

ORDINANCE NO. 1696

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BUENA PARK, CALIFORNIA, AMENDING THE BUENA PARK MUNICIPAL CODE BY ADDING CHAPTER 5.60 (TOBACCO RETAILERS) TO TITLE 5 (BUSINESS LICENSE AND REGULATIONS) TO IMPOSE LICENSING AND OPERATING RESTRICTIONS ON TOBACCO RETAILERS AND PROHIBITING THE SALE OF FLAVORED TOBACCO PRODUCTS WITHIN THE CITY

A. RECITALS.

(i) The City of Buena Park ("City") is a California charter city with plenary authority over all "municipal affairs" and the broad "police powers" vested by California's Constitution, pursuant to which it may make and enforce laws necessary to protect and preserve the health, safety, and welfare of residents, subject only to enactments by the California Legislature on matters of "statewide concern."

(ii) Consistent with such authority, the City enacted the Buena Park Municipal Code ("BPMC") and Buena Park Zoning Code (Title 19 of the BPMC, hereinafter "BPZC") to, among other things, regulate the operations of businesses in the City.

(iii) The City Council finds that a local licensing system for tobacco retailers is necessary and appropriate to ensure that retailers comply with federal, state, and local tobacco control laws and business standards that were enacted to protect the health, safety, and welfare of its residents.

(iv) State law explicitly permits cities to enact local tobacco retail licensing ordinances, and suspend or revoke local licenses issued pursuant to such ordinances for a violation of any state tobacco control law (Cal. Bus. & Prof. Code § 22971.3), and California courts have affirmed the power of the City Council to regulate business activity to discourage violations of law. (See, e.g., *Cohen v. Board of Supervisors*, 40 Cal.App.3d 277 (1985); *Bravo Vending v. City of Rancho Mirage*, 16 Cal.App.4th 383 (1993); *Prime Gas, Inc. v. City of Sacramento*, 184 Cal.App.4th 697 (2010).)

(v) Over 130 cities and counties in California have passed local tobacco retailer licensing ordinances in efforts to discourage or reduce youth from using tobacco products, and such ordinances advance the substantial public interest associated with protecting youth and underserved populations from the well-established harms of tobacco use.

(vi) A requirement for tobacco retailers to obtain a license from the City prior to engaging in retail sales or distribution of tobacco products will not unduly burden legitimate business activities of retailers selling or distributing tobacco products to adults, but will allow the City of Buena Park to regulate the operation of lawful businesses to the extent necessary to minimize harmful secondary effects of the operation and discourage violations of federal, state, and local tobacco-related laws.

(vii) The City of Buena Park has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting

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sales of cigarettes and tobacco products to minors; and finally, and most importantly, in protecting children from being lured into illegal activity through the misconduct of adults.

(viii) All legal prerequisites to the adoption of this Ordinance have been duly satisfied and performed.

B. ORDINANCE.

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

SECTION 1. The facts set forth in the Recitals, Part A, of this Ordinance are true and correct, and incorporated into this Ordinance as substantive findings.

SECTION 2. Chapter 5.60 (Tobacco Retailers) of the Buena Park Municipal Code is hereby added to Title 5 (Business Licenses and Regulations) as follows:

5.60.010 Definitions.

For purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section. Words and phrases used in this chapter not specifically defined shall be construed according to the context and approved use of the language.

"Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including but not limited to tastes or aroma relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that a tobacco product shall not be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.

"Cigar" means any roll of tobacco, other than a cigarette, wrapped entirely or in part in tobacco or any substance containing tobacco and weighing more than three pounds per thousand.

"Cigarette" means (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, and (2) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette as described herein.

"City" means the City of Buena Park.

"Consumer" means a person who purchases a tobacco product for consumption and not for sale to another.

"Coupon" means anything that can be exchanged or used to acquire a tobacco product for less than the full retail price, whether in paper, digital or other form.

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"Department" means the City's Community Development Department, or the person designated by the department to enforce or administer the provisions of this chapter.

"Drug Paraphernalia" has the same meaning as in California Health and Safety Code, section 11364.5, as amended from time to time.

"E-cigarette" means any liquid or substance containing nicotine, whether sold separately or in combination with any device that may be used to deliver nicotine in aerosolized or vaporized form to a person. Common names for e-cigarettes include e-cigar, e-pipe, vape pen, or e-hookah or other names.

"Flavored shisha tobacco product" means any shisha tobacco product that contains a constituent that imparts a characterizing flavor.

