

CITY OF RANCHO CORDOVA

ORDINANCE NO. 10-2022

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA AMENDING TITLE 4 (BUSINESS REGULATIONS), CHAPTER 4.07 (TOBACCO RETAILER LICENSE) WHICH WOULD REPEAL AND REPLACE TITLE 6 (HEALTH AND SANITATION), CHAPTER 6.86 (DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS), AND AMENDING CHAPTER 6.84.020 (REGULATION OF SMOKING, DEFINITIONS) AND TITLE 23 (ZONING CODE), CHAPTER 23.919.100 (SMOKERS' LOUNGE, HOOKAH BAR, E-CIGARETTE LOUNGE, AND VAPOR LOUNGE/BAR)

Section 1. Purpose and Declarations.

WHEREAS, Rancho Cordova Municipal Code (RCMC) Title 4, Chapter 4.07 regulates the sale of tobacco in the City of Rancho Cordova; and

WHEREAS, RCMC Title 6, Chapter 6.86 regulates the distribution of tobacco products to minors in the City of Rancho Cordova; and

WHEREAS, RCMC Title 6, Chapter 6.84 regulates smoking in public places and places of employment; and

WHEREAS, RCMC Title 23, Chapter 23.919.100 regulates smokers' lounges, hookah bars, e-cigarette lounges, and vapor lounges/bars; and

WHEREAS, recent studies have estimated 4.31 million middle and high school students in the U.S. used flavored tobacco within a given 30-day period, which included flavored e-cigarettes, menthol cigarettes, flavored cigars and hookah, and flavored pipe tobacco; and

WHEREAS, the City Council sees a benefit and a need to prohibit the sale, offer of sale, and distribution of flavored tobacco products as mentholated and flavored products have been shown to be "starter" products for youth who begin using tobacco and these products help establish tobacco habits that can lead to long-term-addiction; and

WHEREAS, this ordinance amends Title 4- Chapter 4.07, Title 6- Chapter 6.84.020, Title 6- Chapter 6.86, and Title 23- Chapter 23.919.100 to prohibit the sale, offer of sale, and distribution of flavored tobacco products; and

WHEREAS, on May 16, 2022 the City Council held a properly noticed public hearing for this Ordinance and considered all oral and written testimony.

Section 2: Findings. The City Council hereby finds:

A. CEQA Compliance. CEQA requires analysis of agency approvals of discretionary "projects." A "project," under CEQA, is defined as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (CEQA Guidelines, § 15378.) As reflected in State CEQA Guideline 15061 (b) (3), an activity is not subject to CEQA, "[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 proposed amendments are not a "project" within the meaning of CEQA because the amendments seek to add language to the Municipal Code related to the regulation

of flavored tobacco products. The amended language would prohibit the sale, offer of sale, and distribution of flavored tobacco products, including definitions, exemptions, and fines and violations. Thus, the proposed ordinance is not subject to the requirements of CEQA. However, in the event that adoption of the ordinance is considered a CEQA project, it would nonetheless qualify for categorical exemptions as set forth below.

CEQA Guidelines Section 15061(b)(3) states that a project is exempt from CEQA “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 approval of the code amendments set forth in the proposed ordinance does not approve any physical development and it would not result in a direct or indirect physical changes in the environment. The amended language would prohibit the sale, offer of sale, and distribution of flavored tobacco products, including definitions, exemptions, and fines and violations. For these reasons, the proposed amendments would not have the potential to result in individually or cumulatively significant effects on the environment and these Municipal Code amendments are exempt from review under CEQA and no further environmental review is necessary.

B. The proposed amendments comply with applicable state law and local ordinances.

California Business and Professions Code Section 22971.3 reserves to cities the ability to enact local tobacco control laws, except for laws related to the collection of state taxes. Section 22971.3 also authorizes cities to implement local tobacco licensing laws. Revisions to the Municipal Code implement and are consistent with both local and state regulations.

Section 3. Amendments to Title 4 Business Regulations, Title 6 Health and Sanitation, and Title 23 Zoning Code

The City Council hereby adopts the amendments to Title 4 Business Regulations, Chapter 4.07 Tobacco Retailer License, and Title 6 Health and Sanitation, Chapter 6.86 Distribution of Tobacco Products to Minors, and Title 6.84.020 Regulation of Smoking, Definitions, and Title 23 Zoning Code, Chapter 23.919.100 Smokers’ Lounge, Hookah Bar, E-Cigarette Lounge, and Vapor Lounge/Bar of the Rancho Cordova Municipal Code, as shown and incorporated in Exhibit A to this ordinance.

