

**SUPPLEMENT NO. 25**

**INSERTION GUIDE**

**PLEASANTON MUNICIPAL CODE**

**January 2021**

**(Covering Ordinances through 2211)**

This supplement consists of reprinted pages replacing existing pages in the Pleasanton Municipal Code.

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This Guide for Insertion should be retained as a permanent record of pages supplemented and should be inserted in the front of the code.

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## PREFACE

The Pleasanton Municipal Code is a codification of the general and permanent ordinances of the City of Pleasanton, California. Originally published by Book Publishing Company, the code was prepared under the direction of Peter D. MacDonald, city attorney.

Commencing with the September 2007 code supplement, updates to this code are published by Quality Code Publishing. The code will be periodically updated to incorporate new legislation.

Detailed instructions for using the code are included at the front of this volume. An ordinance list and index are located at the end of the code.

The code is current through Supplement Number 25, January 2021, and includes Ordinance 2211, passed October 6, 2020.

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**Title 9**

**HEALTH AND SAFETY**

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be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top.

3. Air from the room must be directly exhausted to the outside by an exhaust fan. Air from the smoking room must not be recirculated to other parts of the building. Pressure in the room must be less than in the surrounding area to make sure smoke does not drift to surrounding spaces.

4. The ventilation system must provide the smoking room with 60 cubic feet per minute (CFM) of supply air per smoker.

5. Nonsmokers should not have to use the smoking room for any purpose. The smoking room must be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter at any time.

Within 60 days of the effective date of this chapter, every employer having an enclosed place of employment shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment except in freestanding bars and in designated smoking rooms. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

D. "Dining area" means any area containing a counter or tables where meals are served, or area improved with tables, chairs, benches or similar improvements provided for sitting that is controlled by the business where patrons sit after purchasing food or beverage at a restaurant counter.

E. "Employee" means any person who is employed in consideration for direct or indirect monetary wages or profit, and any person who volunteers services for a nonprofit entity or public agency.

F. "Employer" means any person, partnership, corporation or nonprofit entity, including a municipal corporation or other public agency, which employs one or more persons.

G. "Enclosed" means closed in by a roof and walls on all sides with appropriate openings for ingress and egress.

H. "Freestanding bar" means a business which: (1) primarily serves alcoholic beverages; (2) as only incidental to serving such beverages, serves food, has music and/or dancing, provides coin-operated amusement devices, or provides pool tables, darts or other

similar activities; (3) prohibits persons under the age of 18 from entering the business; and (4) was operating as a freestanding bar on January 1, 1994. If there are other uses within the same building, the freestanding bar must also meet the following requirements:

1. Have a separate heating, ventilation and air-conditioning system (HVAC) designed such that none of the air from the freestanding bar will be recirculated into other areas of the building.

2. Be completely separated from the remainder of the building by solid partitions or glazing without openings other than doors, and all doors leading to the bar shall be self-closing. The doors shall be provided with a gasket so installed as to provide a seal where the door meets the stop on both sides and across the top.

3. Air from the freestanding bar must be directly exhausted to the outside by an exhaust fan. Air from the freestanding bar must not be recirculated to other parts of the building. Pressure in the room must be less than in the surrounding area to make sure smoke does not drift to surrounding spaces.

4. The ventilation system must provide the area of the freestanding bar with 60 cubic feet per minute (CFM) of supply air per smoker.

I. "Place of employment" means any area under the control of a public or private employer where employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms and classrooms, cafeterias and hallways.

J. "Pool vehicle" means an automobile, truck or van, owned, leased or otherwise controlled by an employer, which is available, by advance request, reservation or otherwise, for the use, in the course of employment, of any employee or employees.

K. "Public place" means any area to which the public is invited or in which the public is permitted, including but not limited to banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.

L. "Reasonable distance" shall mean any distance necessary to insure that persons in an area where smoking is prohibited are not exposed to second-hand smoke created by smokers near the area. The determination of the city manager shall be final in any disputes relating to reasonable distance for smoking near places regulated by this chapter.

M. "Restaurant" means any coffee shop, cafeteria, tavern, sandwich stand, soda fountain, private or public school cafeteria, and any other eating establish-

ment, organization, club, boarding house, or guest house, the primary purpose of which gives or offers for sale food to the public, guests, patrons or employees.

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 California Business and Professions Code Section 22962.)

