

RESOLUTION NO. PC-2020-02

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PLEASANTON RECOMMENDING APPROVAL, WITH OPTIONS, OF THE APPLICATION OF THE CITY OF PLEASANTON, ON REFERRAL FROM THE YOUTH COMMISSION TO ADD A NEW CHAPTER 18.109 RETAILERS OF TOBACCO PRODUCTS AND PARAPHERNALIA AND AMEND SECTIONS 9.24.020, 18.40.030, 18.44.080, 18.48.130 AND 18.48.140 OF THE PLEASANTON MUNICIPAL CODE TO RESTRICT TOBACCO SALES WITHIN 1,000 FEET OF PUBLIC SCHOOLS, PUBLIC PARKS AND PUBLIC RECREATION FACILITIES, AS FILED UNDER CASE P19-0389, AND A FINDING OF GENERAL PLAN CONSISTENCY

WHEREAS, the Youth Commission has recommended that the City Council add a new Chapter 18.109 Retailers of Tobacco Products and Paraphernalia and amend Sections 9.24.020, 18.40.030, 18.44.080, 18.48.130, and 18.48.140 of the Municipal Code to restrict the sale of tobacco products and smoking devices within 1,000 feet of public schools, public parks and public recreation facilities in order to reduce youth exposure to tobacco advertising and products, and concerns about underage usage and health impacts; and

WHEREAS, on January 15, 2020, the Planning Commission held a noticed public hearing and considered the agenda report, Youth Commission, Human Services Commission, Economic Vitality Committee and staff recommendations, and comments from the public.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Pleasanton, based on the record of proceedings, including the oral and written staff reports and all public comment and testimony:

Section 1: Finds that the Youth Commission's proposed amendment, with options for modifications, to the Municipal Code is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines §15061(b)(3) because the amendment has no possibility of having a significant environmental effect as adults 21 and over can continue to buy tobacco products and smoking devices from retailers outside of the proposed 1,000-foot restricted sales areas, as well as from tobacco stores.

Section 2: The Planning Commission hereby recommends approval of Case P19-0389, the application of the City of Pleasanton, by Youth Commission referral, to add a new Chapter 18.109 Retailers of Tobacco Products and Paraphernalia and amend Sections 9.24.020, 18.40.030, 18.44.080, 18.48.130 and 18.48.140 of the Pleasanton Municipal Code to reduce underage exposure to tobacco products, as generally shown in Attachment 1, to: restrict tobacco sales within 1,000 feet of public schools, public parks and public recreation facilities; allow existing tobacco stores to remain in operation as legal non-conforming uses; and require existing tobacco retailers to phase out sales of tobacco products, with the following options for modifications:

- 1) Allow tobacco retailers within buffer 12-18 months to phase-out tobacco products

Resolution No. PC-2020-02

Page Two

2) Require all tobacco retailers and tobacco stores city-wide to obtain a tobacco retailers license (TRL); "grandfather" existing tobacco stores and tobacco retailers within buffer and allow them to continue to sell tobacco products; require "grandfathered" retailers to "Go Dark" (not visibly display or advertise tobacco products); adopt enforcement provisions for TRL, with failure to comply with sales or Go Dark provisions resulting in revocation of "grandfathering" rights and TRL.

Section 3: The Planning Commission finds that the proposal is consistent with the following provisions of the Pleasanton General Plan 2005-2025 Public Facilities and Community Programs Element, Human Services section:

- Goal 9: Promote a healthy community and a strong community support system.
- Policy 21: Promote a healthy community through the provision of health and mental health facilities and services, and healthy community design.
- Policy 24: Facilitate the provision of safe, accessible youth activities, facilities and services.
- Program 24.1: Support the Youth Commission in its study of youth needs in Pleasanton.

Section 4: This resolution shall become effective immediately upon its passage and adoption.


PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Pleasanton at a regular meeting held on January 15, 2020 by the following vote:

Ayes: Commissioners Allen, Balch, Brown, O'Connor, Ritter
 Noes: None
 Absent: None
 Abstain: None

ATTEST:




 Melinda Denis
 Secretary, Planning Commission

DocuSigned by:


 1C4A70E981F9468...
 Herb Ritter
 Chair

APPROVED AS TO FORM:



 Larissa Seto
 Assistant City Attorney

Exhibit A, Attachment 1

CHAPTER 18.109 RETAILERS OF TOBACCO PRODUCTS AND PARAPHERNALIA

18.109.010 Purpose and intent.

It is the purpose and intent of this chapter to reduce the exposure of youth to tobacco products and tobacco paraphernalia in advertisement and product placement at retail establishments near public schools, public parks and public recreation facilities. These are places where youth congregate, as well as travel to and from frequently. By eliminating tobacco retail sales along frequent youth travel routes, this decreases youth exposure to and availability of tobacco products. The intent is to reduce youth smoking and use of tobacco products.

18.109.020 Definitions.

For purposes of this chapter, certain words and terms are defined as follows:

- A. "Public park" means a site or parcel of land owned by a public agency and open to the public for active or passive recreation activity (e.g. neighborhood or community city parks, East Bay Regional Park District park). This definition excludes public trails.
- B. "Public recreation facility" means a site or parcel of land owned by a public agency and improved with a building or other facility, open to the public for active or passive recreation activity (e.g. city senior center, city aquatic center).
- C. "Public school" means a site or parcel of land owned by a public school district where instruction is provided, and includes the buildings and related recreation fields.
- D. "Tobacco paraphernalia" means cigarette papers or wrappers, blunt wraps, pipes, holders of smoking materials of all types, cigarette rolling machines, e-cigarette liquid pods and any other item designed primarily for the smoking or ingestion of tobacco products.
- E. "Tobacco product" means any of the following:
 - 1. A 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, or snuff.
 - 2. An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.
 - 3. Any component, part, or accessory of a tobacco product, whether or not sold separately.
 - 4. Exception. "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

F. "Tobacco retailer" means a business which sells or displays tobacco paraphernalia and tobacco products. Tobacco paraphernalia and tobacco products can be in addition to other products and services being offered by the business.

G. "Tobacco retail site" means a site where a tobacco retailer operates.

18.109.030 Prohibition and Effective Date.

A. No person shall cause or permit the establishment of a tobacco retail site within one thousand feet (1,000 ft.) of a public school, public park, or public recreation facility.

B. For a tobacco retailer who has a pre-existing tobacco retail site where the sale of tobacco products or tobacco paraphernalia comprises 60% or less of gross revenues annually, such tobacco retail site shall stop all sales and displays of tobacco products and tobacco paraphernalia by the effective date of this ordinance.

C. A tobacco retailer with a pre-existing tobacco retail site which is also operating as a "retail tobacco store" as defined in §9.24.020, or as a "tobacco store" as described in §18.44.080, and where the tobacco retail site primarily sells tobacco products and from which more than 60% of gross annual revenue is derived from the sale of tobacco products and tobacco paraphernalia, entry is limited to persons age 18 or older, and is operating in compliance with a pre-existing zoning certificate or conditional use permit, such person may continue to sell and display of tobacco products and tobacco paraphernalia even if located within one thousand feet (1,000 ft.) of a public school, public park, or public recreation facility, after the effective date of this ordinance. However, such pre-existing retail tobacco store or tobacco store shall then be subject to the nonconforming use provisions in Chapter 18.120.

18.109.040 Measure of Distance.

The distance between any tobacco retail site and any public school, public park, or public recreation facility shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the tobacco retail site to the closest property line of the public school, public park, or public recreation facility.

The city may make the measurement of distance using satellite images to determine building wall location and parcels on the city's geographic information system (GIS). A person who disagrees with this measurement may hire their own California licensed surveyor to provide another measurement.

18.109.050 Inspection by officials.

Any and all investigating officials of the city shall have the right to enter a tobacco retail site from time to time during regular business hours to make reasonable inspections, including review of financial records to determine the percentage of gross receipts related to the sale of tobacco products and tobacco paraphernalia, to observe and enforce compliance with state or federal laws, provisions of this chapter, and provisions of the municipal code.

18.109.060 Penalties.

Notwithstanding Section 1.24.010.B., violations of this chapter are also subject to administrative citation pursuant to Chapter 1.24 for each instance when tobacco products or

tobacco paraphernalia are on display or offered for sale in violation of Section 18.109.030. The city may also pursue other legal remedies for violations of this chapter.

18.109.070 Severability.

If any provision or clause of this chapter or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other chapter provisions or clauses or applications thereof which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this chapter are declared to be severable.

