



CITY OF DEL REY OAKS

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DATE: October 24, 2023

TO: Honorable Mayor and City Council

FROM: John Guertin, City Manager

SUBJECT: Provide Direction on Proposed Comprehensive Tobacco Retailer License Ordinance and Establishing a Smoke-Free Public Place Ordinance

CEQA: This activity is covered by the commonsense exemption that the California Environmental Quality Act (CEQA) applies only to projects that have the potential to have a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Recommended Action

That the Council provide direction to staff regarding proposed Comprehensive Tobacco Retailer License Ordinance and Establishing a Smoke-Free Public Place Ordinance.

Background

The proposed ordinances have been brought forward for consideration by Council members Shirley and Hallock in coordination with staff from the County of Monterey Health Department.

Currently, the City of Del Rey Oaks is part of the of the Peninsula Cities work of Blue Zone Projects, a Monterey County-wide initiative committed to ensuring that all people have a fair and just opportunity to live a long and healthy life. One of the focal points for the Blue Zones Project is their "Tobacco Policy" which encourages local agencies to create an environment where smoking (including vaping) and the use of nicotine is less desirable, accessible, and acceptable.¹

Discussion

Tobacco Retailing License

Monterey County enacted an ordinance to establish tobacco licensing regulations. The County has asked local jurisdictions to adopt tobacco licensing ordinances mirroring the County so the County can enforce compliance with tobacco laws uniformly throughout the County. Attachment 1 (Comprehensive Tobacco Retail License Ordinance) would ensure tobacco retailers comply with tobacco control laws and business standards. This ordinance would also meet the Blue Zone's intent to decrease secondhand smoke exposure (including aerosol from e-cigarettes and smoke from

¹ 2021 Monterey County Peninsula Cities Blueprint, <https://info.bluezonesproject.com/montereycounty>.

marijuana) and reduce access to, and availability of smoking, vaping, and tobacco products. The proposed ordinance before the City Council is modeled after the County's Ordinance.

Smoke-Free Public Places

The Monterey County Health Department has advised staff that tobacco use is the number one cause of preventable deaths in California.² Secondhand smoke has repeatedly been identified as a health hazard and the U.S. Surgeon General has concluded that there is no risk-free level of exposure to secondhand smoke.³ Over the last decade, many California communities have passed tobacco-free laws or regulations that cover outdoor areas such as parks, recreational facilities, beaches, outdoor workplaces, restaurant and bar patios, transit waiting areas, and public events such as county fairs and farmers' markets. As of January 2019, more than 235 California cities and counties had adopted outdoor secondhand smoke ordinances.⁴ Attachment 2 (Smoke-Free Public Place Ordinance) is based on a model ordinance that can be modified for local purposes to limit exposure to secondhand smoke.

These proposed ordinances are submitted for City Council consideration and direction for staff.

Fiscal Impacts

There are no fiscal impacts associated with consideration of this item.

Attachments

- Resolution 2023-04
- Supplemental Agreement
- Master Agreement

Respectfully Submitted,

John Guertin
City Manager

Attachments:

- 1) Draft Comprehensive Tobacco Retailer Licensing Ordinance
- 2) Draft Establishing a Smoke Free Public Place Ordinance
- 3) County of Monterey Tobacco Retailer Licensing Code

² United States Department of Health and Human Services, The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General (2014):

https://www.ncbi.nlm.nih.gov/books/NBK179276/pdf/Bookshelf_NBK179276.pdf

³United States Department of Health and Human Services, The Health Consequences of Involuntary Exposure to Tobacco Smoke, A Report of the Surgeon General (2006),

<https://www.cdc.gov/tobacco/sgr/2006/pdfs/no-riskfree.pdf>

⁴ Tam D. Vuong, California Tobacco Facts and Figures, California Department of Health (2019)

Chapter 7.80 TOBACCO RETAILER LICENSE

7.80.010 Purpose and application.

- A. In promoting the health, safety, and general welfare of its residents, the County has a substantial interest in encouraging compliance with Federal, State, and local laws regulating tobacco sales and use.
- B. State law permits local governments to enact ordinances regarding the local licensing of retailers of tobacco and allows for the suspension or revocation of a local license for a violation of any State tobacco control law.
- C. This Chapter is adopted to: (1) ensure compliance with business standards and practices of the County; (2) encourage responsible retailing of tobacco; (3) promote the health and welfare of youth by discouraging the commercial exploitation of underage tobacco users; and (4) discourage violations of tobacco-related laws, but not to expand or reduce the degree to which the acts regulated by Federal or State law are criminally proscribed or otherwise regulated.
- D. This Chapter applies in the unincorporated area of the County of Monterey.

