

ORDINANCE NO. 2021 - 10

**AN INTERIM ORDINANCE TO REGULATE THE LOCATION
OF SMOKE SHOPS/TOBACCO STORES**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA:

SECTION 1. Consistent with its control over municipal affairs as a charter city and the powers vested in the City of Visalia through the California Constitution, the City of Visalia is authorized to secure and promote the public health, comfort, safety, and welfare of its citizenry. The City of Council of the City of Visalia hereby makes the followings findings:

- A. The City of Visalia Zoning Ordinance, in Section 17.04.030, defines Smoke Shop/Tobacco Store as follows: *"Business with sales of tobacco, either loose or prepared as cigarettes and products for smoking constituting more than thirty (30) percent of gross sales and/or thirty (30) percent of net lease area."*
- B. A Smoke Shop/Tobacco Store is currently allowed under the current City of Visalia Zoning Ordinance in the Commercial Mixed Use (C-MU) and Downtown Mixed Use (D-MU) within the City of Visalia with a Conditional Use Permit (CUP) issued under Visalia Municipal Code Chapter 17.38.
- C. In recent years the City of Visalia has seen an increase in requests for CUPs to operate a Smoke Shop/Tobacco Store. In a recent instance such a usage was proposed within 400 feet of an elementary school. The City of Visalia Zoning Ordinance considers schools a sensitive usage and restricts some types of activities within specified distance of a school.
- D. Although the recent instance of a proposed Smoke Shop/Tobacco Store near a school raised concerns over the proximity the usage was allowed because the current City of Visalia Zoning Ordinance is silent regarding this type of commercial activity near schools. The City Council has since considered whether a specific policy should be adopted and has determined that it would be in the interest of the public health, safety, or welfare.
- E. The increase in requests for the operation of a Smoke Shop/Tobacco Store that has occurred in recent years does not appear to be slowing, which has raised concerns of whether a proliferation of such types of uses could increase the rate of youth smoking within the City of Visalia.
- F. The City of Visalia has directed staff to research specific additional zoning ordinance regulations over the location of a Smoke Shop/Tobacco Store near sensitive uses, and in proximity to one another that could be permanently adopted to balance the need to minimize the visibility of such products to youths while allowing the sale of legal products. However, such a modification will take additional time to be reviewed and prepared.

- G. According to the federal Centers for Disease Control (CDC) 9 in 10 adult smokers in the United States begin smoking by the age of 18 and nearly all (99%) of smokers first try smoking by the age of 26. On average every day in the United States approximately 1,600 youths smoke their first cigarette.¹ Youths utilizing tobacco products are a public health risk.
- H. Concerns have been raised in the community that allowing Smoke Shop/Tobacco Store near schools or other areas where youth congregate increases the visibility of such products to youth, essentially allowing the existence of such stores to serve as advertising for tobacco products.
- I. Concerns have been raised that allowing multiple Smoke Shops/Tobacco Stores to congregate in proximity would also increase their visibility within the community and make tobacco products appear popular and cause less consideration of potential health risks.
- J. The CDC has determined that social and physical environments, such as mass media portrayals of tobacco products, seeing other youth use tobacco products, or seeing parents use tobacco products, can make youth more likely to try such products. In addition, access, availability, and visibility of tobacco products can increase the likelihood of youths using tobacco.² Allowing stores near locations where youth congregate increases the visibility of such products and creates a greater likelihood of youth seeing persons use tobacco products and consider such usage as favorable or desirable.
- K. The City Council finds and declares that there is a current and immediate threat to public health, safety, and welfare, caused by youths using tobacco products that requires the adoption of the proposed interim zoning ordinance while a more specific amendment to the Zoning Ordinance is reviewed in the normal process by the City.
- L. Further the City Council finds and declares that approving additional conditional use permits to allow additional Smoke Shops/Tobacco Stores near specified sensitive uses or within close proximity of an existing Smoke Shop/Tobacco Store would potentially be in conflict with the stated goals of the City of Visalia General Plan and Zoning Ordinance to preserve and promote the public health, safety, and welfare of the city by creating conditions that would increase the visibility and usage of tobacco products within the community making it more likely that youth might utilize tobacco products.

¹ CDC Youth and Tobacco Use Fact Sheet accessed
https://www.cdc.gov/tobacco/data_statistics/fact_sheets/youth_data/tobacco_use/index.htm

² CDC Youth and Tobacco Fact Sheet – see above.

- M. The City Council finds and declares that the zoning regulations on Smoke Shops/Tobacco Stores shall be adopted on an interim and immediate basis to protect the public health, safety, and welfare of the community while the more permanent regulations are reviewed in additional detail.

SECTION 2. While this interim ordinance is in effect the following regulatory standards shall apply as additional limitations under the Visalia Zoning Ordinance on the permissible location of a "Smoke Shop/Tobacco Store" as that term is defined in Visalia Municipal Code section 17.04.030. Businesses that are already operating under conditional use permits that have been issued prior to the date of this interim ordinance may continue to operate outside these regulatory limitations as they would constitute legal non-conforming use.

- A. There shall be a 750-foot separation requirement for Smoke Shops/Tobacco Stores from schools, licensed daycare facilities, parks, or other recreational facilities that are privately or publicly owned where minors congregate.
- B. Smoke Shops/Tobacco Stores shall not be permitted to overly concentrate in one area. Over concentration shall be presumed to apply when a new Smoke Shop/Tobacco Store is sought to be opened within 750-feet of a currently permitted and operating Smoke Shop or Tobacco Store.

SECTION 3. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstances, 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, subdivision, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Visalia hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases hereof be declared invalid or unenforceable.

SECTION 4. This Ordinance shall take effect immediately as an interim zoning ordinance under the provisions of California Government Code section 65858. It shall be of no further force and effect forty-five (45) days from its adoption unless it is extended pursuant to Government Code section 65858(a).

SECTION 5. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted as required by law.

PASSED AND ADOPTED: December 6, 2021

STEVE NELSEN, MAYOR

ATTEST:



LESLIE B. CAVIGLIA, CITY CLERK

APPROVED BY CITY ATTORNEY



STATE OF CALIFORNIA)
COUNTY OF TULARE) ss.
CITY OF VISALIA)

I, Leslie B. Caviglia, City Clerk of the City of Visalia, certify the foregoing is the full and true Ordinance 2021-10 passed and adopted by the Council of the City of Visalia at a regular meeting held on September 7, 2021 and certify a summary of this ordinance has been published in the Visalia Times Delta.

Dated: December 7, 2021

LESLIE CAVIGLIA, CITY CLERK



By Michelle Nicholson, Chief Deputy City Clerk