

ORDINANCE NO. 2017-10

TOBACCO RETAILING BUSINESSES

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance adds Chapter 88-26 to the County Ordinance Code to regulate the location of tobacco retailing businesses and to prohibit the establishment of hookah lounges, vapor lounges, and significant tobacco retailing businesses.

SECTION II. Chapter 88-26 is added to the County Ordinance Code, to read:

Chapter 88-26
TOBACCO RETAILING BUSINESSES

Article 88-26.2
General

88-26.202 Purpose. The primary purposes of this chapter are to restrict the concentration of tobacco retailing businesses in any one area; to minimize the availability of tobacco products to minors by prohibiting tobacco retailing businesses from locating near schools and other youth-sensitive areas; and to prohibit hookah lounges, vapor lounges, and significant tobacco retailing businesses, which have a deleterious effect upon adjacent areas. (Ord. 2017-10 § 2).

88-26.204 Definitions. For the purposes of this chapter, the following words and phrases have the following meanings:

- (a) “Hookah lounge,” also referred to as a “hookah bar,” means any facility, building, structure, or location where customers smoke tobacco or other substances through one or more hookah pipes (also commonly referred to as a hookah or waterpipe).
- (b) “Significant tobacco retailing business” means any tobacco retailing business for which 20 percent or more of floor or display area is devoted to tobacco products, tobacco paraphernalia, or both.
- (c) “Tobacco paraphernalia” and “tobacco product” have the definitions set forth in Section 445-2.006.
- (d) “Tobacco retailing” means selling, offering for sale, or exchanging or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco

paraphernalia. This definition is without regard to the quantity of tobacco products or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange.

- (e) “Tobacco retailing business” means any facility, building, structure, or location that is used, whether as a primary use or as an ancillary use, for tobacco retailing.
- (f) “Tobacco retailer’s license” means a license issued in accordance with Section 445-10.010.
- (g) “Vapor lounge,” also referred to as a “vape lounge,” “vapor bar,” “electronic smoking device bar,” or “electronic smoking device lounge,” means any facility, building, structure, or location where customers use one or more electronic smoking devices, as defined in Section 445-2.006, to deliver an inhaled dose of nicotine or other substance within the establishment. (Ord. 2017-10 § 2).

Article 88-26.4 Tobacco Retailing Business Locations

88-26.402 Restrictions. In land use districts where tobacco retailing regulated by this chapter would otherwise be a permitted use, it is unlawful to establish or maintain a tobacco retailing business if the location of the business is:

- (a) Within 500 feet of any parcel occupied by any other tobacco retailing business; or
- (b) Within 1,000 feet of any parcel occupied by a public or private school, playground, park, or library.

For the purposes of this section, distance is measured by the shortest line connecting any point on the property line of the parcel on which the tobacco retailing business will be established or maintained to any point on the property line of the other parcel. (Ord. 2017-10 § 2).

88-26.404 Establishment. For the purposes of this article, the establishment of a tobacco retailing business includes the opening of a tobacco retailing business as a new business, the relocation of an existing tobacco retailing business to a different location, or the conversion of an existing retail business location to a tobacco retailing business. (Ord. 2017-10 § 2).

88-26.406 Nonconforming tobacco retailing use.

- (a) For the purposes of this chapter, each of the following is a nonconforming tobacco retailing use:
 - (1) Any lawful use of any land or building for tobacco retailing, existing at the time

this chapter becomes effective, that does not conform to the provisions of Section 88-26.402.

- (2) Any lawful use of any land or building for tobacco retailing that, after this chapter becomes effective, does not conform to the provisions of Section 88-26.402(b) due to the lawful establishment of a public or private school, playground, park, or library.
- (b) A nonconforming tobacco retailing use is not a violation of this chapter, except as otherwise provided in subsection (c). If a nonconforming tobacco retailing use is continued after the effective date of this chapter, all applicable permits and licenses, including a tobacco retailer's license, must be maintained in full force and effect, and the nonconforming tobacco retailing use may not be increased, enlarged, or expanded.
- (c) A nonconforming tobacco retailing use must be discontinued if a change of ownership occurs 10 years or more after the date this chapter becomes effective, or 10 years or more after the date the use becomes nonconforming, whichever date is later. For the purposes of this subsection, a "change of ownership" occurs when: 50 percent or more of the ownership interest in the tobacco retailing business is transferred to another person or entity within a 12-month period; or, if the owner of the tobacco retailing business is a corporation, 25 percent or more of the stock interest in the corporate owner of the tobacco retailing business is transferred to another person or entity within a 12-month period. (Ord. 2017-10 § 2).

88-26.408 Compliance with code provisions. A tobacco retailing business allowed under this chapter may only be established and maintained in full compliance with Division 445 of this code. (Ord. 2017-10 § 2).

Article 88-26.6

Hookah Lounges, Vapor Lounges, and Significant Tobacco Retailing Businesses

88-26.602 Hookah lounges prohibited. A hookah lounge may not be established in any land use district. (Ord. 2017-10 § 2).

88-26.604 Vapor lounges prohibited. A vapor lounge may not be established in any land use district. (Ord. 2017-10 § 2).

88-26.606 Significant tobacco retailing businesses prohibited. A significant tobacco retailing business may not be established in any land use district. (Ord. 2017-10 § 2).

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SECTION III. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the Contra Costa Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: DAVID J. TWA,
 Clerk of the Board of Supervisors
 and County Administrator

Board Chair

By: _____
 Deputy

[SEAL]

KCK:

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