(Ord. No. 5200, § 1, 5-15-2012; Ord. No. 5372, § 2, 3-15-2022)

7.80.020 Definitions.

For the purpose of this Chapter, the following words and terms shall have the following meaning:

- A. "Department" means the Monterey County Health Department.
- B. "Drug paraphernalia" shall have the definitions set forth in California Health and Safety Code Section 11014.5, as that Section may be amended from time to time.
- C. "Flavored tobacco product" shall mean any tobacco product that contains a taste or smell, other than the taste or smell of tobacco, that is distinguishable by a 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 or any candy, dessert, alcoholic beverage, herb or spice.
- D. "Health Officer" means the Health Officer of the County of Monterey or his or her designee.
- E. "License" means a Tobacco Retailer License issued by the County pursuant to this Chapter.
- F. "Licensee" means any Proprietor holding a License issued by the County pursuant to this Chapter.
- G. "License Fee" means the charge established by resolution of the Board of Supervisors of the County of Monterey, calculated to recover the reasonable regulatory costs of issuing and administering licenses, retailer education, performing investigations, inspections, and the administrative enforcement and adjudication thereof.
- H. "Person" means any natural person, partnership, cooperative, association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- I. "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 (10) percent 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.

- J. "Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed or used for the smoking or ingestion of tobacco products.
- K. "Tobacco product" means any substance containing tobacco leaf- including but not limited to cigarettes, cigars, pipe tobacco, hookah, tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco - and any product or formulation of matter containing biologically active amounts of nicotine that is product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.
- L. "Tobacco retailer" means any person who engages in tobacco retailing.
- M. "Tobacco retailing" means selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.
- N. "Sale," "sell" or "to sell" means any transaction where, for any consideration, ownership is transferred from one (1) person or entity to another including, but not limited to any transfer of title or possession for consideration, exchange or barter, in any manner by any means.
- O. "Single use electronic cigarette" means any single-use device or delivery system sold in combination with nicotine which can be used to deliver to a person nicotine in aerosolized or vaporized form, including but not limited to, a single-use e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Single use electronic cigarettes shall not include any product that has been approved by the Food and Drug Administration for sale as a tobacco cessation product or other therapeutic purposes where that product is marketed and sold solely for such approved use.
- P. "State" means the State of California.

(Ord. No. 5200, § 1, 5-15-2012; Ord. No. 5372 , § 2, 3-15-2022)

7.80.030 Mandatory license.

- A. Any person who is or intends to become a tobacco retailer shall obtain pursuant to this Chapter a license for each fixed location at which tobacco retailing is to occur.
- B. Any person who is a tobacco retailer as of the effective date of the ordinance enacting this Chapter shall obtain a license within ninety (90) days of the effective date of the ordinance that enacted this Chapter.
- C. Any person who intends to act as a tobacco retailer shall obtain a license prior to acting as a tobacco retailer.
- D. Each license shall be prominently displayed in a publicly visible location at the licensed location.
- E. Nothing in this Chapter shall be construed to grant any licensee any status or right other than to act as a tobacco retailer at the location identified on the face of the license, subject to compliance with all other applicable laws, regulations, or ordinances.
- F. Nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.040 Issuance of license.

- A. No license shall be issued to authorize tobacco retailing at other than a fixed business location. It is unlawful for any person to engage in tobacco retailing at non-fixed locations. For example, tobacco retailing by persons on foot and tobacco retailing from vehicles are prohibited.
- B. No license shall be issued to authorize tobacco retailing at a temporary or recurring temporary event. For example, tobacco retailing at flea markets and farmers' markets is prohibited.
- C. No license shall be issued to authorize tobacco retailing at any location for which a license suspension is in effect or during a period of ineligibility following a revocation pursuant to Section 7.80.100.
- D. 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, tobacco paraphernalia, or tobacco retailing.
- E. No person engaged in tobacco retailing shall sell or transfer a tobacco product or tobacco paraphernalia to another person who appears to be under the age of twenty-seven (27) without first examining the identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the tobacco product or tobacco paraphernalia.
- F. No person who is younger than the minimum age established by State law for the purchase or possession of tobacco products shall engage in tobacco retailing.
- G. It shall be a violation of this Chapter for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any flavored tobacco product.
 - 1. It should 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 such flavored tobacco products with intent to sell or offer for sale.
 - 2. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, manufacturer, or any employee or agent of a tobacco retailer or manufacturer has:
 - a. Made a public statement or claim that the tobacco product imparts a characterizing flavor;
 - b. Used text and/or images on the tobacco products' labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor; or
 - c. Taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.
- H. It shall be a violation of this Chapter for any tobacco retailer or any of the tobacco retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any single use electronic cigarette.

(Ord. No. 5200, § 1, 5-15-2012; Ord. No. 5372 , § 2, 3-15-2022)

7.80.050 Applications for license.

All applications for a license shall be submitted to the Department in the name of each proprietor proposing to conduct tobacco retailing and signed by each prospective proprietor or an authorized agent. Each license application must be accompanied by the required license fee, which is set by resolution of the Board of

Supervisors. A proprietor proposing to conduct tobacco retailing at more than one (1) location shall submit a separate application for each location. Every application shall contain the following information:

- A. The name, address, and telephone number of each prospective proprietor;
- B. The business name, address, and telephone number of the fixed location for which the license is sought;
- C. Whether or not each prospective proprietor has previously been issued a license pursuant to this Chapter that is, or was at any time, suspended or revoked and, if so, the date of the suspension or revocation;
- D. Proof that the location for which a license is sought has been issued a valid State cigarette and tobacco products retail license by the State of California Board of Equalization pursuant to the California Cigarette and Tobacco Products Licensing Act of 2003 (Cal. Bus. & Prof. Code, §§ 22970 et seq.);
- E. A statement signed by each prospective proprietor that no drug paraphernalia is or will be sold at the location for which the license is sought;
- F. A statement signed by each prospective proprietor that the proprietor is informed of the laws affecting licenses; and
- G. Such other information as the County deems necessary for the administration of this Chapter.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.060 Issuance of a license.