O. "Service line" means any line at which one or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money.

P. "Smoking" means: (1) inhaling, exhaling, burning or carrying any lighted pipe, cigar, cigarette, or similar article of any kind; or (2) use of an activated or functioning device, whether an electronic cigarette as defined by California Health and Safety Code Section 119405 ("e-cigarette") or a similar device, including but not limited to a device intended to emulate smoking, which permits a person to inhale vapors or mists that may or may not include nicotine.

Q. "Sports arena" means bowling centers, sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition or witness sports events. (Ord. 2208 § 3, 2020; Ord. 2093 § 1, 2014; Ord. 2038 § 1, 2012; Ord. 1615 § 1, 1994\*; Ord. 1609 § 1, 1993)

\* If a business expends more than \$500.00 to meet the requirements of Section 9.24.020(H), the business shall have until July 1, 1994 to comply fully with the requirements of Ordinance 1615.

**9.24.030 Application of chapter in city-owned facilities.**

All city buildings, vehicles, and other facilities shall be subject to this chapter. (Ord. 1609 § 1, 1993)

**9.24.040 Prohibition of smoking in public places.**

A. Smoking shall be prohibited in all enclosed public places within the city, including the following enclosed and unenclosed spaces:

1. Elevators and restrooms.
2. Buses, taxicabs and other means of public transit, and ticket, boarding and waiting areas of public transit depots.
3. Service lines.

4. Retail stores, except retail tobacco stores.
5. Retail food marketing establishments, including grocery stores and supermarkets.
6. All areas available to and customarily used by the general public in all businesses, nonprofit entities and public agencies patronized by the public, including, but not limited to, business offices, banks, hotels and motels, except as provided in subsection (A)(14) of this section.
7. Restaurants, including:
  - a. Bars and banquet rooms in, open to or directly accessible from restaurants; and
  - b. Outdoor dining areas.
8. Bars.
9. Any building not open to the sky which is used primarily for exhibiting any motion picture, stage drama, lecture, musical recital, or other similar performance, except to the extent that smoking is part of any such production.
10. Sports arenas and convention halls.
11. Stadiums, amphitheaters and similar places of assembly which are open to the sky.
12. Public parks and trails.
13. Health and residential and day care facilities, including, but not limited to, nursing homes, adult care facilities, child care facilities including family day care homes, hospitals, clinics, physical therapy facilities, doctors' offices and dentists' offices.
14. Polling places.
15. Private hotel and motel rooms rented to guests, except that up to 25 percent of such rooms may be designated for smoking guests, if on a separate floor(s) or if in a separate wing(s).
16. Private residences when used at any time as family day care homes or health care facilities.
17. Enclosed lobbies, hallways and other enclosed common areas in apartment buildings, including condominiums, in retirement facilities, and in other multiple-family residential facilities.
18. Any owner, operator, manager or other person holding an event Downtown, defined as the area within the Downtown Specific Plan, pursuant to a police department issued special event permit, involving a closure of a public street, a special event, a conditional use permit, or a temporary use, shall prohibit smoking at such event. "No Smoking" signs shall generally be visible at entrances or reasonable intervals along the perimeter of such event to advise guests, invitees and the public about the prohibition on smoking. Violators are subject to administrative citation as provided in Chapter 1.24.

B. Notwithstanding any other provisions of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment.

C. Notwithstanding the effective date of the ordinance codified in this chapter, any owner, operator, manager or other person who controls any private hotel or motel shall have until July 1, 1994 to comply with subsection (A)(14) of this section. The council may grant an additional 12 months in which to comply for good cause shown. (Ord. 2165 § 1, 2017; Ord. 2136 § 1, 2016; Ord. 2125 § 2, 2015; Ord. 1615 § 1, 1994; Ord. 1609 § 1, 1993)

**9.24.050 Regulation of smoking in places of employment.**

A. Every employer shall provide a smoke-free work place for all employees.

B. Every employer shall post “No Smoking” or “Smoke Free” signs in accordance with Section 9.24.070 of this chapter.

C. Smoking outside any enclosed place of employment shall occur at a reasonable distance from any place of employment to insure that smoke does not enter any place of employment through doors and windows and affect occupants therein, or those entering or leaving any place of employment.

D. Within 60 days of the effective date of the ordinance codified in this chapter, every employer having an enclosed place of employment shall adopt, implement, make known and maintain a written smoking policy which shall contain the following requirements:

Smoking shall be prohibited in all enclosed facilities within a place of employment without exception. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, vehicles, and all other enclosed facilities.

E. Every employer shall communicate this smoking policy to all employees within three weeks of its adoption, and shall communicate the policy to a new employee upon hiring.

