

REVISED
ORDINANCE NO. 2022-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA
APPROVING ZONING TEXT AMENDMENT NO. 2021-10,
A REQUEST BY THE CITY OF VISALIA TO AMEND CHAPTER 8.46 DEFINITIONS
REGARDING TOBACCO STORES, ZONING ORDINANCE SECTION CHAPTER
17.04 DEFINITIONS REGARDING SMOKE SHOPS / TOBACCO STORES, 17.25.030
(ZONING USE MATRIX) LINE R78, AND TO AMEND CHAPTER 17.32 SPECIAL
PROVISIONS TO IMPLEMENT PERFORMANCE STANDARDS REGARDING SMOKE
SHOPS/TOBACCO STORES, WHICH ARE CONDITIONALLY PERMITTED IN THE
C-MU (COMMERCIAL MIXED-USE) AND D-MU (DOWNTOWN MIXED-USE) ZONES,
CITYWIDE

WHEREAS, Zoning Text Amendment No. 2021-10 is a request by the City of Visalia a request by the City of Visalia to amend Chapter 8.46 Definitions regarding Tobacco stores, Zoning Ordinance Section Chapter 17.04 Definitions regarding Smoke Shops / Tobacco Stores, 17.25.030 (Zoning Use Matrix) line R78, and to amend Chapter 17.32 Special Provisions to implement performance standards regarding smoke shops/tobacco stores, which are conditionally permitted in the C-MU (Commercial Mixed-Use) and D-MU (Downtown Mixed-Use) Zones, Citywide. The specific amendments apply City-wide and are specified in Attachment “A” of this Ordinance; and

WHEREAS, the project is exempt under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) (common sense exemption); and

WHEREAS, the Planning Commission of the City of Visalia, after duly published notice, held a public hearing before said Commission on February 28, 2022; and,

WHEREAS, the Planning Commission of the City of Visalia considered the Zone Text Amendment in accordance with Section 17.44.070 of the Zoning Ordinance of the City of Visalia and on the evidence contained in the staff report and testimony presented at the public hearing; and,

WHEREAS, the City Council of the City of Visalia, after duly published notice, held a public hearing before said City Council on March 21, 2022, and introduced said Ordinance for first reading on that date.

NOW, THEREFORE, BE IT RESOLVED that the City Council concurs that the project is exempt from further review under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) (common sense exemption).

BE IT FURTHER RESOLVED that the City Council of the City of Visalia finds as follows:

1. That the proposed Zone Text Amendment is consistent with the intent of the General Plan, and Zoning Ordinance, and is not detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
2. That the proposed Zone Text Amendment is not inconsistent with any other Element of the General Plan.
3. The Zoning Text Amendment establishes objective standards to limit exposure and visibility of these uses near specified sensitive uses or within close proximity of existing Smoke Shop/Tobacco Store, consistent 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.
4. That the project is exempt from further review under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) (common sense exemption).

NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA, that Zoning Text Amendment 2021-10, is approved, as contained in Attachment “A” of this Ordinance.

Severability. 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.

Construction. The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

Effective Date. This Ordinance shall take effect thirty days after its adoption.

Certification. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.

Ordinance No. 2022-04

ATTACHMENT A

Zoning Text Amendment No. 2021-10, amendment to:

1. Chapter 8.46 Definitions regarding Tobacco Stores,
2. Chapter 17.04 Definitions regarding Smoke Shops / Tobacco Stores
3. Chapter 17.25, Section 17.25.030 (Zoning Use Matrix) line R78, and
4. Chapter 17.32 Special Provisions to implement performance standards regarding smoke shops/tobacco stores, which are conditionally permitted in the C-MU (Commercial Mixed-Use) and D-MU (Downtown Mixed-Use)

Changes to City of Visalia Municipal Code, as specified by underline & italics for additions and ~~strikeout~~ for deletions.

1. TITLE 8 Health and Safety

Chapter 8.46.010 Legislative purpose.

The city of Visalia has determined that in order to protect the health, safety, and welfare of those citizens within the city and metropolitan area, under the age of ~~eighteen (18)~~ twenty-one (21) years of age, it is necessary to regulate the sale, acquisition, or possession of tobacco products facilitated by self-service displays.

