



CITY COUNCIL AGENDA REPORT

---

August 4, 2020  
Community Development  
Police Department  
Economic Development Department

**TITLE: SECOND READING AND ADOPTION OF ORDINANCE NO. 2208 AMENDING MUNICIPAL CODE CHAPTER 9.32 AND TITLE 18 TO RESTRICT THE SALE OF FLAVORED TOBACCO PRODUCTS, ELECTRONIC SMOKING DEVICES AND RELATED PARAPHERNALIA CITY-WIDE; LIMIT NEW TOBACCO SALES WITHIN 1,000 FEET OF PUBLIC SCHOOLS, PARKS AND RECREATION FACILITIES; AND ADOPT MINIMUM PACKAGE SIZES AND PRICING FOR TOBACCO PRODUCTS**

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Pleasanton on May 5, 2020 by the following vote:

Ayes: Councilmembers Brown, Narum, Pentin, Testa, Mayor Thorne  
Noes: None  
Absent: None  
Abstain: None

**ORDINANCE NO. 2208**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLEASANTON AMENDING MUNICIPAL CODE CHAPTER 9.32 AND TITLE 18 TO RESTRICT THE SALE OF FLAVORED TOBACCO PRODUCTS, ELECTRONIC SMOKING DEVICES AND RELATED PARAPHERNALIA CITY-WIDE; LIMIT NEW TOBACCO SALES WITHIN 1,000 FEET OF PUBLIC SCHOOLS, PARKS AND RECREATION FACILITIES; AND ADOPT MINIMUM PACKAGE SIZES AND PRICING FOR TOBACCO PRODUCTS**

**WHEREAS**, the California Department of Public Health (CDPH) Tobacco Control Program reports in *Tobacco Facts and Figures 2018* that in California 63.6% of current cigarette smokers started by the age of 18, and that the overall tobacco use rate among California high school students is at 13.6%; and

**WHEREAS**, the CDPH notes that nationally 70 to 80 percent of middle and high school tobacco users have used at least one flavored tobacco product in the past 30 days, and eight out of ten young adults 18 to 24 that currently use other tobacco products reported flavor usage; and

**WHEREAS**, the CDPH further advises that youth who would otherwise not have smoked cigarettes or use other tobacco products are using electronic smoking devices, and such adolescent electronic smoking device users are also more likely to start smoking traditional cigarettes; and

**WHEREAS**, the Alameda County Department of Public Health's Tobacco Control Program learned that for underage tobacco users in Alameda County: 81% who try tobacco first use a flavored product; 87.6% have used a flavored tobacco products; 30% have used e-cigarettes; 20% currently use e-cigarettes; 11% currently use e-cigarettes in school; 79% believe it is easy to obtain e-cigarettes; and 57% believe it is easy to obtain cigarettes; and

**WHEREAS**, the CDPH reports in its Young Adult Tobacco Purchase Survey 2019 that underage decoys were able to purchase the following tobacco products from retail locations at this frequency: e-cigarettes and e-liquids = 16.9%; cigarettes = 17.5%; cigars, little cigars/cigarillos, or wraps = 33.3%; at these store types: pharmacies = 3.5%; supermarkets 8.9%; vape shops = 13.4%; gas stations = 14.5%; liquor stores = 15%; convenience stores = 15.5%; tobacco stores/smoke shops = 30.6%; and restaurant/café/donut shop = 43.2%; and

**WHEREAS**, the Centers for Disease Control and Prevention (CDC) reports that scientific evidence shows that tobacco company advertising and promotion influences young people to start using tobacco, and that tobacco companies pay retailers for stocking, shelving, displaying and merchandising of particular tobacco brands and products; and

**WHEREAS**, the CDC reports that cigarette smoking is responsible for more than 480,000 deaths per year in the United States, including more than 41,000 deaths resulting from secondhand smoke exposure (see *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General* (2014) U.S. Dept. of Health and Human Services); and

**WHEREAS**, the CDC also advises that each day about 2,000 people younger than 18 years smoke their first cigarette, and over 300 people younger than 18 years become daily cigarette smokers;

**WHEREAS**, the CDC reports that accessibility, availability and prices of tobacco products affect youth usage, with higher cost for tobacco reducing underage usage, citing *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*, Atlanta: U.S. Dept. of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012; and

**WHEREAS**, it is in the community's public health and safety interest to reduce underage use of tobacco products, in particular by lessening the availability of and exposure to flavored tobacco products and electronic smoking devices, as well as enforce tobacco sales restrictions.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLEASANTON DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** Finds that the amendment to the Municipal Code has no possibility to have a significant effect on the environment per Title 14 California Code of Regulations §15061(b)(3) as persons age twenty-one and older can obtain flavored tobacco and electronic smoking devices, including those at other prices, in other jurisdictions and on-line, and other tobacco sales can continue at existing tobacco retailers and tobacco stores.