Section 4. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance, is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

Section 5. Effective Date

Within fifteen (15) days after adoption, a Summary of this Ordinance shall be published once in the Grapevine Independent, or the Sacramento Bee, a newspaper of general circulation printed and published in Sacramento County and circulated in the City of Rancho Cordova, in

accordance with Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its inception.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 6th day of June 2022 by the following vote:


AYES: Budge, Gatewood, Sander, and Terry

NOES: None

ABSENT: Pulipati

ABSTAIN: None

ATTEST:



Stacy Leitner, CMC
City Clerk



Donald Terry, Mayor

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Chapter 4.07 TOBACCO RETAILER LICENSE

Sections:

- 4.07.010 Legislative findings.
- 4.07.020 Purpose.
- 4.07.030 Definitions.
- 4.07.040 Requirement for tobacco retailer license.
- 4.07.050 Application procedure.
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- 4.07.080 License fee.
- 4.07.090 License nontransferable.
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- 4.07.130 Denial, suspension and revocation – Appeals.
- 4.07.140 Hearings – Generally.
- 4.07.150 Conduct of hearing.
- 4.07.160 Form and contents of decision – Finality of decision.
- 4.07.170 Enforcement.
- 4.07.180 Severability.
- 4.07.190 Effective date and publication.

4.07.010 Legislative findings.

The city council of the city of Rancho Cordova finds and determines that:

A. The United States Surgeon General has declared nicotine, a key ingredient of cigarettes and tobacco products, as addictive as cocaine or heroin; yet no other addictive product or drug is as accessible to minors or as heavily advertised and promoted to minors as tobacco products. Once addicted, minors necessarily have great difficulty in complying with laws regulating access by minors to tobacco.

B. Since 1971, federal law has banned the advertising of tobacco products on radio and television, in part because of substantial evidence showing that the most persuasive advertising was being conducted on radio and television, and these broadcasts were particularly effective in reaching a large audience of young people.

C. Studies show an association between tobacco use and use of alcohol and illicit drugs. The National Institute on Drug Abuse found that teenagers who smoke are 14 times more likely to abuse alcohol, 100 times more likely to smoke marijuana and 32 times more likely to use cocaine than their nonsmoking peers.

D. Eighty-eight percent of adults who have ever smoked tried their first cigarette by the age of 18, and the average age at which smokers try their first cigarette is 14.5.

E. Although the tobacco industry insists the sole purpose of advertising is to convince current smokers to switch brands, it spends over \$5,000,000,000 a year in advertising and promotion costs to aggressively recruit new smokers. To replace smokers who quit or die prematurely (some 3,000 smokers a day) the tobacco industry must attract approximately 2,000,000 new smokers each year. Most new smokers are children and adolescents. The tobacco industry sells \$1,260,000,000 in tobacco products (over 947,000,000 packs of

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cigarettes and 26,000,000 containers of smokeless tobacco) each year to children under 18. Thus, the tobacco industry earns \$1,500,000,000 annually from the illegal sale of tobacco to children.

F. Based upon the foregoing facts and findings, the city has a substantial interest in promoting compliance with state laws prohibiting sales of cigarettes and tobacco products to minors, in promoting compliance with federal, state and local laws intended to discourage the purchase of tobacco products by minors, and in protecting children from being lured into illegal activity through the misconduct or illegal acts of adults.

G. State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to persons under 21 years of age except active duty military personnel who are 18 years of age or older (Section 308 of the Penal Code).

H. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 21 years of age (Section 22956 of the California Business and Professions Code) and provides procedures for using persons under 21 years of age to conduct on-site compliance checks of tobacco retailers (Section 22952 of the California Business and Professions Code).

I. State law requires that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under 21 years of age is illegal (Section 22952 of the California Business and Professions Code and Section 308 of the California Penal Code).

J. State law prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk (Section 22962 of the California Business and Professions Code).

K. State law prohibits the sale of “bidis” (a type of hand-rolled filterless cigarette) except at those businesses that prohibit the presence of minors (Section 308.1 of the California Penal Code).

L. State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibits the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than six-tenths of an ounce of tobacco (Section 308.3 of the California Penal Code).

M. State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees (Section 48901(a) of the California Education Code).

N. RCMC 4.61.040 prohibits the sale or distribution of tobacco products from vending machines.

O. From 2013 to 2015, an estimated 15% of ninth and eleventh grade students in California reported using electronic smoking devices.

P. Over 9% of high school students in California reported buying their own electronic cigarette from a store.

Q. In 2016, an estimated 82% of tobacco retailers in California sold flavored non-cigarette tobacco products, over 90% of tobacco retailers sold menthol cigarette, and 80% of tobacco retailers near schools sold flavored non-cigarette tobacco products.