"Flavored tobacco product" means any tobacco product (cigars, menthol cigarettes, little cigars, cigarillos, chewing tobacco, smokeless tobacco, shisha [hookah tobacco], flavored components / parts / accessories [such as flavored rolling papers, filters, and blunt wraps], electronic smoking devices, such as e-cigarettes [ESDs], and the solutions used in ESDs, which includes vaping) that contains a constituent that imparts a characterizing flavor. For purposes of this definition, "constituent" means any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet that is added by the manufacturer to the tobacco product during the processing, manufacturing or packing of the tobacco product.

"Full retail price" means the price listed for a tobacco product on its packaging or on any related shelving, advertising or display where the tobacco product is sold or offered for sale.

"Hookah" means a type of waterpipe, used to smoke shisha or other tobacco products, with a long flexible tube for drawing aerosol through water. Components of a hookah may include heads, stems, bowls, and hoses.

"Hookah tobacco retailer" means a tobacco retailer that is engaged in the retail sale of shisha tobacco products, hookah, and hookah smoking accessories.

"Labeling" means any written, printed or graphic material upon any tobacco product or on any of its packaging, or accompanying such tobacco product.

"Licensee" shall mean a person that has been issued a tobacco retailer's license by the City under this chapter, signifying the person's authorization to operate a tobacco retailing business in the City.

"Little cigar" means any roll of tobacco other than a cigarette wrapped entirely in part in tobacco or any substance containing tobacco and weighing no more than three pounds per thousand, and includes but is not limited to tobacco products known or labeled as small cigar, little cigar or cigarillo.

"Packaging" means any pack, box, carton or container of any kind or, if no other container, any wrapping, including cellophane, in which a tobacco product is sold or offered for sale to a consumer.

"Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity.

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"Proprietor" means a person with an ownership or managerial interest in a business that engages in whole or in part in tobacco retailing. An "ownership interest" shall be deemed to exist when a person has a ten percent (10%) 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.

"Sale" or "sell" means any transfer, exchange, barter, gift, offer for sale or distribution of a tobacco product for a commercial purpose, in any manner or by any means.

"Shisha tobacco product" means a tobacco product smoked or intended to be smoked in a hookah. "Shisha tobacco product" includes, and may be referred to as, hookah tobacco, waterpipe tobacco, maassel, narghile, and argileh. "Shisha tobacco product" does not include any electronic devices, such as an electronic hookah, electronic cigarette, or electronic tobacco product.

"Smoking" means inhaling, exhaling, burning or carrying any lighted, heated or ignited Tobacco Product.

"Tobacco retailer's license" or "licensee" shall mean a license issued by the City under this chapter that authorizes the person licensed to operate, sell tobacco products or otherwise engage in tobacco retailing in the City.

"Tobacco Paraphernalia" means any item designed or marketed for the consumption, use or preparation of Tobacco Products.

"Tobacco Product" means:

1. Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
2. Any electronic smoking device that delivers nicotine or other substances to the person inhaling from the device including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe or electronic hookah.
3. Any component, part, or accessory of a tobacco product, whether or not sold separately.
4. Notwithstanding the foregoing, "Tobacco Product" 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, including cessation products specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

"Tobacco retailer" means any person who sells, offers for sale, or otherwise exchanges or offers to exchange for any form of consideration, tobacco, tobacco products or tobacco paraphernalia; and "tobacco retailing" shall mean a person doing or engaging in any of the

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

5.60.020 Tobacco Retailer License Required.

A. It shall be unlawful for any person to sell tobacco products or otherwise engage in tobacco retailing except in strict compliance with this chapter, and without first obtaining and at all times maintaining a valid Buena Park tobacco retailer's license pursuant to this chapter.

B. It shall be unlawful for any person, any licensee, or a licensee's agents or employees to sell tobacco products or otherwise engage in tobacco retailing in any manner that violates this chapter, the terms and conditions of the license, or any local, state, or federal law applicable to tobacco products, tobacco paraphernalia, or tobacco retailing.

C. A tobacco retailer license issued by the City shall be prominently displayed in a publicly visible area at the licensed location.

D. A tobacco retailer's license required by this chapter shall be in addition to any other local, state, or federal laws or regulations applicable to the person or activities being conducted or operated at the subject location. The issuance of a license under this chapter shall not be construed as granting any other consent or approval that may be required by local, state, or federal law prior to or in connection with selling tobacco products or otherwise engaging in tobacco retailing, and nothing in this chapter shall preempt, supersede, or render inapplicable any other applicable provision of law, including without limitation the provisions of the Buena Park Zoning Code, Buena Park General Plan, or applicable specific plans.