- A. Upon the receipt of a complete application for a license and the license fee required by this Chapter, the Health Officer shall issue a license unless one (1) or more of the following grounds exists:
 - 1. The application is incomplete or inaccurate;
 - 2. The application seeks authorization for tobacco retailing at a location for which a suspension is in effect pursuant to this Chapter, for which a license has been revoked pursuant to this Chapter, or for which this Chapter otherwise prohibits issuance of licenses;
 - 3. The application seeks authorization for tobacco retailing for a prospective proprietor for whom a suspension is in effect pursuant to this Chapter for the subject location or another location, whose license has been revoked pursuant to this Chapter for the subject location or another location, or to whom this Chapter otherwise prohibits a license to be issued;
 - 4. The Department has information that the prospective proprietor or his or her agent or employee has violated any local, State or Federal tobacco control law, including this Chapter, within the preceding twelve (12) months; or
 - 5. The application seeks authorization for tobacco retailing that is prohibited pursuant to this Chapter, that is otherwise unlawful pursuant to this Code, or that is unlawful pursuant to any other local, State, or Federal law.
- B. Any denial of an application for a license shall be in writing, setting forth the reasons for the denial and notifying the applicant for a license that the decision to deny an application for a license shall become final unless the applicant seeks an appeal pursuant to Section 7.80.130 within fourteen (14) calendar days of the date of service of the Health Officer's decision. Service of the decision shall be provided in accordance with the service requirements set forth in Subsection A of Section 7.80.120.

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- C. All information required to be submitted pursuant to Section 7.80.050 in order to apply for a license shall be updated whenever the information changes. A tobacco retailer shall provide the Department with any updates within ten (10) business days of a change.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.070 License renewal and expiration.

- A. A license is invalid unless the appropriate license fee has been paid in full and the term of the license has not expired. The term of a license is one (1) year beginning each fiscal year on July 1st and ending on June 30th of the following year. Each tobacco retailer shall apply for the renewal of his or her license and submit the license fee no later than thirty (30) calendar days prior to expiration of the term.
- B. A license that is not timely renewed shall expire at the end of its term. To reinstate a license that has expired, or to renew a license not timely renewed pursuant to Subsection A of this Section, the proprietor must:
1. Submit the license fee; and
 2. Submit a signed affidavit affirming that the proprietor:
 - a. Has not sold and will not sell any tobacco product or tobacco paraphernalia after the license expiration date and before the license is renewed; or
 - b. Has waited the appropriate ineligibility period established for tobacco retailing without a license, as set forth in Section 7.80.110, before seeking renewal of the license.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.080 License nontransferable.

- A. A license may not be transferred from one person to another or from one location to another. Whenever a tobacco retailing location has a change in proprietors, a new license is required.
- B. 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 unless:
1. The location has been fully transferred to an entirely new proprietor or fully transferred to entirely new proprietors; and
 2. The new proprietor(s) provides the Department with clear and convincing evidence that the new proprietor(s) has acquired or is acquiring the location in an arm's length transaction. As used in this Section, the term "arm's length transaction" shall mean a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two (2) 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.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.090 Inspections, investigations and enforcement.

- A. Compliance with this Chapter shall be monitored by the Department or any law enforcement officer. Employees of the Department or a law enforcement officer may conduct compliance checks, including but

not limited to youth decoy operations. Any law enforcement officer may enforce the penal provisions of this Chapter. Compliance checks may be unannounced.

- B. The County shall not enforce any tobacco-related minimum age law against a person who otherwise might be in violation of such law because of the person's age (hereinafter "youth decoy") if the potential violation occurs when:
1. The youth decoy is participating in a compliance check supervised by an employee of the Department or a law enforcement officer;
 2. The youth decoy is acting as an agent of a person designated by the County to monitor compliance with this Chapter;
 3. The youth decoy is participating in a compliance check funded in part, either directly or indirectly through subcontracting, by the Department; or
 4. The youth decoy has an immunity letter from the District Attorney's Office.
- C. 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.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.100 Suspension or revocation of license.