R. Mentholated and flavored products have been shown to be “starter” products for youth who begin using tobacco and these products help establish tobacco habits that can lead to long-term-addiction.

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S. Flavored tobacco has significant public health implications for youth and people of color as a result of targeted industry marketing strategies and product manipulation.

T. Neither federal nor California state laws restrict the sale of menthol cigarettes or flavored non-cigarette tobacco products, electronic smoking devices, or the solutions used in these devices.

U. Despite these restrictions, minors continue to be exposed to and influenced by tobacco advertising, and to purchase or steal or otherwise obtain cigarettes and other tobacco products at alarming rates. Studies show that nearly one-quarter of all teenagers in this country are smokers.

V. California courts, in *Cohen vs. Board of Supervisors*, 40 Cal. 3d 277 (1985), and *Bravo Vending vs. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law.

W. State law authorizes local tobacco retailer licensing laws to provide for the suspension or revocation of the local tobacco retailer license for any violation of a state tobacco control law (Section 22971.3 of the Business and Professions Code).

X. A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the city to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco laws. [Ord. 3-2005 § 2].

4.07.020 Purpose.

A. The purpose of this chapter is to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided for violations. [Ord. 3-2005 § 2].

4.07.030 Definitions.

As used in this chapter, the following words and phrases shall have the meanings given them in this section, unless the context clearly requires otherwise:

“Characterizing flavor” means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcohol beverage, herb, or spice.

“City” means the city of Rancho Cordova.

“City manager” means the city manager of the city of Rancho Cordova or his or her designee.

“E-cigarette” or “electronic cigarette” or “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, vape pen, or e-hookah. “E-cigarette”, “electronic cigarette”, or “electronic smoking device” includes any component, part, or accessory of the device, and also includes any substance

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that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. “E-cigarette,” “electronic cigarette,” or “electronic smoking device” 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.

“Flavored tobacco product” means any tobacco product that imparts a characterizing flavor.

“Itinerant tobacco retailing” means engaging in tobacco retailing at other than a fixed location.

“License” means a tobacco retailer license issued by the city pursuant to this chapter.

“Licensee” means any proprietor holding a license issued by the city pursuant to this chapter.

“Person” means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

“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 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 has, or can have, sole or shared control over the day-to-day operations of a business.

“Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

“Tobacco paraphernalia” means any item designed or marketed for the smoking consumption, use, or preparation of a tobacco product.

“Tobacco product” means:

- 1) Any product containing, made of, or derived from tobacco or nicotine, whether natural or synthetic, 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;
- 2) Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- 3) 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.

“Tobacco product” does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

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“Tobacco retailer” means any person who sells, offers for sale, exchanges, or offers 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.

“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. [Ord. 13-2014 §§ 4 – 6; Ord. 3-2005 § 2].

4.07.040 Requirement for tobacco retailer license.

A. It shall be unlawful for any person to act as a tobacco retailer without first obtaining a license for each location at which tobacco retailing is to occur. No license will be issued to authorize tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.

B. Nothing in this chapter shall be construed to grant any person obtaining a license any status or right other than the right to act as a tobacco retailer at the location in the city identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by Section 6404.5 of the Labor Code. [Ord. 3-2005 § 2].

4.07.050 Application procedure.

All applications for a license shall be submitted to the city manager in the name of each proprietor proposing to conduct tobacco retailing and shall be signed by each proprietor or an authorized agent thereof. A proprietor proposing to conduct tobacco retailing at more than one location shall submit a separate application for each location. Every application shall be submitted on a form supplied by the city manager and shall contain the following information:

- A. The name, address, and telephone number of each proprietor; and
- B. The business name, address, and telephone number of the fixed location for which a license is sought; and
- C. Whether or not any 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 dates of the suspension period or the date of revocation; and
- D. Such other information as the city manager deems necessary for the administration or enforcement of this chapter. [Ord. 3-2005 § 2].

4.07.060 Issuance and renewal of license.

A. Upon the receipt of an application for a license and the applicable license fee, the city manager shall issue a license unless:

- 1. The application is incomplete or inaccurate;

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2. The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this chapter; provided, however, this subsection shall not constitute a basis for denial of a license if either or both of the following apply:

a. The applicant provides the city with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For the purposes of this subsection, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this chapter that occurred at the location, is presumed not to be an "arm's length transaction";

b. It has been more than five years since the most recent license for that location was revoked;

3. The application seeks authorization for tobacco retailing that is unlawful pursuant to this code, or that is unlawful pursuant to any other local, state, or federal law;

4. The city manager has information that the applicant or his or her agents or employees has violated any local, state or federal tobacco control law at the location for which the license or renewal of the license is sought within the preceding 30-day period;