**Section 2.** Finds that these amendments to the Municipal Code conform with the following provisions of the General Plan's Public Facilities and Community Programs Element regarding Human Services:

- 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 3.** Amends Municipal Code Chapter 9.32 Tobacco Restrictions and Title 18 Zoning as set forth in the attached Exhibit A.

**Section 4.** A summary of this ordinance shall be published once within fifteen (15) days after its adoption in "The Valley Times", a newspaper of general circulation published in the City of Pleasanton, and the complete ordinance shall be posted for fifteen (15) days in the City Clerk's office within fifteen (15) days after its adoption.

**Section 5.** This ordinance shall be effective thirty (30) days after its passage and adoption; but the provisions amending Pleasanton Municipal Code §§9.32.030 [prohibition on flavored tobacco sales city-wide], 9.32.050 [prohibition on sale of electronic smoking devices and related paraphernalia city-wide], 9.32.065 [minimum package size and pricing], shall not be enforced until January 1, 2021.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Pleasanton on May 5, 2020 by the following vote:

Ayes: Councilmembers Brown, Narum, Pentin, Testa, Mayor Thorne  
Noes: None  
Absent: None  
Abstain: None

\_\_\_\_\_  
Jerry Thorne, Mayor

ATTEST:

\_\_\_\_\_  
Karen Diaz, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Daniel G. Sodergren, City Attorney

Exhibit A

Amend **Chapter 9.32 TOBACCO RESTRICTIONS** as follows:

**Article I. Tobacco Restrictions**

**9.32.010 Legislative findings and declarations.**

**9.32.020 Definitions.**

**Article II. Flavored Tobacco Restrictions**

**9.32.030 Prohibition on the sale of flavored tobacco citywide**

**9.32.040 Sale of flavored tobacco by wholesalers and distributors**

**Article III. Electronic Smoking Devices and Related Paraphernalia Restrictions**

**9.32.050 Prohibition on the sale of electronic smoking devices and related paraphernalia citywide**

**9.32.060 Sale of electronic smoking devices and related paraphernalia by wholesalers and distributors**

**Article IV. Minimum Prices and Package Sizes for Tobacco Products**

**9.32.065 Tobacco Product Pricing and Packaging**

**Article I. Tobacco Restrictions**

**9.32.010 Legislative findings and declarations.** The city council hereby finds and determines that the adoption of this chapter is necessary to the promotion of the public health, safety and welfare. Each of the reasons set forth below provides a separate and independent basis for the council's adoption of this chapter.

A. Substantial scientific evidence supports the causal relationship between using tobacco products and the deadly diseases such as lung cancer, chronic bronchitis, heart disease, emphysema and other types of cancer. The Surgeon General of the United States has determined that smoking is the leading cause of preventable death in this country.

B. The Centers for Disease Control and Prevention (CDC) reports that cigarette smoking is responsible for more than 480,000 deaths per year in the United States, including more than 41,000 deaths resulting from secondhand smoke exposure.

C. The Cal. Department of Public Health (CDPH) Tobacco Control Program reports in *Tobacco Facts and Figures 2018* that in California 63.6% of current cigarette smokers started by the age of 18, and that the overall tobacco use rate among California high school students is at 13.6%.

D. Youth under 21 currently have ready access to cigarettes and other tobacco products as a result of noncompliance with existing laws that prohibit the sale of such tobacco products to underage youth, self-service displays of tobacco products in tobacco stores, and seeing other underage youth with e-cigarettes in public parks or other youth gathering areas. The CDPH reports in its *Young Adult Tobacco Purchase Survey 2019* that underage decoys were able to purchase a variety of tobacco products from many retail locations at a 21.6% violation rate in Alameda County.