- A. In addition to any other remedy authorized by law, after notice and opportunity to be heard pursuant to Section 7.80.120 of this Chapter, a license may be suspended or revoked as provided in this Section if the Health Officer finds by a preponderance of the evidence that the licensee, or any of the licensee's agents or employees, has:
1. Violated any of the requirements, conditions prohibitions of this Chapter; or
 2. Pleaded guilty, "no contest" or its equivalent, or admitted to any of the following:
 - a. The original or renewal application contained incorrect, false, or misleading information;
 - b. One or more of the grounds for denial listed in Section 7.80.060 existed before the license was issued; or
 - c. A licensee is convicted of a misdemeanor or felony violation of any Federal, State, or local tobacco retailing law or regulation, including any provision of this Chapter.
- B. During any period of suspension or revocation, the licensee shall remove all tobacco products and tobacco paraphernalia from public view. Failure to do so may be considered a subsequent violation.
- C. When the Health Officer finds a violation as set forth in Subsection A of this Section, the license shall be suspended or revoked as follows:
1. Upon a finding by the Health Officer of a first license violation, the license shall be suspended for sixty (60) days;
 2. Upon a finding by the Health Officer of a second license violation within any sixty (60) month period, the license shall be suspended for one hundred twenty (120) days;
 3. Upon a finding by the Health Officer of a third license violation in any sixty (60) month period, the license shall be suspended for one hundred eighty (180) days; and

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- 4. Upon a finding by the Health Officer of a fourth license violation within any sixty (60) month period, the license shall be revoked and no new license shall issue for the location until five (5) years has passed from the date of revocation.
 - D. Violation by a licensee at one location shall not be construed as a violation at another location of the same licensee, nor shall violations by a prior licensee at the same location be accumulated against a subsequent licensee at the same location.
 - E. A license shall be revoked if the Health Officer finds that one or more of the grounds for denial of an application for a license pursuant to Section 7.80.060 existed at the time the application was made or at any time before the license was issued.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.110 Penalties for tobacco retailing without a license.

- A. In addition to any other penalty authorized by law, if a court of competent jurisdiction determines, or the Health Officer finds after notice and opportunity to be heard pursuant to Section 7.80.120 of this Chapter, that any person has engaged in tobacco retailing at a location without a valid license, either directly or through the person's agents or employees, the person shall be ineligible to apply for, or to be issued, a License as follows:
 - 1. After a first violation of this Section 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 sixty (60) days have passed from the date of the violation.
 - 2. After a second violation of this Section at a location within any sixty (60) month 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 one hundred eighty (180) days have passed from the date of the violation.
 - 3. After a third or subsequent violation of this Section at a location within any sixty (60) month 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.
- B. Any imposition of a penalty pursuant to this Section shall be in writing, setting forth the reasons for the imposition of a penalty and notifying the person subject to the penalty that the decision to impose the penalty shall become final unless the person seeks an appeal pursuant to Section 7.80.130 within fourteen (14) calendar days of the date of service of the Health Officer's decision. Service of the decision shall be provided in accordance with the service requirements set forth in Subsection A of Section 7.80.120.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.120 Health Officer decision.

- A. Upon determining the existence of any of the grounds pursuant to this Chapter for the suspension or revocation of a license, or the imposition of a penalty for tobacco retailing without a license, the Health Officer shall issue a notice of intended decision to the applicant for a license, the licensee, or the person against whom the penalty for tobacco retailing without a license is directed. The notice shall be provided by personal service or by first class mail, postage prepaid, and shall include a copy of the affidavit or certificate of mailing.

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- B. The notice of intended decision shall state all the grounds upon which the revocation, suspension, or imposition of penalty is based.
 - C. The notice of intended decision shall specify the effective date of the action.
 - D. The notice of intended decision shall state that the Health Officer shall give the applicant for a license, the licensee, or the person against whom the penalty for tobacco retailing without a license is directed an opportunity to request a hearing thereon. The hearing shall be an informal hearing before the Health Officer. Following the hearing, or within a reasonable time if no hearing is requested, the Health Officer shall issue a decision and serve the decision in accordance with the service requirements set forth in Subsection A of this Section.
 - E. The decision of the Health Officer shall be in writing, setting forth the reasons for the decision, and shall advise the applicant for a license, the licensee, or the person against whom the penalty for tobacco retailing without a license is directed that the decision to suspend or revoke the license, or to impose the penalty for tobacco retailing without a license shall become final unless the applicant for a license, the licensee, or the person against whom the penalty for tobacco retailing without a license is directed seeks an appeal pursuant to Section 7.80.130.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.130 Appeal procedures.

With regard to any denial of an application for a license pursuant to Section 7.80.060 or any decision issued by the Health Officer pursuant to Section 7.80.120, the following rules apply:

- A. A decision of the Health Officer to deny an application for a license, to suspend or revoke a license, or to impose a penalty for tobacco retailing without a license can be appealed to a Hearing Officer, subject to the following requirements and procedures. A person served with a decision issued pursuant to Subsection B of Section 7.80.060 or Subsection D of Section 7.80.120 may seek an appeal by filing with the Health Officer a written request for hearing within fourteen (14) calendar days of service of the decision. Failure to timely file a written request for hearing shall be deemed a waiver of the right to challenge the decision of the Health Officer and a failure to exhaust administrative remedies. The hearing officers shall be individuals selected by the County who may hear the appeals, issue subpoenas, receive evidence to administer oaths, rule on questions of law and the admissibility of evidence, prepare a record of the proceedings, and issue orders with regard to an appeal.
- B. The Hearing Officer shall schedule a hearing.
 - 1. Written notice of the time, date and location of a hearing before the Hearing Officer shall be given by personal service or by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the appellant.
 - 2. Hearing Procedures.
 - a. Requirements for Taking Testimony. In any proceeding before a Hearing Officer, oral testimony offered as evidence shall be taken only on oath or affirmation, and the Hearing Officer, his/her clerk, or other designee shall have the power to administer oaths and affirmations and to certify to official acts. Oaths of witnesses may be given individually or en masse. Witnesses shall be asked to raise their right hands and to swear or affirm that the testimony they shall give will be the truth, the whole truth, and nothing but the truth.
 - b. Continuances. The Hearing Officer may continue the hearing as determined appropriate by the Hearing Officer.