5. There are grounds for denial pursuant to Chapter 4.06 RCMC; or

6. No general business license has been granted for the enterprise pursuant to Chapter 4.06 RCMC.

B. A license shall be valid for one year and an application for renewal must be filed not later than 30 days prior to the expiration of the license, but no earlier than 60 days prior to the expiration of the license. Unless revoked on an earlier date, all licenses shall expire one year after the date of issuance. A license may be renewed for additional periods of one year by submitting an application to the tax and license collector and payment of the applicable license fee; provided, however, a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings shall not be renewed. The application and license fee shall be submitted at least 30 days, but not more than 60 days, prior to the expiration of the current valid license. The applicant shall follow all of the procedures and provide all of the information required by RCMC 4.07.050, and the tax and license collector shall process the application according to the provisions of this section. Provided that an application is made within the time period required by this subsection, a licensee may continue the sale of tobacco products pending a determination of the tax and license collector to renew or disapprove the license.

C. Where the city manager does not approve a license or renewal of a license, the procedures for denial, including appeals therefrom, of RCMC 4.07.120 shall apply. [Ord. 3-2005 § 2].

4.07.070 Display of license.

Each license shall be prominently displayed in a publicly visible location at the licensed premises. [Ord. 3-2005 § 2].

4.07.080 License fee.

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The fee for issuance or renewal of a license shall be established by the city manager and shall be in addition to the city's business operation tax and any other license or permit fee imposed by this code upon the applicant. The license fee shall be paid to the city at the time the license application is submitted. The amount of the fee shall be determined on the basis of the costs incurred in the enforcement of tobacco retailing laws together with the costs, including the costs of counsel, incurred in the administration of this chapter. [Ord. 6-2010 § 5; Ord. 3-2005 § 2].

4.07.090 License nontransferable.

A license is nontransferable. If a licensee changes business location, that licensee must obtain a new license prior to acting as a tobacco retailer at the new location. If a business licensed to conduct tobacco retailing is sold, the new owner must obtain a license for that location before acting as a tobacco retailer. [Ord. 3-2005 § 2].

4.07.100 License violation.

A. It shall be a violation of a license for a licensee or his or her agents or employees to violate any local, state, or federal tobacco-related law. [Ord. 3-2005 § 2].

B. It shall be a violation of a license for a licensee, or a licensee's agents or employees to sell, offer for sale, or distribute any flavored tobacco product. There is a rebuttable presumption that a tobacco product is a flavored tobacco product, if a tobacco manufacturer or its agents or employees has made a public statement or claim that the tobacco product has or produces a characterizing flavor, including, but not limited to, text, color, or images on the product's labeling or packaging that are used to expressly or impliedly communicate that a tobacco product has a characterizing flavor.

1. After ninety (90) calendar days from the effective date of this Chapter, it shall be a violation of this Chapter for a tobacco licensee, or a licensee's agents or employees to sell, offer for sale, or distribute any prohibited product.

2. This Chapter shall not apply to any existing establishment that (i) has been formally permitted to allow the on-site smoking of tobacco products under Section 23.919.100 of the Rancho Cordova Municipal Code and that (ii) sells only shisha tobacco products (as defined in California Health and Safety Code Section 104559.5) for onsite consumption. The hookah tobacco retailer has a valid license to sell tobacco products issued pursuant to Chapter 2 (commencing with Section 22971.7) of Division 8.6 of the Business and Professions Code. Retail sales of flavored tobacco products other than shisha tobacco products (as defined in California Health and Safety Code Section 104559.5) by such smoking lounges are prohibited. No flavored shisha tobacco products purchased at such smoking lounges may be removed from the premises. As required in Section 23.919.100 of the Rancho Cordova Municipal Code, all consumption or use of flavored shisha tobacco products at such smoking lounges shall occur indoors. The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products.

4.07.110 Administrative fine.

A. Any tobacco retailer or licensee violating the provisions of this Chapter shall be guilty of a misdemeanor, and in addition to any other remedy, shall be liable for an administrative fine of one thousand dollars (\$1,000) per violation. Each day a violation exists shall constitute a new and separate violation.

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B. Any violation of this Chapter may be remedied by a civil action brought by the City Attorney. The city may recover reasonable attorney's fees and costs of any civil action brought by the City Attorney to remedy any violation of this Chapter.

C. Additional Amounts. Administrative costs, interest, late payment charges, costs of compliance reinspections, and collection costs are in addition to the fine as set forth in Subsection (A).

D. A notice of violation and of intent to impose a fine shall be personally served on, or sent by certified mail to, the person or persons subject to the fine. The notice shall state the basis of the city's determinations and include an advisement of the right to request a hearing to contest the fine. Any request for a hearing must be in writing and must be received by the city within 10 calendar days of personal service of the notice on the person or persons subject to a fine or within 15 calendar days if the person or persons subject to a fine are served by mail.