E. This section shall become effective and enforceable at 12:00 a.m. on January 1, 2022.

5.60.030 License Application; Procedure.

A. Any person desiring to sell tobacco products or otherwise engage in tobacco retailing in the City shall first submit an application for a tobacco retailer's license to the City. The application shall be submitted on the form provided by the Community Development Department and shall contain the following information:

1. The name, address, and telephone number of each proprietor of the business seeking a license. The application shall be submitted in the name of each proprietor proposing to engage in tobacco retailing and shall be signed by each applicable proprietor or an authorized agent thereof.

2. The business name, address, and telephone number of the single fixed location for which a license is sought, and evidence that the fixed location satisfies the requirements of this chapter, or otherwise qualifies for an exemption to that section.

3. A general description of the business, and of the tobacco products and non-tobacco-related products, goods, or services to be sold or made available at the location, and evidence that the type and nature of tobacco products satisfy this chapter.

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4. A single name and mailing address for receiving all communications and notices required by or convenient to the enforcement of this chapter. If an authorized address is not supplied, notices will be provided at the business address.

4. Proof that the location for which a tobacco retailer's license is sought has been issued and maintains applicable State licenses for the sale of tobacco products.

5. A statement signed by each proprietor that no drug paraphernalia is or will be sold or offered for sale at the location for which a license is sought.

6. Such other information as the Department deems reasonably necessary for the administration or enforcement of this chapter as specified on the application form made available by the Department.

B. All information submitted in connection with an application for a tobacco retailer's license shall be subject to disclosure under the California Public Records Act (California Government Code section 6250, et seq.) and similar public disclosure laws.

5.60.040 Issuance or Denial of License.

A. Upon receipt of a complete application for a tobacco retailer's license, and upon payment of applicable license fees required by this chapter, the Community Development Department shall issue the license requested unless substantial evidence demonstrates that one or more of the following grounds for denial exists:

1. The application is incomplete or required fees have not been paid;
2. The information presented in the application is inaccurate, misleading, or false;
3. The application seeks a license for a location where tobacco retailing is prohibited or for a tobacco product that is prohibited by this chapter;
4. The application seeks a license to engage in tobacco retailing in any manner that is prohibited by this chapter or any other applicable local, state, or federal laws or regulations.

B. The Department's denial of an application shall be in writing and state clearly the reasons for such denial, and the Department's decision shall be subject to appeal pursuant to Section 5.60.150(B) of this chapter.

5.60.050 License Term; Renewal.

A.A tobacco retailer's license issued under this chapter shall be valid for a period of twelve (12) calendar months beginning on the date issued, after which the license shall automatically expire unless timely renewed pursuant to this section.

B.A licensee desiring to extend the term of a tobacco retailer's license shall annually apply for its renewal and pay required fees no later than thirty (30) days prior to scheduled expiration of the current license. Applications for license renewals shall be submitted on the form and include the information provided by the Community Development Department, and shall be approved by the Department unless one or more of the following grounds for denial exists:

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1. The application for renewal is untimely, in which case the applicant shall submit a new application under Section 5.60.060.
2. The renewal application is incomplete.
3. Any required renewal application fees have not been paid, or the applicant has failed to pay any fines, penalties, fees, or taxes otherwise imposed by this chapter or otherwise in the previous license year.
4. The information presented in the renewal application is inaccurate, misleading, or false.
5. The application seeks a renewal of a license for a location where tobacco retailing is prohibited or for a tobacco product that is prohibited by this chapter.
6. The application to renew a license that has been revoked in accordance with this chapter in any of the preceding five (5) years.
7. The application seeks a license renewal to engage in tobacco retailing in any manner that is prohibited by this chapter or any other applicable local, state, or federal laws or regulations.

C. The Department's denial of an application shall be in writing and state clearly the reasons for such denial, and the Department's decision shall be subject to appeal pursuant to Section 5.60.150(B) of this chapter.

5.60.060 License Nontransferable.

A license issued under this chapter may not be transferred to any other person, proprietor, or location other than that for which the license was originally issued, and any purported transfer or assignment shall be null and void. Any person desiring to transfer a license to any other person or location shall apply for a new license under this chapter.

5.60.070 Application and Licensing Fees.

Applicants for a tobacco retailer's license shall pay an application fee, licensees applying to renew an existing license shall pay an application renewal fee, and licensees shall pay an annual license fee, each in the amount as may be established from time to time by resolution of the City Council. The application fee, renewal fee, and annual fee shall be calculated and imposed by the City in an amount necessary to recover the City's cost of reviewing the applications and administering or enforcing this chapter.