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- c. Administrative Interpretations. In conducting the hearing, the Hearing Officer shall consider the previously established interpretation of an ordinance provision by the Department charged with its enforcement unless that interpretation is shown to be clearly erroneous or unauthorized.
 - d. Hearing Officer Decisions. Within thirty (30) calendar days after the close of the hearing, the Hearing Officer shall issue a written decision, including a statement of the basis for the decision. The Hearing Officer's written decision shall constitute the final administrative decision of the County.
 - e. In the event a civil action is initiated to obtain enforcement of the decision of the Hearing Officer, and judgment is entered to enforce the decision, the person against whom the order of enforcement has been entered shall be liable to pay the County's total costs of enforcement, including reasonable attorney's fees.
- C. The appellant's failure to appear at the hearing on appeal shall constitute an abandonment of the review request and a failure to exhaust administrative remedies.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.140 Other penalties.

The remedies provided by this Chapter are cumulative and in addition to any other remedies available at law or in equity.

- A. Violations of this Chapter may, in the discretion of the District Attorney, be prosecuted as infractions or misdemeanors.
- B. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this Chapter shall constitute a violation.
- C. Violations of this Chapter are hereby declared to be public nuisances.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.150 Stipulated fine in lieu of hearing.

For a first or second alleged violation of this Chapter within any sixty (60) month period, the Health Officer may allow a tobacco retailer alleged to have violated this Chapter to stipulate in writing to the penalties provided in this Section in lieu of the penalties that would otherwise apply pursuant to this Chapter and to forego any right the tobacco retailer may have to a hearing pursuant to Section 7.80.130. Notice of any stipulation shall be provided to the Sheriff's Office, and no hearing shall be held. Stipulations shall not be confidential, shall be in writing, and shall contain the following terms plus any other noncriminal provisions established by the Health Officer in the interests of justice:

- A. After a first alleged violation of the Chapter at a location:
 - 1. An agreement by the tobacco retailer to stop acting as a tobacco retailer for one (1) day;
 - 2. An administrative penalty of one thousand and no/100ths (\$1,000.00) dollars;
 - 3. An admission by the tobacco retailer that the first alleged violation of the Chapter at the location occurred; and
 - 4. An agreement that the first alleged violation of the Chapter at the location shall be considered in determining the penalty for any future violation.

(Supp. No. 51)

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- B. After a second alleged violation of the Chapter at a location within any sixty (60) month period:
1. An agreement by the tobacco retailer to stop acting as a tobacco retailer for ten (10) days;
 2. An administrative penalty of five thousand and no/100ths (\$5,000.00) dollars;
 3. An admission by the tobacco retailer that the second alleged violation of the Chapter at the location occurred; and
 4. An agreement by the tobacco retailer that the second alleged violation of the Chapter at the location will be considered in determining the penalty for any future violations.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.160 Implementation.

The Department shall begin implementing the provisions of this Chapter effective July 1, 2012.

(Ord. No. 5200, § 1, 5-15-2012)

7.80.170 Severability.

If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, the remainder of this Chapter or the application of such provision to other persons or circumstances shall not be affected thereby.

(Ord. No. 5200, § 1, 5-15-2012)

**AN ORDINANCE OF THE CITY OF DEL REY OAKS AMENDING TITLE 8,
HEALTH AND SAFETY, OF THE DEL REY OAKS MUNICIPAL CODE
BY ADDING CHAPTER 8.09, "SMOKE FREE PUBLIC PLACE," TO
REGULATE SMOKING AND TOBACCO USE**

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard; and

WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, and exposure to secondhand smoke can occur at significant levels outdoors; and

WHEREAS, smoking cigarettes near building entryways can increase air pollution levels by more than two times background levels, with maximum levels reaching the "hazardous" range on the United States Environmental Protection Agency's Air Quality Index; and

WHEREAS, exposure to secondhand smoke causes death and disease, as since 1964 approximately 2.5 million nonsmokers have died from health problems caused by exposure to secondhand smoke; and

WHEREAS, secondhand smoke was responsible for an estimated 34,000 heart disease-related and 7,300 lung cancer-related deaths among adult nonsmokers each year during 2005–2009 in the United States; and

WHEREAS, significant disparities in tobacco use exist in California, which create barriers to health equity as African American (17.0%) and American Indian (19.1%) Californians report a higher smoking prevalence than white Californians (11.8%); and

WHEREAS, Californians with the highest levels of educational attainment and annual household income report the lowest smoking rates; and

WHEREAS, smokeless tobacco is not a safe alternative to smoking and causes its own share of death and disease, as smokeless tobacco use can lead to nicotine addiction, and cause oral, esophageal, and pancreatic cancers; and

WHEREAS, smokeless tobacco use is associated with increased risk for heart disease and stroke and stillbirth and preterm delivery;

WHEREAS, the activity is covered by the commonsense exemption that the California Environmental Quality Act (CEQA) applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA pursuant to Section 15061(b)(3) the CEQA Guidelines

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DEL REY OAKS
DOES ORDAIN AS FOLLOWS:**

Section 1. Findings.