E. If no request for a hearing is timely received, the city's determination on the violation and the imposition of a fine and any additional amounts pursuant to subsection (C) of this section shall be final and payment shall be made within 30 calendar days of written demand made in the manner specified above for a notice of violation. If the fine is not paid within that time, the fine may be collected, along with any additional amounts pursuant to subsection (C) of this section, in any manner provided by law. In the event that a judicial action is necessary to compel payment, the person or persons subject to the fine and any additional amount shall also be liable for the costs of the suit and attorneys' fees incurred by the city in collecting the fine.

F. If a hearing is requested pursuant to subsection (D) of this section, the city shall provide written notice, within 45 calendar days of its receipt of the hearing request, to the person or persons subject to a fine and any additional amount, of the date, time, and place of the hearing in the manner specified above for a notice of violation.

G. The hearing shall be conducted in accordance with the procedures set forth in RCMC 4.07.140 through 4.07.160.

H. If no timely notice of appeal to the superior court is filed, or the city is not timely served with a copy of a notice of appeal, the hearing officer's decision and findings shall be deemed confirmed and the fine and any additional amounts imposed pursuant to subsection (C) of this section shall be collected pursuant to subsection (E) of this section. [Ord. 6-2010 § 6; Ord. 3-2005 § 2].

4.07.120 Suspension or revocation of license.

A. In addition to any other remedy authorized by law, a license shall be suspended or revoked as provided in this section if the city manager finds that the licensee or his or her agents or employees has or have violated any of the provisions of this chapter; provided, however, violations by a licensee at one location may not be accumulated against other locations of that same licensee, nor may violations accumulated against a prior licensee at a licensed location be accumulated against a new licensee at the same licensed location.

1. Upon a finding by the city manager of a first license violation within any five-year period, the license shall be suspended for 30 days.

2. Upon a finding by the city manager of a second license violation within any five-year period, the license shall be suspended for 90 days.

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3. Upon a finding by the city manager of a third license violation within any five-year period, the license shall be suspended for one year.

4. Upon a finding by the city manager of a fourth license violation within any five-year period, the license shall be revoked.

B. Notwithstanding RCMC 4.07.110(A), a license shall be revoked if the city manager finds that either one or both of the following conditions exist:

1. One or more of the bases for denial of a license under RCMC 4.07.060(A) existed at the time application was made or at any time before the license was issued.

2. The information contained in the license application, including supplemental information, if any, is found to be false in any material respect.

C. In the event the city manager suspends or revokes a license, written notice of the suspension or revocation shall be served upon the licensee within five days of the suspension or revocation. The notice shall contain:

1. A brief statement of the specific grounds for such suspension or revocation;

2. A statement that the licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of RCMC 4.07.130, to the city manager, within 10 calendar days of the date of service of the notice; and

3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.

D. A licensee for whom a license suspension is in effect must remove all tobacco products and tobacco paraphernalia from public view at the address that appears on the suspended license. [Ord. 3-2005 § 2].

4.07.130 Denial, suspension and revocation – Appeals.

A. Any applicant or licensee aggrieved by the decision of the city manager in denying, suspending, or revoking a license may appeal the decision by submitting a written appeal to the city manager within 10 calendar days from the date of service of the notice of denial, suspension, or revocation. The written appeal shall contain:

1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant;

2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;

3. The signatures of all parties named as appellants and their official mailing addresses; and

4. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.

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- B. The appeal hearing shall be conducted in accordance with RCMC 4.07.140 through 4.07.160.
- C. Upon receipt of any appeal filed pursuant to this section, the city manager shall transmit said appeal to the secretary of the hearing examiner who shall calendar the matter for hearing within 45 days.
- D. Written notice of the time and place of the hearing shall be given at least 10 calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.
- E. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.
- F. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.
- G. Any suspension or revocation of a license shall be stayed during the pendency of an appeal which is properly and timely filed pursuant to this section. [Ord. 3-2005 § 2].

4.07.140 Hearings – Generally.

- A. The city manager shall appoint a hearing examiner to hear appeals brought pursuant to this chapter.
- B. The city manager shall promulgate rules and procedures as necessary for the use of the hearing examiner.
- C. At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the city manager, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.
- D. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.
- E. The hearing examiner may, upon request of the appellant or upon request of the city manager, grant continuances from time to time for good cause shown, or upon his or her own motion.
- F. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to official acts. [Ord. 3-2005 § 2].

