

ORDINANCE NO. _____

**AN UNCODIFIED URGENCY ORDINANCE ADOPTING AN INTERIM
MORATORIUM ON NEW TOBACCO RETAILER ESTABLISHMENTS
FOR ALL PURPOSES WITHIN THE CITY OF PLACERVILE PENDING
THE DEVELOPMENT AND ADOPTION OF TOBACCO PRODUCT
RETAIL REGULATIONS**

WHEREAS, the City has seen a proliferation of tobacco and vape shop retail businesses within its incorporated limits, with five new licenses issued since 2020 for establishment within the City, in addition to other existing general retailers that also sell tobacco and vape products; and

WHEREAS, the City is concerned about this recent proliferation of tobacco retailer businesses and the harmful effects of tobacco on City residents, especially youth; and

WHEREAS, the City Council has a substantial interest in protecting City residents, particularly youth and underserved populations, from the harms of tobacco use; and

WHEREAS, tobacco use is the number one cause of preventable death in California and continues to be an urgent public health issue, as evidenced by the following: 40,000 California adults die from their own smoking annually¹; more than 25% of all adult cancer deaths in California are attributable to smoking²; smoking costs California \$15.44 billion in annual health care expenses, \$3.85 billion in Medicaid costs caused by smoking, and \$28.1 billion in smoking-caused productivity losses³; tobacco use can cause disease in nearly all of the organs of the body and is responsible for 87% of lung cancer deaths, 32% of coronary heart disease deaths, and 79% of all cases of chronic obstructive pulmonary disease in the United States⁴; and

¹ Centers for Disease Control and Prevention. Best Practices for Comprehensive Tobacco Control Programs — 2014. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at:

https://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2014/comprehensive.pdf.

² Lortet-Tieulent J, Goding Sauer A, Siegel RL, et al. State-Level Cancer Mortality Attributable to Cigarette Smoking in the United States. JAMA Intern Med. 2016;176(12):1792-1798. doi:10.1001/jamainternmed.2016.6530.

³ Campaign for Tobacco-Free Kids. The Toll of Tobacco in California.

<https://www.tobaccofreekids.org/problem/toll-us/california>. Reviewed December 18, 2023.

⁴ U.S. Department of Health and Human Services. The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health

WHEREAS, 5.6 million of today’s Americans who are younger than 18 years of age are projected to die prematurely from a smoking-related illness⁵; and

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 poverty⁶; and

WHEREAS, the density of tobacco retailers near adolescents’ homes has been associated with increased youth smoking rates⁷ and initiation of noncigarette tobacco product use⁸; and

WHEREAS, adults who smoke are likely to have a harder time quitting when residential proximity to tobacco retailers is closer⁹ and density is higher¹⁰; and

WHEREAS, the recently released 2023 National Youth Tobacco Survey (NYTS) identified a concerning trend that has emerged among middle school students showing a significant rise in the use of any tobacco product reaching 6.6% in 2023, up from 4.5% in 2022. That is an increase of over 46%¹¹; and

WHEREAS, in 2023, 10% of middle and high school students (2.80 million) reported current (i.e., past 30-day) use of tobacco products¹²; and

WHEREAS, given the number of middle and high school students that use tobacco

Promotion, Office on Smoking and Health. 2014. Available at:

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

⁵ https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/diseases-and-death.html

⁶ E.g. Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighborhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health*. 2005;59(7):568-573. doi: 10.1136/jech.2004.029041.

⁷ Finan LJ, Lipperman-Kreda S, Abadi M, et al. Tobacco Outlet Density and Adolescents’ Cigarette Smoking: A Meta-Analysis. *Tob Control*. 2019;28(1):27-33. doi: 10.1136/tobaccocontrol-2017-054065.

⁸ Abdel Magid HS, Halpern-Felsher B, Ling PM, et al. Tobacco Retail Density and Initiation of Alternative Tobacco Product Use Among Teens. *J Adolesc Health*. 2020;66(4):423-430. doi: 10.1016/j.jadohealth.2019.09.004.

⁹ Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health*. 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.

¹⁰ E.g. Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty. *Addiction*. 2015;110(1):152-161. doi: 10.1111/add.12718.