5.60.080 Prohibited Tobacco Retailing Locations.

A. **Mobile Retailing Prohibited.** No retailer's tobacco license shall be issued for, and no person shall engage in tobacco retailing other than at a fixed location and permanent building or structure. For example, tobacco retailing on foot or by street vendors.

B. **Self Service Displays Prohibited.** Tobacco retailing by means of a self-service display is prohibited within the City. "Self-service display" means the open display or storage of tobacco products or tobacco paraphernalia in a manner that is physically accessible in any way to

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the general public without the assistance of the retailer or employee of the retailer and a direct person-to-person transfer between the purchaser and the retailer or employee of the retailer. A vending machine is a form of self-service display.

C. Sales Prohibited Near Sensitive Uses. No tobacco retailer's license shall be issued for and no licensee or any other person shall sell or otherwise engage in tobacco retailing at any location that is within: (i) five hundred (500) feet of any public or private school (kindergarten through high school), public library, or public park, or (ii) the distances in this section shall be measured by a straight line from the nearest point of the property line of the tobacco retailer to the nearest point of the property line of the sensitive use or retailer.

1. Exception for Legal Nonconforming Tobacco Retailers. The prohibition in Sections (C) above shall not apply to a tobacco retailer that satisfies all of the following criteria:

a. The tobacco retailer was lawfully operating and engaged in the sale of tobacco products as of the date this chapter was adopted; and

b. The tobacco retailer applies for, otherwise qualifies for, and is issued a tobacco retailer's license under this chapter by the City and renews the license annually thereafter.

2. Limitations; Expiration of Legal Nonconforming Use. Tobacco retailers issued a license and operating under the foregoing exceptions shall be considered a legal nonconforming use within the meaning of Division 2 [Nonconforming Uses and Sites] of Title 19 of the Zoning Code, and such tobacco retailers and the location shall be subject to all terms and conditions set forth in said Division governing (among other things) the extension, termination and amortization of nonconforming land uses in the City.

5.60.90 Prohibited Operations.

A. Sales at Drug Paraphernalia Locations Prohibited. No tobacco retailer's license shall be issued for, and no person shall engage in tobacco retailing at any location where drug paraphernalia is sold, offered for sale or displayed for sale.

B. Underage Sales Prohibited. No person engaged in tobacco retailing shall sell or distribute a tobacco product or tobacco paraphernalia to any other person who appears to be under twenty seven (27) years of age without first examining the recipient's identification to confirm the recipient is of the minimum age established by State law for the purchase or receipt of tobacco products or tobacco paraphernalia.

C. Underage Retailers Prohibited. It shall be unlawful for any person who is younger than the age of eighteen (18) years old to act as a tobacco retailer or engage in tobacco retailing.

5.60.100 Sale of Flavored Tobacco Products Prohibited.

A. The sale of flavored tobacco products to customers is prohibited in the City, and no person or licensee shall sell or offer for sale any flavored tobacco product to customers in the City as of 12:00 a.m. on March 31, 2022.

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B. There shall be a rebuttable presumption that a tobacco retailer in possession of ten (10) or more flavored tobacco products, whether individual products or packaged or in the aggregate, possesses such flavored tobacco products with intent to sell or offer for sale.

C. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product within the meaning of this chapter if a tobacco retailer, manufacturer, or any employee or agent thereof:

1. Makes or disseminates a public statement or claim that the tobacco product imparts a characterizing flavor;
2. Uses text and/or images on a tobacco product's labeling or packaging that explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor;
3. Uses text or images on the labeling or packaging that uses descriptive terms such as "sweet" or "spicy" that refer to or imply a characterizing flavor; or
4. Takes any other action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.

D. Subsection A prohibiting the sale of flavored tobacco products shall not apply to the following:

1. The sale of flavored shisha tobacco products by a hookah tobacco retailer if all of the following conditions are met:

a. The hookah tobacco retailer shall have been lawfully operating within the City of Buena Park as of July 27, 2021.

b. 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.

c. The hookah tobacco retailer does not permit any person under 21 years of age to be present or enter the area designated for hookah use.

d. The hookah tobacco retailer shall operate in accordance with all relevant state and local laws relating to the sale of tobacco products.