4.07.150 Conduct of hearing.

- A. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. Section 11513, Subsections (a), (b) and (c), of the Government Code as presently written or hereinafter amended shall apply to hearings under this chapter.
- B. Oral evidence shall be taken only upon oath or affirmation.

C. Irrelevant and unduly repetitious evidence shall be excluded.

D. Each party shall have these rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing;
2. To introduce documentary and physical evidence;
3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
4. To impeach any witness regardless of which party first called the witness to testify;
5. To rebut the evidence presented against the party; and
6. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.

E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments. [Ord. 3-2005 § 2].

4.07.160 Form and contents of decision – Finality of decision.

A. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, or revoke the license, the hearing examiner shall affirm the city manager’s decision to deny, suspend, or revoke the license. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.

B. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by Section 1094.6 of the California Code of Civil Procedure. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section. [Ord. 3-2005 § 2].

4.07.170 Enforcement.

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

B. Any violation of this chapter may be remedied by a civil action brought by the city attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal enforcement proceedings, and suits for injunctive relief. The city may recover reasonable attorneys’ fees and costs of suit in any civil action brought by the city attorney to remedy any violation of this chapter.

C. Violations of this chapter are hereby declared to be public nuisances subject to abatement by the city. [Ord. 3-2005 § 2].

4.07.180 Severability.

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If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, that decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The city council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrase hereof be declared invalid or unenforceable. [Ord. 3-2005 § 2].

4.07.190 Effective date and publication.

Within 15 days from and after adoption, the ordinance codified in this chapter shall be published once in the Grapevine Independent, a newspaper of general circulation printed and published in Rancho Cordova City and circulated in the city of Rancho Cordova, in accordance with Section 36933 of the California Government Code. The ordinance codified in this chapter shall take effect and be enforced 30 days after its adoption. [Ord. 3-2005 § 2

**Chapter 6.84
REGULATION OF SMOKING**

6.84.020 Definitions.

A. “Bar” means an area in which the serving of food is only incidental to the consumption of alcoholic beverages and where no persons under the age of 18 years are allowed to enter except to travel to the restroom facilities. The term “bar” shall not include an adjacent restaurant dining area when meals are being served.

B. “Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods and services are sold, as well as professional corporations and other entities under which professional services are delivered.

C. “Child care facilities” means any family day care home regulated by Sections 1597.30 through 1597.621 of the California Health and Safety Code, and any day care center for children regulated by Section 1596.90 et seq. of the California Health and Safety Code. It does not include foster homes or residential child care facilities.

D. “Cigarette” means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco and such roll weighs over three pounds per thousand, as defined in Revenue and Taxation Code Section 30003, as it may be subsequently amended or superseded.

E. “Dining area” means any area, including streets and sidewalks, that is available to or commonly used by the general public or an employee and which is designated, established or regularly used for the consumption of food or drink.

F. “E-cigarette” or “electronic cigarette” or “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, vape pen, or e-hookah. “E-cigarette”, “electronic cigarette”, or “electronic smoking device” includes any component, part, or accessory of the device, and also includes any substance that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. “E-cigarette”, “electronic cigarette,” or “electronic smoking device” 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.

G. “Employee” means any person who is employed by an employer for direct or indirect monetary wages or profit, including those employed full-time, part-time, temporary or contracted for from a third party; “employee” also means any person who performs services as a volunteer or intern for a business or nonprofit entity.

H. “Employer” means any person, business, corporation, entity, partnership, municipal corporation or agency, or nonprofit entity which employs the services of one or more persons, and includes the city.

I. “Enclosed” means closed in by a roof and three or more connected, floor-to-ceiling walls with appropriate openings for ingress and egress.

J. “Multifamily residential property,” for purposes of this chapter, means residential property containing two or more total units with one or more shared walls, floors or ceilings, including but not limited to rental complexes, apartments, residential cooperatives, condominium complexes, senior citizen residences, assisted living complexes and skilled nursing facilities. “Multifamily residential property” does not include:

1. A hotel or motel that meets the requirements of Section [1940\(b\)\(2\)](#) of the Civil Code;
2. A mobile home park;
3. A campground;
4. A single-family residence;
5. A single-family home with a detached in-law or second unit when permitted pursuant to a city ordinance and/or applicable state law.

K. “Mall” means enclosed public walkway or hall area which serves to connect retail or professional establishments, whether publicly or privately owned.

L. “Nonprofit entity” means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character-building, political, social or other similar purposes, the net proceeds from the operation of which are not for private financial gain. A public agency is not a nonprofit entity within the meaning of this chapter.

M. “Open space” means any lot or area of land or water essentially or partially unimproved and set aside, dedicated, designated or reserved for public use or enjoyment, or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space.