E. The free distribution of cigarettes and other tobacco products encourages people to begin smoking and using tobacco products and thereby become addicted to the habit, discourages people from quitting smoking, and tempts those who had quit smoking to begin smoking again. Encouraging smoking and discouraging those who are currently smoking from overcoming the habit endangers the public health by leading more people into habits that cause illness and death.

- G. The compelling purpose and intent of this chapter includes:
1. To prevent young people from using nicotine until they are mature and capable of making an informed and rational decision;
  2. To reduce significantly the ability of young people from illegally obtaining tobacco products by banning the retail sale of flavored tobacco products, electronic smoking devices and related paraphernalia;
  3. To reduce youth exposure to tobacco products at point of sale in grocery stores, pharmacies, convenience stores and gas stations, as well as exposure to tobacco store advertising, near youth-gathering places such as public schools, parks and recreation facilities;
  4. To reduce the ability of young people to possess e-cigarettes in public parks or other public places where youth gather, as that may influence other youth to try such tobacco products;
  5. To promote generally the health and welfare of all people in the community against the health hazards and harmful effects of using addictive tobacco products.

**9.32.020 Definitions.** For the purposes of this chapter, the following terms shall be defined as set forth herein:

- A. "Arm's length transaction" means a sale in good faith and for valuable consideration that reflects the fair market value between two informed and willing parties, neither of which is under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for which a significant purpose is avoiding the effect of violations of this chapter is not an arm's length transaction.
- B. "Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product or any byproduct produced by the tobacco product, including, but not limited to, tastes or aromas relating to menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice.
- C. "Cigar" means any roll of tobacco other than a cigarette wrapped entirely or in part in tobacco or any substance containing tobacco weighing more than three pounds per thousand.
- D. "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 which, 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.
- E. "Consumer" means a person who purchases or intends to purchase a tobacco product or tobacco paraphernalia for consumption or use and not for sale to another.
- F. "Coupon" means any voucher, rebate card, paper, note, form, statement, ticket, image, or other issue, whether in paper, digital, or other form, used for commercial purposes to obtain an article, product, service, or accommodation without charge or at a discounted price.
- G. "Deliver" means to commercially transfer tobacco products or tobacco paraphernalia to a consumer at a location not permitted under this chapter.
- H. "Distribution" means to give, sell, deliver, dispense, issue, or cause or hire any person to give, sell, deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.
- I. "E-cigarette" or "Electronic cigarette" means an activated or functioning device, whether an electronic device as defined by California Health and Safety Code Section 104495 or a similar device, including, but not limited to, a device intended to emulate smoking, which permits a person to inhale vapors, vaporized liquids or mists that may or may not include nicotine.
- J. "Electronic smoking device" means 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. (See Cal. Health and Safety Code §104495.)

Exempt from this definition is any product specifically approved by the U.S. Food and Drug Administration for use in the mitigation, treatment or prevention of disease.

K. "Flavored tobacco product" means any tobacco product that imparts a characterizing flavor.

L. "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, plus all applicable taxes and fees if such taxes and fees are not included in the listed price.

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

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

O. "Manufacturer" means any person, including any re-packer or re-labeler, who manufactures, fabricates, assembles, processes, or labels a tobacco product; or imports a finished tobacco product for sale or distribution into the United States.

P. "Package" or "Packaging" means a 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.

Q. "Person" shall mean any natural person, firm, partnership, joint venture, unincorporated association, corporation, estate, trust, trustee, or any other group or combination of the above acting as a unit, or other legal entity, excepting however the United States of America, the state of California, and any political subdivision or unit thereof.

R. "Proprietor" means a person with an ownership interest in a business. 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.

S. "Sale" or "Sell" or "Sold" means any transfer, exchange, barter, gift, sale, distribution for a commercial purpose, or offer of any of the foregoing, in any manner or means whatsoever.

T. "Smoke" or "Smoking" means inhaling, exhaling, burning, or carrying any lighted or heated cigar, cigarette, or pipe, or any other lighted or heated tobacco or plant product intended for inhalation, whether natural or synthetic, in any manner or in any form. "Smoking" includes the use of an electronic smoking device that creates an aerosol or vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking. (See Cal. Health and Safety Code §104495.)

