

ORDINANCE NO. 2023-09

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARINA
AMENDING TITLE 5 OF THE MARINA CITY CODE
BY ADDING CHAPTER 5.90, "TOBACCO RETAILER LICENSE"**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 1. Findings.

1. The City Council finds and determines the recitals set forth above to be true and correct and by this reference, incorporates the same herein as findings.
2. The City Council finds that the recitals set forth above contain persuasive support for the proposition that the City has adequate authority to allow and regulate tobacco retail sales in the City.
3. The City Council hereby finds that it is in the best interest of the health, safety and welfare of the residents of the City to establish regulations that will license tobacco retail sales within the City.
4. The City wishes to adopt regulations that mirror County Code 7.80 so as to allow either the City or the County to oversee and enforce provisions applicable to licensing tobacco retailers.

Section 2. New Chapter 5.90, "Tobacco Retail Licensing" is hereby added to Title 5, BUSINESS TAXES, LICENSES AND REGULATIONS, of the Marina City Code as follows:

CHAPTER 5.90- TOBACCO RETAILER LICENSE

Sections:

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

5.90.010 Monterey County Tobacco Retailer License Provisions Adopted

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

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

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

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

5.90.010 Pharmacy Tobacco Retailing is Prohibited

A. The definitions set forth in Monterey County Code Chapter 7.80, entitled “Tobacco Retailer License,” apply to this subsection. In addition, for the purposes of this subsection, “Pharmacy” means any retail establishment in which the profession of pharmacy is practiced by a pharmacist licensed by the State of California in accordance with the Business and Professions Code and where prescription pharmaceuticals are offered for sale, regardless of whether the retail establishment sells other retail goods in addition to prescription pharmaceuticals.

B. Prohibition – Pharmacy.

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

Section 3. Severability.

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

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

Section 4. Effective Date.

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

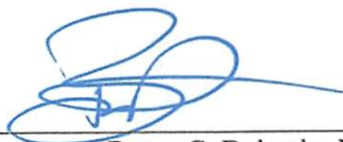
This foregoing ordinance was introduced at a regular meeting of the City Council and read on the 15th day of August 2023 and was finally adopted on the 6th day of September 2023, by the following vote:

AYES: COUNCILMEMBERS: Visscher, McCarthy, Biala, Medina Dirksen, Delgado

NOES: COUNCILMEMBERS: None

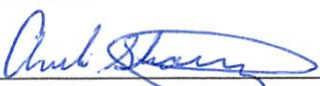
ABSENT: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None



Bruce C. Delgado, Mayor

ATTEST:



Anita Sharp, Deputy City Clerk