N. “Place of employment” means any enclosed area under the control of a public, nonprofit, or private employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges and restrooms, conference rooms and classrooms, vehicles, taxis, employee cafeterias or eating places, and hallways. A private residence is not a place of employment for the purposes of this chapter, unless it is used as a child care or health care facility, or unless it is used for a permitted home occupation having one or more employees, or which is visited by the public twice a month or more.

O. “Private club” means any eating establishment, organization, club, boardinghouse or guesthouse which gives or offers food for sale to the public, guests, patrons or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions, except that the term “restaurant” shall not include bars.

P. “Recreational area” means any area that is publicly owned or controlled and open to the general public for recreational purposes. The term “recreational area” includes but is not limited to parks, picnic areas, playgrounds, sports fields, open space, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, skateboard parks, and ice-skating rinks, but does not include golf courses.

Q. “Service area” means any publicly or privately owned area, including streets and sidewalks, that is designated to be used or is regularly used by one or more persons to wait for or receive a service or make a transaction, whether or not such service or transaction involves the exchange of money. The term “service

area” includes automated teller machine waiting areas, all bus stops, light rail stops, and other local public transit facilities.

R. “Smoke” means the gases, particles or vapors released into the air by combustion, electronic ignition or vaporization when the apparent or usual purpose of the combustion, electronic ignition or vaporization is human inhalation of the resulting combustion products, including but not limited to tobacco smoke, cigarette smoke, marijuana smoke, and gases, aerosol or vapor released by the ignition of e-cigarettes or electronic smoking devices. “Smoke” does not include the product of combustion of incense or similar products when used solely for olfactory purposes and not containing tobacco or nicotine.

S. “Smoking” means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, pipe, hookah, or any other lighted or heated tobacco or plant product intended for inhalation, including marijuana, whether natural or synthetic, in any manner or in any form. “Smoking” includes the use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking.

T. “Sports arena” means any sports pavilion, gymnasium, health spa, boxing arena, swimming pool, roller rink, ice rink, bowling alley, pool hall, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.

U. “Tobacco product” means:

- 1) Any product containing, made of, or derived from tobacco or nicotine, whether natural or synthetic, 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;
- 2) Any electronic smoking device and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine; or
- 3) 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.

“Tobacco product” does not mean drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

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

W. “Work area” or “workplace” means any area of a place of employment enclosed by floor-to-ceiling walls in which two or more employees are assigned to perform work for an employer. [Ord. 14-2020 § 2; Ord. 13-2014 § 3; Ord. 9-2014 §§ 2 – 4; Ord. 21-2003 §§ 2, 4; Ord. 20-2003 §§ 2, 4; SCC 0810 § 2, 1990; SCC 610 § 2, 1984. Formerly 6.84.010, 6.84.015, 6.84.024, 6.84.041, 6.84.045, 6.84.055]

23.919.100 Smokers' lounge, hookah bar, e cigarette lounge and vapor lounge/bar

A. Purpose and Findings.

1. The council finds that the use of hookah pipes, electronic cigarettes, and other similar devices in smokers' lounges, hookah bars, and vapor bars/lounges and the activities associated with such businesses (including loud music, large numbers of customers congregating for long periods, etc.) have been associated with increases in odors, noise, vapors, second-hand smoke, parking impacts, loitering, and disturbances in the peace. The purpose of this section is to prevent the overconcentration of this land use and to mitigate the negative impacts associated with this land use.
2. The council also finds that smoking and vaping uses expose minors to dangerous secondhand smoke by-products and increase the potential for minors to associate smoking of electronic tobacco devices and hookah pipes with a normative or healthy lifestyle.
3. The council also finds that the tobacco smoke, including secondhand smoke, from hookah pipes and electronic cigarettes contributes to indoor air pollution and is a significant health hazard and carcinogen to smokers and nonsmokers alike, including employees of smokers' lounges and hookah bars.
4. The U.S. Food and Drug Administration conducted laboratory analysis of electronic cigarette samples and found them to contain carcinogens and toxic chemicals to which users and bystanders could potentially be exposed, suggesting that the same health and public nuisance concerns present with conventional cigarettes exist with electronic cigarettes.
5. The U.S. Centers for Disease Control and Prevention reports that smoking a hookah has many of the same health risks as cigarette smoking; that hookah use by youth is increasing; that the charcoal used to heat hookah tobacco can have negative health risks because it produces high levels of carbon monoxide, metals, and carcinogens; that hookah smokers may absorb more of the toxic substances also found in cigarette smoke than cigarette smokers do; that secondhand smoke from hookahs can be a health risk for nonsmokers; and that new forms of electronic hookah smoking are now on the market and very little information is available on the health risks of electronic tobacco products.
6. The city has banned indoor smoking in places accessible to the public under Chapter 6.84 RCMC (Regulation of Smoking). However, California Labor Code Section 6404.5(d)(4) allows for indoor smoking within retail or wholesale tobacco shops and private smokers' lounges and such businesses do currently exist within the city; and therefore the council finds that it is necessary to enact clear and defined regulations for this use.