U. "Tobacco accessories" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion of tobacco products.

V. "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. (See Cal. Business and Professions Code §22962.)

W. "Tobacco product" means any of the following:

- a. 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, snuff, and blunt wraps.
- b. An electronic device that delivers nicotine, other substances or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
- c. Any component, part, or accessory of a tobacco product, whether or not sold separately.

d. *Exception.* "Tobacco Product" does not include drugs, devices or combination of products 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. (See Cal. Business and Professions Code §22950.5.)

X. "Tobacco product sample" means a tobacco product and/or tobacco accessories distributed to members of the general public at no cost or at a nominal cost for product promotional purposes.

Y. "Tobacco retailer" means any person who sells tobacco products and tobacco paraphernalia on a retail basis (but not in the quantity that qualifies the business as a tobacco store) in addition to other products and services being offered by the business.

Z. "Tobacco retailer permit" or "permit" means the certificate issued by the business license division which allows a location to sell tobacco products and tobacco paraphernalia on a retail basis.

AA. "Tobacco store" means any person which primarily sells tobacco products; generates more than 60% of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia; does not permit any person under 18 to enter unless with parent or guardian; and does not sell alcoholic beverages or food for consumption on the premises. (See Cal. Business and Professions Code §22962.)

## **Article II. Flavored Tobacco Restrictions**

### **9.32.030 Prohibition on the sale of flavored tobacco citywide**

A. It shall be unlawful for any tobacco retailer, tobacco store or their agents or employees to sell or offer for sale, give or furnish at no cost or nominal cost, or to possess with intent to sell or offer for sale, any flavored tobacco product. This prohibition is applicable citywide.

B. There shall be a rebuttable presumption that a tobacco retailer or tobacco store in possession of four or more flavored tobacco products, including but not limited to individual flavored tobacco product, packages of flavored tobacco product, or any combination thereof, possesses such flavored tobacco product with intent to sell or offer for sale.

C. There shall be a rebuttable presumption that a tobacco product is a flavored tobacco product if a tobacco retailer, tobacco store, manufacturer, or their agents or employees:

1. made a public statement or claim that the tobacco product imparts a characterizing flavor;
2. used text and/or images on the tobacco product's labeling or packaging to explicitly or implicitly indicate that the tobacco product imparts a characterizing flavor; or
3. taken action directed to consumers that would be reasonably expected to cause consumers to believe the tobacco product imparts a characterizing flavor.

### **9.32.040 Sale of flavored tobacco by wholesalers and distributors**

Wholesalers and distributors may sell flavored tobacco products to other wholesalers, distributors and retailers.

## **Article III. Electronic Smoking Devices and Related Paraphernalia Restrictions**

### **9.32.050 Prohibition on the sale of electronic smoking devices and related paraphernalia citywide**

A. It shall be unlawful for any tobacco retailer, tobacco store or their agents or employees to sell or offer for sale, give or furnish at no cost or nominal cost, or to possess with intent to sell or offer for sale, any electronic smoking device and related paraphernalia, which includes, but is not limited to: cartridges, cartomizers, e-liquid (e.g. any liquid or substance that can be used by



an electronic smoking device), smoke juice, tips, atomizers, electronic smoking device batteries and chargers, and any other item specifically designed for the preparation, charging, or use of electronic smoking devices. This prohibition is applicable citywide.

B. There shall be a rebuttable presumption that a tobacco retailer or tobacco store in possession of four or more electronic smoking devices or related paraphernalia possesses such electronic smoking devices and related paraphernalia with intent to sell or offer for sale.

### **9.32.060 Sale of electronic smoking devices and related paraphernalia by wholesalers and distributors**

Wholesalers and distributors may sell electronic smoking devices and related paraphernalia to other wholesalers, distributors and retailers.