The City Council finds and determines the recitals set forth above to be true and correct and by this reference, incorporates the same herein as findings.

Section 2. New Chapter 8.09, “Smoke Free Public Place” is hereby added to Title 8, HEALTH AND SAFETY, of the Del Rey Oaks City Code as follows:

CHAPTER 8.09 SMOKE FREE PUBLIC PLACE

Sections:

- 8.09.010 Definitions.
- 8.09.020 Prohibition of Smoking in Unenclosed Area.
- 8.09.030 Smoke Free Buffer Zones.
- 8.09.040 Tobacco Waste.
- 8.09.050 Enforcement.
- 8.09.040 Violation and Penalties.

8.09.010 Definitions. For the purposes of this chapter the following definitions shall govern unless the context clearly requires otherwise

- A. “Cannabis” has the meaning set forth in California Business and Professions Code Section 26001, as that section may be amended from time to time.
- B. “Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. This shall not include inhalers or medical devices prescribed by a physician for medical purposes.
- C. “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 their services for an employer within the city.
- D. “Employer” means any person or nonprofit entity that retains the service of one or more employees.
- E. “Enclosed area” means all space between a floor and a ceiling that is bounded by walls, doorways, or windows, whether open or closed, covering more than 50 percent of the combined surface area of the vertical planes constituting the perimeter of the area. A wall includes any retractable divider, garage door, or other physical barrier, whether temporary or permanent.

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- F. "Multiunit Residence" means property containing two or more units, including, but not limited to, apartment buildings, common interest developments, senior and assisted living facilities, and long-term health care facilities.
- G. "Outdoor Dining Area" means any publicly or privately owned outdoor area, including streets and sidewalks, that is available to or customarily used by the general public or an employee, and that is designed, established, or regularly used for consuming food or drink.
- H. "Place of employment" means an area under the control of an employer that an employee or the general public may enter in the normal course of operations, regardless of the hours of operation, including work areas and construction sites. This definition shall not apply to private residential units. This definition shall also not apply to designated smoking areas as designated by a private employer.
- I. "Public event areas" means any publicly or privately owned place used for an event open to the general public, regardless of any fee or age requirement, including a farmers' market, parade, fair, or festival.
- J. "Public place" means any publicly or privately owned place that is open to the general public, regardless of any fee or age requirement, including public squares, sidewalks, streets, parking lots, plazas, shopping areas, stadiums, or sporting facilities.
- K. "Recreational area" means any publicly or privately owned area including streets and sidewalks located within the area that is open to the general public for recreational purposes, regardless of any fee or age requirement. The term "Recreational Area" includes, but is not limited to, facilities, parks, playgrounds, athletic fields, restrooms, beaches, picnic areas, spectator and concession areas, golf courses, walking paths, gardens, vernal ponds, hiking trails, bike paths, riding trails, roller and ice-skating rinks, skateboard parks, amusement parks, zoos, and aquatic areas.
- L. "Service area" means any publicly or ~~privately~~-owned-area, including streets and sidewalks, designed to be used or is regularly used by one or more persons to receive a service, wait to receive a service, or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "service area" includes, but is not limited to, areas including or within 25 feet of information kiosks, automatic teller machines (ATMs), service lines, bus stops or shelters, or cab stands.
- M. "Service lines" means an outdoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money, including but not limited to, ATM lines, concert lines, food vendor lines, mobile vendor lines, movie ticket lines, and sporting event lines.
- N. "Smoke" or "Smoking" means: (1) inhaling, exhaling, or burning, any tobacco, nicotine, cannabis, or plant product, whether natural or synthetic; (2) carrying any lighted, heated,

or activated tobacco, nicotine, cannabis, or plant product, whether natural or synthetic, intended for inhalation; or (3) using an electronic smoking device or hookah.

O. Tobacco Product” means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah, tobacco, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco, and any product or formulation of matter containing biologically active amounts of nicotine that is product or matter will be introduced into the human body, but does not include any product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco product dependence.

P. “Tobacco product waste” means any component, part, or remnant of any tobacco product. Tobacco product waste includes any waste that is produced from the use of a tobacco product, including all tobacco product packaging and incidental waste such as lighters or matches, whether or not it contains tobacco or nicotine.