Chapter 8.46.030 Definitions

“Employee” means any person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. Employee also includes any person volunteering his or her time or service.

“Minor” means any person under eighteen (18) years of age. *In the State of California, the minimum age to purchase tobacco or tobacco related products is twenty-one (21) years of age.*

“Tobacco paraphernalia” means cigarette papers or wrappers, blunt wraps as defined in Section 308 of the Penal Code, pipes, holders of smoking materials of all types, cigarette rolling machines, or other instruments or things designed for the smoking or ingestion of tobacco products.

~~“Tobacco product” means any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhaling, snuffing, or other manner of ingestion or absorption in the human body~~ 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, chewing tobacco, hookah, pipe tobacco snuff; and any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, a vaping device, electronic cigar, electronic pipe, or electronic hookah.

~~“Tobacco shop” also referred to “Smoke Shop/Tobacco Store” in the City of Visalia Zoning Ordinance means a business establishment in which fifty (50) percent or more of any one or more of the following is devoted to or attributable to the sale of tobacco products:~~

~~—1. Wall space or any other display area such as tables, racks, or display structures; or~~

~~—2. Gross revenues.~~ any establishment, structure, facility, or stand that devotes more than thirty (30) percent of either its gross floor space or display area to the retail sale, display, marketing, bartering, trading or exchange of any combination of tobacco, tobacco products, or exchange of tobacco paraphernalia, including electronic smoking devices and accessories.

~~“Wholesale retailer” means any large-scale retail establishment with supporting goods and services designated to service a regional service trade area and located within the PCR zone.~~

2. TITLE 17 Zoning

Chapter 17.04 Definitions regarding Smoke Shops / Tobacco Stores

“Smoke Shop / Tobacco Store” means any establishment, structure, facility, or stand that devotes more than thirty (30) percent of either its gross floor space or display area to the retail sale, display, marketing, bartering, trading or exchange of any combination of tobacco, tobacco products, or exchange of tobacco paraphernalia, including electronic smoking devices and accessories.

3. Chapter 17.25 Uses in the Commercial, Mixed Use, Office, and Industrial Zones

Section 17.25.030 Commercial, Mixed-Use Office, and Industrial Zone Use Matrix

Commercial, Mixed Use, Office, and Industrial Zones Use Matrix P = Use is Permitted by Right C = Use Requires Conditional Use Permit T = Use Requires Temporary Use Permit Blank = Use is Not Allowed											
USE	Commercial and Mixed Use Zones					Office Zones			Industrial Zones		Special Use Standards (See identified Chapter or Section)
	C-N	C-R	C-S	C-MU	D-MU	O-PA	O-C	BRP	I-L	I	
R78	Smoke Shops (retail of cigarettes and smoke devices/paraphernalia) / Tobacco Stores										17.32.164

4. Chapter 17.32 Special Provisions

Section 17.32.164 Smoke Shop / Tobacco Store performance standards.

- A. Smoke Shops / Tobacco Stores businesses shall be conditionally permitted in the C-MU (Mixed Use Commercial Zone) and D-MU (Mixed Use Downtown Zone) as they are identified on the Zoning map. In addition, no Smoke Shop / Tobacco Store shall be located:
- Within one thousand (1,000) feet of any other Smoke Shop / Tobacco Store located either inside or outside the city limits.
 - Within one thousand (1,000) feet of any existing or planned public, private, or parochial schools, elementary schools, middle schools, high schools, licensed day care facilities, preschools, libraries, parks, or other recreational facilities where minors congregate, located either inside or outside of the city limits.

- B. As used in this section, "Existing" means existing at the time the permit application is submitted. "Planned" means property designated on the general plan of the city for such use, or other official planning documents of the city, or property owned or leased by the city for such use.
- C. In addition to the location requirements stated above all Smoke Shops / Tobacco Stores shall meet the following performance standards:
1. Hold a valid California Cigarette and Tobacco Products Retailer's License issued by the State Board of Equalization in accordance with State law, and a copy of this license shall be prominently displayed in a publicly visible location at the establishment.
 2. Meet all requirements stated in Visalia Municipal Code Chapter 8.46 for the sale of tobacco paraphernalia and tobacco products.
 3. No smoking, as defined in Visalia Municipal Code Chapter 8.48, shall be permitted within the Smoke Shop / Tobacco Store.