permit pursuant to Chapter 130.40.340(D) shall not constitute a substantial change to the business operation.
- vii. The tobacco retailer ~~conscientiously~~ retains the right to operate under other applicable laws including this Code.
- 3. Exception For Tobacco Retailers Who Submitted Planning Application Prior to January 1, 2024**
- a. Add new subsection E of Section 8.68.070 to exempt persons who submitted a planning application prior to January 1, 2024 from the excessive density limitation. The County adopted an urgency ordinance, effective January 1, 2024, establishing a moratorium on the approval of any new Tobacco Retailer applications in the unincorporated County area. Because of the lengthy planning entitlement process, businesses typically engaged in tobacco retailing that submitted planning applications should be exempt from the excessive density limitation before the moratorium since those applications were submitted in reliance on then existing regulations which did not limit their ability to engage in tobacco retailing.

Add new subsection E. to Section 8.68.070

E Exception for Pending Planning Applications. Persons who submitted a planning application before January 30, 2024 shall not be subject to the excessive density limitation in Section 8.68.070 D. Said businesses shall apply for a tobacco retailer license within 90 days of being issued a Certificate of Occupancy. Failure to do so will result in being subject to Section 8.68.070 D. Once issued a tobacco retailer license, these retailers may renew licenses if otherwise eligible under Section 8.68.070 D.3.

4. Transferability for Grandfathered/Exempts Retailers

- a. Amend subsection A of Section 8.68.110 to delete restriction on transferability to be consistent with density exception for grandfathered businesses:
- i. *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. A new tobacco retailer's license shall only be issued to locations consistent with Section 8.68.070.
 - ii. *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) more than twelve (12) consecutive months after the last violation.;~~ ~~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.~~

5. Suspension or revocation of license

- a. Amend Section 8.68.150 to issue written warnings for first violations of administrative or technical violations of the TRL Ordinance.

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.

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 ~~30~~15 days. For purposes of this section, a first violation of sections 8.68.030(C) [Display of License]; 8.68.030(E) [Positive Identification], and 8.68.060 [Tobacco product pricing and packaging] shall result in a written warning. Another violation relating to the aforementioned provisions within a consecutive twelve-month period shall be subject to the suspension provisions identified in sections 2 through 5 below;
2. Upon a finding by the Department of a second violation of this chapter at a location within any 60-month period, the license shall be suspended for 90 days.
3. Upon a finding by the Department of a third violation of this chapter at a location within any 60-month period, the license shall be suspended for 90 days.
4. Upon a finding by the Department of a ~~fourth~~third violation of this chapter at a location within any 60-month period, the license shall be suspended for one year.
5. Upon a finding by the Department of ~~five~~ or more violations of this chapter at a location within any five-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 years after the effective date of revocation.

6. Operational Requirements – Identification

- a. Amend subsection E of Section 8.68.030 to be consistent with federal law.
E. Positive identification required for persons under the age of 30. 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 30 for sale of tobacco products~~ as established by federal law.

7. Tobacco Product pricing and packaging

- a. Amend subsection C of Section 8.68.060 to delete prohibition on distributing free or nominally priced tobacco products to be consistent with other jurisdictions:

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.~~
- b. Amend subsection D to reflect actual product sizes to ensure existing retailers remain competitive.

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 20 little cigars; or
2. Any cigar unless it is sold in a package of at least ~~at least six~~ five 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.

8. Zoning Ordinance

- a. 130.40.340. 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.
- i. The County's Zoning Code states that a legal nonconforming use that is "abandoned" for more than twelve consecutive months or more loses its legal nonconforming status. This means that a suspension after the fourth violation means the use loses its nonconforming status. We should confirm with the County that this is the only circumstance in which a location's legal nonconforming use is "abandoned."