F. Every employer shall supply a written copy of the smoking policy upon request to any employee or prospective employee. (Ord. 1615 § 1, 1994; Ord. 1609 § 1, 1993)

**9.24.060 Optional smoking areas.**

A. Notwithstanding Sections 9.24.040 and 9.24.050 to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:

1. Private residences, except when: (a) such residence is used at any time as a family day care home or a health care facility; or (b) such residence is a rental unit of two or more connected rental units under common ownership and subject to the smoking restrictions of Chapter 9.26; and in the event of a conflict between the Chapters 9.24 and 9.26 the stricter restrictions on smoking shall apply.

2. Retail tobacco stores.

3. Outdoor areas a reasonable distance from any area designated nonsmoking in this chapter.

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment. (Ord. 2164 § 3, 2017; Ord. 1615 § 1, 1994; Ord. 1609 § 1, 1993)

**9.24.070 Posting of signs.**

A. Where signs are required by this section, the owner, operator, manager or other person having control of a building shall conspicuously post in such building “Smoking” and “No Smoking” signs, whichever are appropriate, with letters of not less than one inch in height, or the international “Smoking” or “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette, enclosed in a green circle for “Smoking,” or enclosed in a red circle with a red bar across it for “No Smoking”), or the same information in another format approved by the city manager.

B. Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the theater or auditorium.

C. The owner, operator, manager or other person having control of a restaurant or other public place shall conspicuously post in, or at every entrance of, every restaurant or other public place, including all places described in Section 9.24.040 when in or adjacent to a building, or in outdoor dining areas, “No Smoking” signs and “Smoking” signs, when appropriate.

D. The owner, operator, manager or other person having control of every bar shall conspicuously post at every entrance of every bar, adjacent to any warning sign required under the California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), a “No Smoking” sign.

E. The owner, operator, manager or other person having control of the area shall remove all ash trays

in any area designated nonsmoking. (Ord. 2038 § 1, 2012; Ord. 1609 § 1, 1993)

**9.24.080 Enforcement.**

A. The city manager and any other persons designated by the city manager shall administer and enforce the provisions of this chapter.

B. Any citizen who desires to register a complaint may initiate enforcement of this chapter.

C. A private citizen may bring legal action to enforce this chapter. (Ord. 1609 § 1, 1993)

**9.24.090 Nonretaliation.**

No person or employer shall discharge, refuse to hire, or in any manner retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter. (Ord. 1609 § 1, 1993)

**9.24.100 Violations and penalties.**

A. It is unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to this chapter to fail to ensure compliance with its provisions.

B. It is unlawful for any person to smoke in any area designated nonsmoking under the provisions of this chapter.

C. Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

1. A fine, not exceeding \$100.00, for the first violation;
2. A fine, not exceeding \$200.00, for a second violation of this chapter within one year;
3. A fine, not exceeding \$500.00, for each additional violation of this chapter within one year. (Ord. 1609 § 1, 1993)

**9.24.110 Severability.**

If any provision or clause of this chapter or the application thereof to any person or circumstances is held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such validity shall not affect other provisions or clauses or applications thereof which can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses of this chapter are declared to be severable. (Ord. 1609 § 1, 1993)

5. Allowing potable water to escape from breaks within the customer's plumbing system for more than eight hours after the customer is notified or discovers the break;

6. Use of water in non-recirculating decorative ponds, fountains, and other water features;

7. The serving of drinking water other than upon request in eating or drinking establishments, including, but not limited to, restaurants, hotels, cafés, cafeterias, bars, or other public places where food or drink are served and/or purchased;

8. Use of potable water for any purpose in excess of the customer's allowed usage as provided in Section 9.30.070. (Ord. 2148 § 1, 2016; Ord. 2118 § 1, 2015; Ord. 2104 § 1, 2014; Ord. 2092 § 1, 2014)

#### **9.30.120 Adjustments.**

A. Any customer who believes that the application of the provisions of this chapter results in unfair treatment or causes undue hardship may seek an adjustment in the customer's allocation.

B. Such customer shall request the adjustment in writing and shall state with specificity the reasons why the adjustment is warranted, and provide any applicable supporting documentation. Such request for an adjustment shall be submitted within 30 days of receipt of the bill that is the subject of the adjustment request.

C. The director shall consider all requests and make a written decision, transmitted by U.S. mail or email, within 30 days of receiving all information supporting the adjustment request. In making a decision, the director shall give particular consideration to the following:

1. The reduction would cause conditions threatening to health, sanitation, fire protection or safety of the customer, the customer's dependents or the general public.