//

In Chapter 9.24 Smoking in Public and Work Places

Amends Municipal Code Section 9.24.020 Definitions, Subsection N, as follows:

N. "Retail tobacco store" means a retail store where more than 60 percent of gross annual revenues are generated from the sale of tobacco or smoking products and paraphernalia, and does not permit anyone under 18 years of age to be present.

//

In Chapter 18.40 O Office Districts

Amends Municipal Code Section 18.40.030 Permitted and conditional uses as follows:

18.40.030 Permitted and conditional uses.

A. Permitted and conditional uses in an O district are provided in Table 18.44.080.

B. Tobacco product and tobacco paraphernalia sales are only permitted in compliance with Chapter 18.109.

In Chapter 18.44 C Commercial Districts

Amends Municipal Code Section 18.44.080 Permitted and conditional uses as follows:

18.44.080 Permitted and conditional uses.

A. Permitted uses and uses subject to a minor conditional use permit or conditional use permit in a C district are provided in Table 18.44.080 at the end of this section.

B. Multi-family dwellings and mixed-use development shall be permitted in the C-C district provided that there shall be not less than 1,000 square feet of site area per dwelling unit, and provided that dwelling units not located above a permitted nonresidential use shall be subjected to the requirements for usable open space per dwelling unit of the RM-1,500 district, or, if applicable, the Core Area Overlay district.

Yards and courts at and above the first level occupied by dwelling units shall be as required by Section 18.84.100 of this title, except that where no side or rear yard is required for a nonresidential use on the site, no side or rear yard need be provided except when required by the Building Code for adjoining walls with openings.

C. Tobacco product and tobacco paraphernalia sales are only permitted in compliance with Chapter 18.109.

D. Any other use which is determined by the zoning administrator or planning commission, as applicable, as provided in Chapter 18.128 of this title, to be similar to the uses listed in this section shall be a permitted use or a conditional use in the districts in which the uses to which it is similar are permitted uses or conditional uses.

Footnotes 23 and 30 of Table 18.44.080 are amended as follows:

Table 18.44.080

PERMITTED AND CONDITIONAL USES

23 The service station shall be at least 60 feet from residentially planned or zoned property. All operations except the sale of gasoline and oil shall be conducted within a building enclosed on at least three sides, and the minimum site area shall be 20,000 square feet. Direct sales to the public shall be limited to petroleum products, automotive accessories, food products, and limited household goods. Tobacco product and tobacco paraphernalia sales are only permitted in compliance with Chapter 18.109.

30 Liquor stores and convenience markets shall only be permitted in the C-R(m) and C-R(p) districts, and shall be subject to a conditional use permit as prescribed in Chapter 18.124 in the C-N and C-C districts.
Tobacco stores (which are uses which primarily sell tobacco products and from which more than 60% of gross annual revenue is derived from the sale of tobacco products and tobacco paraphernalia, and does not permit anyone under 18 years of age to be present), shall be subject to a conditional use permit as prescribed in Chapter 18.124 in the C-R(m), C-R(p), C-N and C-C districts, but only if the proposed site also meets the restrictions of Chapter 18.109.
Secondhand stores and/or pawn shops shall be subject to a conditional use permit as prescribed in Chapter 18.124 in the C-C district.

In Chapter 18.48 I Industrial Districts

Amends Municipal Code Section 18.48.130 Permitted and conditional – I-P district as follows:

18.48.130 Permitted and conditional uses—I-P district.

A. Permitted and conditional uses in the I-P district are provided in Table 18.44.080.

B. Tobacco product and tobacco paraphernalia sales are only permitted in compliance with Chapter 18.109.

C. The conditional uses provided in Table 18.44.080 shall be permitted upon the granting of a use permit in accord with the provisions of Chapter 18.124 of this title

Amends Municipal Code Section 18.48.140 Permitted and conditional – I-G district as follows:

18.48.140 Permitted and conditional uses—I-G district.

A. Permitted and conditional uses in the I-G district are provided in Table 18.44.080.

B. Tobacco product and tobacco paraphernalia sales are only permitted in compliance with Chapter 18.109.

C. The conditional uses provided in Table 18.44.080 shall be permitted upon the granting of a use permit in accord with the provisions of Chapter 18.124 of this title.

//