B. Applicability.

1. The provisions of this section shall apply in addition to other regulations of this zoning code and municipal code. In the event of a conflict between other sections and this section, this section shall control.
2. The provisions of this section shall apply to new facilities established following the effective date of the ordinance codified in this title. All legal, code-compliant smokers' lounges, hookah bars, vapor bars, and e-cigarette lounges currently located in the city shall become legal, nonconforming uses and as such must comply with the regulations set forth in Chapter 23.170 RCMC.

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Chapter 23.919.100 Smokers' lounge, hookah bar, e-cigarette lounge and vapor lounge/bar

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C. Location. Smokers' lounges, hookah bars, e-cigarette, and vapor bars/lounges shall only be permitted in general commercial (GC) and light industrial (M-1) zoning districts.

D. Operational and Development Standards. The following operational and development standards shall apply to all smokers' lounges, hookah bars, vapor bars, and e-cigarette lounges in the city and shall be included as conditions imposed upon any license, permit, or other entitlement granted for such a business:

1. Distance Requirements. All e-cigarette lounges, hookah bars, vapor bars, and smokers' lounges shall be located at least 500 feet from other e-cigarette lounges, hookah bars, smokers' lounges, smoke shops, and tobacco shops. All e-cigarette lounges, hookah bars, vapor bars, and smokers' lounges shall be located at least 1,000 feet from the following:

- a. Public or private K-12 schools and day cares.
- b. Libraries.
- c. Churches.
- d. Community and recreation centers.
- e. Liquor stores.
- f. Sexually oriented businesses.
- g. Tattoo parlors.
- h. Pawnshops.
- i. Bars and nightclubs.
- j. Card rooms.
- k. Check cashing businesses.
- l. Parks.
- m. Residential zones.

2. The business shall be owner-operated or otherwise exempt from the prohibition of smoking in the workplace pursuant to California Labor Code Section 6404.5.

3. The establishments shall operate in compliance with all federal, state, county, and local laws and regulations.

4. Minors Prohibited. No persons under 21 years of age shall be permitted within the establishment, including as employees, and business owners or operators shall require proof of identification to verify the age of customers, visitors, and employees. This means that all employees must be at least 21 years of age.

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5. **Parking Standards.** Parking shall be provided under the standards established for bars and nightclubs in Table 23.719-1, as may be amended from time to time.

6. **Hours of Operation.** Operating hours shall be limited to 8:00 a.m. to 10:00 p.m.

7. **Indoor Operation Only.** All business-related activity, including smoking, shall be conducted entirely within a building. Outdoor seating, operating outdoor barbecues or braziers, and/or lighting coals outdoors shall not be permitted.

8. **Entertainment and Admission Charges Prohibited.** No live entertainment, including dancers, singers, disc jockeys, or comedians shall be permitted within the business. No admission charges, including a cover charge or minimum purchase requirement, shall be permitted.

9. **Food and beverages, including alcoholic beverages and prepackaged food and beverages, shall not be sold, served, or consumed on the premises.**

10. **Visibility and Illumination.** No window coverings or signage shall prevent visibility of the interior of the establishment from the outside during operating hours. The interior of the establishment shall have lighting adequate to make the conduct of patrons within the establishment readily discernible to people of normal visual capabilities.

11. **Ventilation.** Adequate ventilation must be provided in accordance with all standards imposed by the building official and fire department, and those establishments by state or federal laws. The requirements imposed by the building official or fire department may be more comprehensive than current building codes to prevent negative health and nuisance impacts on neighboring properties, including a requirement for a separate system to prevent smoke and vapors from migrating to adjoining suites or buildings. The ventilation shall, at a minimum, prevent smoke and vapors from migrating into adjacent buildings and/or suites and to outdoor public areas. A mechanical exhaust hood system shall be required if an establishment heats coals indoors.

12. **Noise.** Any amplified noise shall be subject to the regulations established in the municipal code, including those in Chapter 6.68 RCMC (Noise Control) and Chapter 23.737 RCMC (Noise, Odor, and Vibration Performance Standards), as may be amended from time to time.

13. **Security.** Uniformed security guard(s) shall be provided, as deemed necessary by the chief of police or his/her designee.

E. **Penalties and Enforcement.** Any violation of this section shall be enforced under Chapter 23.173 RCMC. [Ord. 4-2017 § 3 (Exh. B); Ord. 1-2016 § 2].