2. The reduction would cause unfair economic hardship including, but not limited to, loss of employment, loss of production, or loss of jobs, or be unfair or result in the unnecessary loss of a business.

3. Medical requirements of the customer.

4. Permanent change to the household size of the residential customer (temporary visitor(s)/guest(s) do not warrant a request for adjustment).

D. The director's decision may be appealed in writing to the city manager for reconsideration on the written record. Such appeal shall be submitted within 15 days of the date of the director's decision. The city manager shall review written material submitted by the customer, written information from the director, and shall issue a decision within 30 days of receipt of the com-

plete written materials. The city manager's decision as to the request shall be final. (Ord. 2148 § 1, 2016; Ord. 2118 § 1, 2015; Ord. 2104 § 1, 2014; Ord. 2092 § 1, 2014)

#### **9.30.130 Notification to customers.**

After the city council adopts a water shortage contingency plan stage, customers will be notified by publication in the newspaper and/or by mail. The failure of any customer to receive actual notice shall not invalidate any action taken by the city council as to a particular customer nor reduce the amount of the penalties provided herein. (Ord. 2148 § 1, 2016; Ord. 2118 § 1, 2015; Ord. 2104 § 1, 2014; Ord. 2092 § 1, 2014)

#### **9.30.140 Calculation of allowable water use for new customers.**

Where the current customer has no billing history, or only a partial billing history, the director shall determine the customer's allocation, based upon the allocation for similar customers. (Ord. 2148 § 1, 2016; Ord. 2118 § 1, 2015; Ord. 2104 § 1, 2014; Ord. 2092 § 1, 2014)

#### **9.30.150 Severability.**

If any provision of this chapter is held to be unconstitutional, it is the intent of the city council that such portion of such chapter be severable from the remainder and that the remainder be given full force and effect. (Ord. 2148 § 1, 2016; Ord. 2118 § 1, 2015; Ord. 2104 § 1, 2014; Ord. 2092 § 1, 2014)

## Chapter 9.32

## TOBACCO RESTRICTIONS

## Sections:

## 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 Package Size and Prices for Tobacco Products

- 9.32.065 Tobacco product pricing and packaging.

## Article V. Tobacco Retailer Permitting and other Regulations

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9.32.080 Application procedure.  
9.32.090 Issuance of tobacco retailer permit—Standards.  
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9.32.180 Hearing and appeal.  
9.32.190 Enforcement.

- 9.32.200 Sale of tobacco products from or self-service displays.  
9.32.210 Severability.

## 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 California Department of Public Health (CDPH) Tobacco Control Program reports in *Tobacco Facts and Figures 2018* that in California 63.6 percent 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 percent.

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 percent 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.

F. 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. (Ord. 2208 § 3, 2020; Ord. 2120 § 1, 2015; Ord. 1529 § 1, 1991)

#### 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 California Health and Safety Code Section 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, fab-

ricates, 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 10 percent 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 California Health and Safety Code Section 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 California Business and Professions Code Section 22962.)

W. “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, snuff, and blunt wraps.

2. 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.

3. Any component, part, or accessory of a tobacco product, whether or not sold separately.

4. 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 California Business and Professions Code Section 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 percent 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 California Business and Professions Code Section 22962.) (Ord. 2208 § 3, 2020; Ord. 2120 § 1, 2015; Ord. 1529 § 1, 1991)

## 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. (Ord. 2208 § 3, 2020)

**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. (Ord. 2208 § 3, 2020)

**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. (Ord. 2208 § 3, 2020)

**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. (Ord. 2208 § 3, 2020)

**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 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 1st 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. (Ord. 2208 § 3, 2020)

**Article V. Tobacco Retailer Permitting and other Regulations**

**9.32.070 Tobacco retailer and tobacco store requirements and prohibitions.**

A. Tobacco Retailer Permit Required. It is unlawful for any person to act as a tobacco retailer or a tobacco store in the city without first obtaining and maintaining a valid tobacco retailer permit under this chapter for each location at which the sale of tobacco products or tobacco paraphernalia on a retail basis is to occur. The sale of tobacco products or tobacco paraphernalia on a retail basis without a valid permit constitutes a nuisance as a matter of law.

B. Lawful Business Operation. It is a violation of this chapter for any person to violate any local, state or federal law applicable to tobacco retailing.

C. Display of Tobacco Retailer Permit. Each tobacco retailer and tobacco store must prominently display its tobacco retailer permit in a publicly visible area at the permitted location.