P. “Tobacco use” means the act of smoking or the consumption of any other tobacco product in any form.

Q. “Unenclosed area” means any area that is not an enclosed area.

8.09.020 Prohibition of Smoking in Unenclosed Areas.

A. Smoking is prohibited in the unenclosed areas of the following places within the city:

1. Recreational areas
2. Service areas
3. Outdoor dining areas
4. Public event areas
5. Sidewalks
6. Public places

B. Nothing in this chapter prohibits any person or employer with control over any property from prohibiting smoking and tobacco use on any part of such property, even if smoking or tobacco use is not otherwise prohibited in that area.

8.09.030 Smoke Free Buffer Zones

Smoking in all unenclosed areas shall be prohibited within 25 feet from any area in which smoking is prohibited under Section 8.09.020 of this chapter or by any other law. This prohibition shall not apply to unenclosed areas of private residential properties that are not multiunit residences.

8.09.040 Tobacco Waste

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- A. No person or employer shall permit smoking ash receptacles within an area under their control and in which smoking is prohibited by law, including within twenty-five (25) feet from any area in which smoking is prohibited. The presence of smoking ash receptacles in violation of this subsection shall not be a defense to a charge of smoking in violation of any provision of this chapter.
- B. No person shall dispose of tobacco product waste within the boundaries of an area in which smoking is prohibited.

8.09.050 Enforcement

- A. No person or employer shall permit smoking or tobacco use in an area that is under the control of that person or employer and in which smoking, or tobacco use is prohibited by this article or any other law.
- B. Any employer that has control of an area in which smoking is prohibited by this chapter shall post a clear, conspicuous, and unambiguous “No Smoking” or “Smoke-Free” sign in at least one conspicuous point within the area. Signs shall have letters of no less than one inch in height and shall include the international “No Smoking” symbol. Signs posted on the exterior of buildings to comply with this section shall include the 25-foot distance requirement set forth in Sec. 8.09.040. The presence or absence of signs shall not be a defense to a charge of smoking in violation of any other provision of this chapter.
- C. Event organizers shall post at least five no smoking signs at an entrance to the event. Signs shall have letters of no less than one inch in height and shall include the international “No Smoking” symbol and may be printed. A template of the no smoking sign will be included with the event application provided by the City.
- D. A person or employer that has control of an area in which smoking, and tobacco use is prohibited by this chapter shall direct anyone who is smoking or using tobacco in violation of this chapter to extinguish the product being smoked or stop using the tobacco product.
- E. No person or employer shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this chapter.

8.09.060 Violations and Penalties.

Enforcement of these provisions shall be governed by Chapters 1.08(Code Violation Penalties), Chapter 1.10 (Civil Enforcement), and Chapter 1.12(Administrative Fines) of the Del Rey Oaks Municipal Code. Each instance of smoking or tobacco use in violation of this chapter shall constitute a separate violation. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

Section 3. California Environmental Act (CEQA).

The adoption of this ordinance is exempt from the California Environmental Quality Act, based on 14 California Code of Regulations Section 15061(b)(3), where, as the case here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment because no change in existing permitted uses of land results from adoption of this ordinance, and to the extent impacts associated with the proposed location of cultivation and manufacturing facilities exist, they have been previously addressed in other environmental documents.

Section 4. Severability Clause

It is the intent of the City Council of the City to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase independently, even if any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases were declared invalid or unenforceable.

Section 4. Effective Date.

This ordinance shall be in full force and effect thirty (30) days following its passage and adoption, as certified by the City Clerk.

This ordinance was introduced and read on the ___ day of _____ 2023 and was finally adopted on the ___ day of _____ 2023, by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

, The Honorable Mayor

ATTEST:

, Deputy City Clerk

ORDINANCE NO. 2023-XXX

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL REY OAKS
AMENDING TITLE 5 OF THE DEL REY OAKS CITY CODE
BY ADDING CHAPTER 0.0.0, "TOBACCO RETAILER LICENSE"**

WHEREAS, the State of California enacted the California Business and Professions Code, Division 8.6, Chapter 1, Section 22970 entitled "Cigarette and Tobacco Products Licensing Act of 2003" (the "Act") to control tobacco sales; and

WHEREAS, the Act explicitly permits cities and counties to enact local tobacco retail licensing ordinances, and allows for the suspension or revocation of a local license for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3);

WHEREAS, pursuant to the authority established by the Act applicable to a local entity's ability to adopt tobacco licensing regulations, Monterey County ("County") enacted Ordinance 5200 adding Chapter 7.80, "Tobacco Retailer License" to the County Code establishing licensing requirements for tobacco retailing to "encourage responsible retailing of tobacco" and to "discourage violations of tobacco-related laws"; and

WHEREAS, over 200 cities and counties in California have passed tobacco retailer licensing ordinances in an effort to stop youth from using tobacco; and

WHEREAS, a majority of cities within the County have adopted a tobacco retail licensing ordinance; and

WHEREAS, the City of Del Rey Oaks ("City") has a substantial interest in protecting youth and underserved populations from the harms of tobacco use; and

WHEREAS, despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following: In 2022, 27.7 percent of the retailers illegally sold tobacco to young adult decoys; Almost 90% of adults who smoke began by age 18, and 99% began by age 26; disparities in tobacco use exist among California high school students, with higher rates found among LGBTQ, American Indian, and Pacific Islander youth; in 2023, 20.3% of high school students in California had tried some sort of tobacco product, and almost 18% of high school students have tried vapes; and