5.60.110 Posting of Full Retail Price; Discounts Prohibited; Minimum Packaging and Pricing.

A. A tobacco retailer shall prominently display the full retail price of all tobacco products offered for sale at the point of display or at the point of sale.

B. Notwithstanding any other provision of this chapter, no tobacco retailer shall:

1. Honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase tobacco products for less than the full retail price.

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2. Sell, or offer for sale, any tobacco products to a consumer through a multi-package discount or otherwise provide any tobacco products to a consumer for less than full retail price in exchange for the purchase of any other tobacco products or any other item by the consumer.

3. Provide any free or discounted item to a consumer in consideration for the purchase of tobacco products at full retail price.

4. Sell, or offer for sale, tobacco products to a consumer for less than full retail price; provided, however, that the foregoing does not prohibit a tobacco retailer from changing the full retail price or informing consumers that the full retail price has changed.

5.60.120 Compliance Monitoring.

The Community Development Department may inspect the premises of tobacco retailers for compliance with this chapter, and may make periodic inspections, reasonable inspections of the location during normal business hours to assure compliance with this chapter and other applicable state and federal laws relating to tobacco retailers or tobacco products. An inspection of each tobacco retailer for compliance with this chapter shall occur not less than once annually. If any violations of this chapter are found, the Department shall notify the licensee of the violation in writing, and may take such other or additional action as permitted by this chapter or by law based on the nature and severity of the violation to remedy, correct, and cure it.

5.60.130 License Suspensions or Revocations; Fines for Violations.

A. The Department may impose the fines or may suspend or revoke a license as set forth below if the Department finds based on the preponderance of evidence and after the licensee is afforded notice and opportunity to be heard, that the licensee, or any of the licensee's employees or agents, has violated any of the requirements, conditions or prohibitions of this chapter, or has pleaded guilty, "no contest" or its equivalent, or admitted to a violation of any law designated in this chapter.

1. Upon the first violation at a location within any five-year period, the licensee shall pay an administrative fine of \$1,000, and/or the license may be suspended for up to thirty (30) days.

2. Upon the second violation of this chapter at a location within any five-year period, the licensee shall pay an administrative fine of \$1,500, and/or the license may be suspended for up to sixty (60) days.

3. Upon the third violation and each successive violation of this chapter at a location within any five-year period, the licensee shall pay an administrative fine of \$5,000, and/or the license may be suspended for up to ninety (90) days, and/or the license may be referred to revocation proceedings.

B. During the period of any license suspension, or following the revocation of a license: (1) all tobacco products and tobacco paraphernalia shall be kept out of public view; and (2) no display or advertisement relating to tobacco products or tobacco paraphernalia that promotes the sale or distribution thereof from the subject location shall be visible from the public view.

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C. The Department's decision to impose a fine or to suspend a license shall be in writing and state clearly the reasons for such suspension, and the Department's decision shall be subject to appeal pursuant to this chapter.

5.60.140 License Revocation.

A. After notice and hearing, the Department may revoke any license granted pursuant to this chapter if it determines based upon a preponderance of the evidence that the licensee, or any of the licensee's employees or agents:

1. Made any false, misleading or fraudulent statement of a material fact in the application for license, or any report or record required to be filed pursuant to this chapter.
2. That one or more of the bases for denial of a license under Section 5.60.060 existed at the time application was made or at any time before the license issued.
3. Committed an isolated egregious violation, or repeated violations of this chapter, conditions of the license, or any statute, ordinance or condition relating to tobacco retailing or tobacco products; or
4. Is convicted of a felony or a crime or moral turpitude.

B. The Department's decision to revoke a license shall be in writing and state clearly the reasons for such revocation, and the Department's decision shall be subject to appeal pursuant to the provisions of this chapter.

5.60.150 Procedure for Suspension or Revocation; Appeals.

A. Notice. On determining that grounds for license suspension or revocation exist, the Department shall furnish written notice of the proposed suspension or revocation to the licensee. Such notice shall set forth the time and place of a hearing, and the ground(s) upon which the proposed suspension or revocation is based. The notice shall be mailed, postage prepaid, addressed to the address listed in the application for receiving notices, or shall be personally delivered to the licensee at the licensed location, at least ten (10) calendar days prior to the hearing date.

B. Hearing. Hearings shall be conducted in accordance with procedures established by the Department. All parties involved shall have a right to: (1) offer testimonial, documentary and tangible evidence bearing on the issues; (2) be represented by counsel; and (3) confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any hearing under this section may be continued for a reasonable time for the convenience of a party or a witness.