## **Article IV. Minimum Package Size and Prices for Tobacco Products**

### **9.32.065 Tobacco Product Pricing and Packaging**

- A. Packaging and Labeling. No tobacco retailer or tobacco store may sell any tobacco product to any consumer unless such product:
1. Is sold in the original manufacturer's packaging intended for sale to consumers; and
  2. Conforms to all applicable federal labeling requirements.
- B. Display of Price. The price of each tobacco product offered for sale must be clearly and conspicuously displayed to indicate the price of the product.
- C. Prohibition of Tobacco Product Coupons and Discounts. No tobacco retailer or tobacco store may:
1. Honor or redeem, or offer to honor or redeem, a coupon to allow a consumer to purchase a tobacco product for less than the full retail price;
  2. Sell any tobacco product to a consumer through a multi-package discount or otherwise provide any such product to a consumer for less than the full retail price in consideration for the purchase of any tobacco product or any other item; or
  3. Provide any free or discounted item to a consumer in consideration for the purchase of any tobacco product.
- D. Minimum Package Size for Little Cigars. No tobacco retailer or tobacco store may sell to a consumer any little cigar unless it is sold in a package of at least twenty (20) little cigars.
- E. Minimum Package Sizes and Prices for Cigarettes, Little Cigars, and Cigars. No tobacco retailer or tobacco store may sell to a consumer:
1. Cigarettes at a price that is less than \$8.00 per package of 20 cigarettes, plus sales tax.
  2. Little cigars at a price less than \$8.00 per package of 20 little cigars, plus sales tax;
  3. Cigars at a price that is less than \$8.00 per package of five cigars, plus sales tax; or
  4. An individual cigar at a price that is less than \$7.00 for an individual cigar, plus sales tax.
- F. Consumer Price Index Adjustment. The minimum prices in Subsection E., above, shall be adjusted July 1<sup>st</sup> of each year beginning in 2022 based on Consumer Price Index for all urban users for all items for the San Francisco-Oakland-Hayward statistical area as reported by the U.S. Bureau of Labor Statistics or successor index. Adjustments made on percent change based on the annual average with base of June 2020 in \$0.25 increments.
-

Add a new Chapter 18.109 to the Municipal Code as follows:

## **CHAPTER 18.109 RETAILERS OF TOBACCO PRODUCTS AND PARAPHERNALIA**

### **18.109.010 Purpose and intent.**

### **18.109.020 Definitions.**

### **18.109.030 Prohibition and Effect on Existing Retail Sites.**

### **18.109.040 Measure of Distance.**

### **18.109.050 Inspection by officials.**

### **18.109.060 Penalties.**

### **18.109.070 Severability.**

### **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 restricting tobacco 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. (See Cal. Business and Professions Code §22962.) This definition may be used throughout Title 18.
- 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. (See Cal. Business and Professions Code §22950.5.) This definition may be used throughout Title 18.

- F. "Tobacco retailer" means a business which sells tobacco products and tobacco paraphernalia on a retail basis (but not in the quantity that qualifies the business as a tobacco store) in addition to other products and services being offered by the business. This definition may be used throughout Title 18.
- G. "Tobacco retail site" means a site where a tobacco retailer or tobacco store operates.
- H. "Tobacco store" means a retail business which primarily sells tobacco products; generates more than 60% of its gross revenues annually from the sale of tobacco products and tobacco paraphernalia; does not permit any person under 18 to enter unless with parent or guardian; and does not sell alcoholic beverages or food for consumption on the premises. (See Cal. Business and Professions Code §22962.) This definition may be used throughout Title 18.

**18.109.030 Prohibition and Effect on Existing Retail Sites.**

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

B. A tobacco retail site which is within one thousand feet (1,000 ft.) of a public school, public park, or public recreation facility that is existing on the effective date of this ordinance may continue to operate, sell and display tobacco products and tobacco paraphernalia.

1. However, such pre-existing retail tobacco site shall then be subject to the nonconforming use provisions in Chapter 18.120 with regard to: the restrictions on alterations and additions in Section 18.120.030; and abandonment in Section 18.120.040. But, shall not be subject to the elimination provisions of Section 18.120.060.
2. A retail tobacco site which qualifies under this section shall still be subject to other tobacco retail restrictions in the Municipal Code and state and federal law.

**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 building 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. Fines for such administrative citations shall be paid by the business owner, not the employee. The city may also pursue other legal remedies and penalties 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 that primarily sells tobacco products where more than 60 percent of gross annual revenues are generated from the sale of tobacco products and tobacco paraphernalia, does not permit anyone under 18 years of age to be present unless with parent or guardian, and does not sell alcoholic beverages or food for consumption on the premises. (See Cal. Business and Professions Code §22962.)

//

---

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; from which more than 60% of gross annual revenue is derived from the sale of tobacco products and tobacco paraphernalia; does not permit anyone under 18 years of age to be present unless with parent or guardian; and does not sell alcoholic beverages or food for consumption on the premises), 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.

//