WHEREAS, youth are more receptive to and influenced by tobacco advertising compared to adults, and the tobacco industry spends an estimated \$485 billion in tobacco advertising in California each year; and

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WHEREAS, research indicates that the density and proximity of tobacco retailers increase smoking behaviors, including the number of cigarettes smoked per day, particularly in neighborhoods experiencing poverty; and

WHEREAS, the density of tobacco retailers near adolescents' homes has been associated with increased youth smoking rates and initiation of noncigarette tobacco product use; and

WHEREAS, adults who smoke are likely to have a harder time quitting when residential proximity to tobacco retailers is closer and density is higher; and

WHEREAS, the City Council finds that a local licensing system for tobacco retailers is appropriate to ensure that retailers comply with tobacco control laws and business standards of the City in order to protect the health, safety, and welfare of our residents; and

WHEREAS, the County Health Department has asked for local jurisdictions to adopt tobacco licensing ordinances mirroring the County's, so the County can enforce compliance with tobacco laws uniformly throughout the County and improve overall compliance while limiting sales to minors; and

WHEREAS, City staff and County staff have a long history of working together to promote community health and wellness; and

WHEREAS, the activity is covered by the commonsense exemption that the California Environmental Quality Act (CEQA) applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA pursuant to Section 15061(b)(3) the CEQA Guidelines

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF DEL REY OAKS DOES ORDAIN AS FOLLOWS:

Section 1. Findings.

1. The City Council finds and determines the recitals set forth above to be true and correct and by this reference, incorporates the same herein as findings.
2. The City Council finds that the recitals set forth above contain persuasive support for the proposition that the City has adequate authority to allow and regulate tobacco retail sales in the City.
3. The City Council hereby finds that it is in the best interest of the health, safety and welfare of the residents of the City to establish regulations that will license tobacco retail sales within the City.

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4. The City wishes to adopt regulations that mirror County Code 7.80 so as to allow either the City or the County to oversee and enforce provisions applicable to licensing tobacco retailers.

Section 2. New Chapter 0.0.0, “Tobacco Retail Licensing” is hereby added to Title 5, BUSINESS TAXES, LICENSES AND REGULATIONS, of the Del Rey Oaks City Code as follows:

CHAPTER 0.0.0- TOBACCO RETAILER LICENSE

Sections:

- 0.0.0.010 Adoption of provisions of the Monterey County Tobacco Retailer License Regulations
0.0.0.020 Prohibition of Licensing Pharmacies for the Sale of Tobacco

0.0.0.010 Monterey County Tobacco Retailer License Provisions Adopted

A. Monterey County Code Chapter 7.80, entitled “Tobacco Retailer License” pertaining to tobacco retailer products, as may be amended, is hereby adopted by the city and incorporated by reference into this chapter, and made a part hereof, and shall be enforced within the limits of the city.

B. For purposes of the city, the following terms shall apply to the incorporation of the Monterey County ordinance into this Chapter.

1. All reference to the term “unincorporated areas of the County of Monterey” in the Monterey County Code shall be amended to include the term “city limits of Del Rey Oaks.”
2. All reference to the term “Chapter” in the Monterey County Code shall be to the term “Chapter” in the Del Rey Oaks Municipal Code.
3. All reference to the term “Code” in the Monterey County Code shall be to the Del Rey Oaks Municipal Code.

C. A violation of the Monterey County ordinance is considered an infraction and a violation of the Del Rey Oaks Municipal Code, and may be enforced pursuant to 1.08, 1.10 and 1.12.

0.0.0.010 Pharmacy Tobacco Retailing is Prohibited

A. The definitions set forth in Monterey County Code Chapter 7.80, entitled “Tobacco Retailer License,” apply to this subsection. In addition, for the purposes of this subsection, “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

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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.

B. Prohibition – Pharmacy.

1. No License may be issued, and no existing License may be renewed, to authorize Tobacco Retailing in a pharmacy.
2. No person shall sell or otherwise distribute a tobacco product in a Pharmacy.

Section 3. Severability.

It is the intent of the City Council of the City to supplement applicable state and federal law and not to duplicate or contradict such law and this ordinance shall be construed consistently with that intention. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase independently, even if any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases were declared invalid or unenforceable.

Further, if any section, subsection, subdivision, paragraph, sentence, clause, or phrase of Monterey County Code Chapter 7.80, entitled “Tobacco Retailer License”, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases of this ordinance, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase of Monterey County Code Chapter 7.80 independently, even if any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases were declared invalid or unenforceable.

Section 4. Effective Date.

This ordinance shall be in full force and effect thirty (30) days following its passage and adoption, as certified by the City Clerk.

This foregoing ordinance was introduced at a regular meeting of the City Council and read on the ___ day of ___ 2023 and was finally adopted on the ___ day of _____ 2023, by the following vote:

ATTACHMENT 1

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

, Mayor

ATTEST:

Deputy City Clerk

DRAFT

DRAFT