C. Penalty. After holding the hearing in accordance with this section, upon determining that there are sufficient grounds for disciplinary action, the Department shall impose fines or suspend or revoke the license as permitted by this chapter. The Department may, in conjunction with the issuance of a warning or the suspension of a license, order the licensee to take appropriate corrective action.

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D. Appeals. A decision of the Department to deny, suspend or revoke a license, or impose a fine on a licensee is appealable to the City Manager and any appeal must be filed in writing with the City Clerk within ten (10) calendar days of mailing of the Department's decision. If such an appeal is timely made, it shall stay enforcement of the suspension, revocation, or fine. The City Manager shall conduct the hearing and render a written decision within thirty (30) days after the conclusion of hearing. The City Manager's decision may be reviewed by the Planning Commission upon written appeal filed with the City Clerk within ten (10) calendar days of mailing of the City Manager's decision. Upon receipt of such an appeal, the Department will schedule a public hearing before the Planning Commission. The Planning Commission may affirm, reverse, or conditionally reverse the City Manager's decision and the Planning Commission's decision shall be final. Review of the Planning Commission's decision shall be only through a judicial action under Code of Civil Procedure section 1094.5 and within the time frame for filing such action as provided in Code of Civil Procedure section 1094.6.

5.60.160 Authority to Adopt Regulations to Implement this Chapter.

The Director of the Department shall have the power to adopt and implement regulations not consistent with this chapter for the purpose of carrying out the provisions hereof. Any such regulations shall be published in advance and a copy shall be on file with the Department and available for public inspection.

5.60.170 Violations, Remedies and Enforcement.

A. General. Violations of this chapter shall be punishable or subject to the remedies set forth in this chapter, in addition other penalties and remedies that are available under this code or other applicable law. Each and every violation of this chapter shall be considered individually as a separate violation, and each day of a continuing violation shall be a separate violation of this chapter.

B. Public Nuisance. A violation of this chapter is declared and shall be a public nuisance within the meaning of California Civil Code section 3480 and other applicable laws. The City Council may authorize and direct the City Attorney to bring an action in the appropriate court to abate or enjoin any continued or threatened violations of this chapter.

C. Seizure of Unlawful Tobacco Products. Tobacco products or tobacco paraphernalia that is offered for sale or exchange in violation of this chapter are subject to seizure by the Department or any peace officer, and shall be forfeited after the licensee and any other owner of the tobacco products and tobacco paraphernalia seized is given reasonable notice and an opportunity to demonstrate that no such violation of this chapter occurred. The Department's decision shall be in writing and state clearly the reasons for it, and the Department's decision shall be subject to appeal pursuant to this chapter. Tobacco products and tobacco paraphernalia that is seized pursuant to this section shall be stored by the Buena Park Police Department, and shall be destroyed only after all internal appeals have been exhausted and the time in which to seek judicial review pursuant to California Code of Civil Procedure section 1094.6 or other applicable law has expired without the filing of a lawsuit or, if such a suit is filed, after judgment in that suit becomes final.

D. Evidence of Violations. 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 person shall not be required to appear or give testimony in any civil or administrative process brought to enforce

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this chapter, and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

SECTION 3. CEQA. Adoption of this Ordinance is not a project within the meaning of Section 15378 of the CEQA Guidelines in that it (a) is an ordinance of general policy and procedure and does not constitute a project within the meaning of CEQA and (b) has no potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment.

SECTION 4. Severability. The City Council declares that, should any provision, section; paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Ordinance shall remain in full force and effect.

SECTION 5. This Ordinance shall take effect 30 days after its passage and adoption pursuant to California Government Code section 36937.

SECTION 6. The City Clerk of the City of Buena Park shall certify to the passage of the Ordinance and shall cause the same to be posted in the manner required by law.

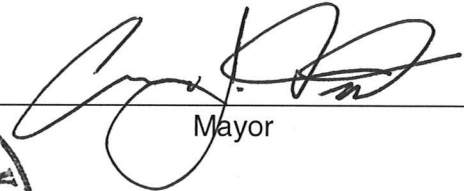
PASSED AND ADOPTED this 27th day of July 2021, by the following called vote:

AYES: COUNCILMEMBERS: Park, Sonne, Brown, Swift, Traut

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None



Mayor

ATTEST:



City Clerk



I, Adria Jimenez, City Clerk of the City of Buena Park, California, do hereby certify that the foregoing ordinance was introduced and passed at a regular meeting of the City Council of the City of Buena Park held on the 27th day of July 2021.



City Clerk