¹¹ [Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023 \(cdc.gov\)](https://www.cdc.gov/nctobacco/2023-national-youth-tobacco-survey)

¹² Id.

products, sustained efforts to prevent initiation of tobacco product use among young persons and strategies to help young tobacco users quit are critical to reducing youth tobacco product use; and

WHEREAS, policies to reduce tobacco retailer density have been shown to be effective and can reduce or eliminate inequities in the location and distribution of tobacco retailers¹³; and

WHEREAS, the City has no specific regulations for tobacco retailers that would protect minors, such as distance requirements from schools and/or youth-oriented areas; and

WHEREAS, on February 13, 2024, the City Council provided staff direction to draft an urgency ordinance to allow staff the opportunity to develop an ordinance to regulate tobacco retail businesses; and

WHEREAS, on March 12, 2024, the City Council adopted an Urgency Ordinance No. 1716 providing for an interim 45-day moratorium on new tobacco retailer establishment which expires on April 26, 2024; and

WHEREAS, on April 9, 2024, the City Council adopted actions to alleviate concerns by allowing the establishment of new tobacco retailer establishments 10 days prior to the adoption of this Urgency Ordinance extension; and

WHEREAS, for the protection of the public's health, safety, and general welfare, the City desires to extend the prohibition to maintain the current status quo and to provide time for the City to continue to collaborate with El Dorado County Public Health Division's County-wide Tobacco Use Prevention Program (TUPP) team in tobacco prevention programs and in the preparation of an ordinance; and

WHEREAS, the City desires that such extension take effect immediately upon its adoption in accordance with §36934 of the California Government Code; and

WHEREAS, notice of the public hearing at which this Ordinance was considered was published in the Mountain Democrat, a newspaper of general circulation within the City of Placerville on April 5, 2024:

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLACERVILLE DOES ORDAIN AS FOLLOWS:

¹³ *E.g.* Ribisl KM, Luke DA, Bohannon DL, Sorg AA, Moreland-Russell S. Reducing Disparities in Tobacco Retailer Density by Banning Tobacco Product Sales Near Schools. *Nicotine Tob Res.* 2017;19(2):239-244. doi: 10.1093/ntr/ntw185.

Section 1. Extension of Moratorium. Urgency Ordinance No. 1716 is hereby extended for an additional ten months and fifteen days beyond its original expiration date, such that Urgency Ordinance No. 1716 shall now expire on March 15, 2025, unless further extended by the City Council pursuant to Government Code section 65858.

Section 2. Authority. Urgency Ordinance No. 1716 is extended pursuant to the authority conferred upon the City Council of the City of Placerville by Government Code Section 65858.

Section 3. Findings. In adopting this extension, the City Council finds and determines that each of the recitals and findings contained in Urgency Ordinance No. 1716 remain true and correct and are incorporated herein by reference, and that the adoption of this extension is necessary to allow the City to collaborate with El Dorado County Public Health Division's County-wide Tobacco Use Prevention Program (TUPP) team in tobacco prevention programs and in the preparation of tobacco retail ordinance.

Section 4. Written Report. Pursuant to California Government Code Section 65858 a written report adopted by the City Council of the City of Placerville on April 9, 2024, describing the actions to be undertaken to alleviate the conditions which led to the adoption of the interim urgency ordinance.

Section 5. No Mandatory Duty of Care. This Ordinance is not intended to and shall not be construed or given effect in a manner which imposes upon the City, or any officer or employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 6. Adoption of this Ordinance is Not a Project under the California Environmental Quality Act (CEQA). This Ordinance is not a "project" within the meaning of Public Resources Code Section 21065 and CEQA Guidelines Section 15378 because the temporary moratorium on approval of new Tobacco Retailer applications does not have the potential of resulting in a direct physical change to the environment or reasonably foreseeable indirect physical change in the environment. Even if the adoption of the moratorium were a project, it would be categorically exempt from CEQA under CEQA Guidelines Section 15308 because the moratorium is adopted in order for the County to adopt a regulatory process for the protection of the environment and there are no unusual circumstances under CEQA Guidelines Section 15300.2, and under the "common sense" exemption in CEA Guidelines Section 15061(b)(3) because there is no possibility that adoption of this temporary moratorium would have a significant effect on the environment.

Section 7: Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

Section 8. Conflicting Laws. For the term of this Ordinance, as set forth in Section 9 below, the provisions of this Ordinance shall govern. The provisions of this Ordinance shall prevail in the event that they are in conflict between the provisions of this Ordinance and the provisions of any provision of the Placerville Municipal Code or any other City ordinance, resolution, or policy.

Section 9. Effective Date.

This Urgency Ordinance shall take full force and effect immediately upon adoption by a vote of at least four-fifths of the City Council.

Section 10. The City Clerk is directed to publish this Ordinance, or a summary thereof, within fifteen (15) days in accordance with Government Code Section 36933.

I, REGINA O'CONNELL, CITY CLERK OF THE CITY OF PLACERVILLE, HEREBY CERTIFY this Ordinance was PASSED and ADOPTED by the City Council of the City of Placerville at a regular meeting on April 23, 2024.

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor Jackie Neau

ATTEST:

Regina O'Connell, CPMC, City Clerk