D. Positive Identification Required. No tobacco retailer or tobacco store may sell a tobacco product or tobacco paraphernalia to a person who is under the age of 30 years without first examining the identification of the consumer to confirm that the consumer is at least the minimum age for sale of tobacco products as established by state and federal law.

E. On-Site Sales. All sales of tobacco products and tobacco paraphernalia to consumers must be conducted in-person at the permitted location. It is a violation of this chapter for any tobacco retailer, tobacco store or any agents or employees to: deliver tobacco products or tobacco paraphernalia or to knowingly or recklessly sell a tobacco product or tobacco paraphernalia to any person that intends to deliver such tobacco products or tobacco paraphernalia to a consumer in the city; and to sell a tobacco product or tobacco paraphernalia at a non-fixed location, including, but not limited to, tobacco retailing by persons on foot or from vehicles.

F. False and Misleading Advertising Prohibited. A tobacco retailer or tobacco store without a valid

permit, including, for example, a person whose permit has been suspended or revoked:

1. Must keep all tobacco products and tobacco paraphernalia out of public view. The public display of tobacco products and tobacco paraphernalia in violation of this provision constitutes tobacco retailing without a permit in violation of Section 9.32.150; and

2. Must not display any advertisement related to tobacco products and tobacco paraphernalia that promotes the sale of such products from the tobacco retailer or tobacco store's location or that could lead a reasonable consumer to believe that such products can be obtained at that location.

G. Limited, Conditional Privilege. Nothing in this chapter shall be construed to grant any person obtaining and maintaining a permit any status or right other than the limited conditional privilege to act as a tobacco retailer or tobacco store at the location in the city identified on the face of the permit. (Ord. 2209 § 3, 2020)

**9.32.080 Application procedure.**

A. Application for a tobacco retailer permit must be submitted in the name of each person proposing to conduct sales of tobacco products or tobacco paraphernalia and each person or an authorized agent thereof shall furnish to the business license division a sworn statement setting forth the information in this section.

B. It is the responsibility of each person to be informed of all laws applicable to tobacco retailing.

C. No person may rely on the issuance of a permit as a determination by the city that the person is in compliance with all laws related to its operation. A permit issued contrary to this chapter or any other law, or on the basis of false or misleading information supplied by an applicant, shall be revoked under Section 9.32.160 of this chapter. Nothing in this chapter shall be construed to vest in any person obtaining and maintaining a permit any status or right to act as a tobacco retailer or tobacco store in contravention of any provision of law.

D. All applications must be submitted on a form supplied by the business license division and must contain the following information:

1. The name, address, and telephone number of each proprietor of the business seeking a permit;

2. The business name, address, and telephone number of the single fixed location for which a permit is sought;

3. An address for receipt of legal notice;

4. Proof that the location for which a permit is sought conforms with applicable zoning;

5. Proof that the location for which a permit is sought has been issued a valid California Cigarette and Tobacco Products Retailer's Permit for the sale of tobacco products, if the tobacco retailer or tobacco store sells products that require such permit;

6. Whether or not any proprietor or any agent of the proprietor has admitted violating, or has been found to have violated, this chapter and, if so, the dates and locations of all such violations within the previous five years; and

7. Such other information as the business license division deems appropriate for the administration or enforcement of this chapter.

E. A permitted tobacco retailer or tobacco store must inform the business license division in writing of any change in the information submitted on an application for a permit within 10 business days of a change. (Ord. 2209 § 3, 2020)

**9.32.090 Issuance of tobacco retailer permit—Standards.**

After receipt of a complete application for a tobacco retailer permit and the permit fee required by this chapter, the business license division, after consultation with the community development department, shall issue a permit within 30 days unless substantial evidence demonstrates that one or more of the following bases for denial exists:

A. The application is incomplete or inaccurate;

B. The application seeks authorization for tobacco retailing by a person or at a location for which a suspension or revocation is in effect under Section 9.32.160 of this chapter;

C. The application seeks authorization for tobacco retailing for a person to whom this chapter prohibits a permit to be issued; or

D. The application seeks authorization for tobacco retailing at a location that is in violation of applicable city zoning under Title 18 of this code, or is in violation of any other local, state, or federal law. (Ord. 2209 § 3, 2020)

**9.32.100 Tobacco retailer permit renewal and expiration.**

A. Renewal of Tobacco Retailer Permit. A tobacco retailer permit is invalid if the permit fee has not been timely paid in full or if the permit term has expired. The term of a permit is one year from January 1st to December 31st of each calendar year. Each tobacco retailer and tobacco store must apply for the renewal of their permit and submit the permit fee as required by the business license division.

B. Expiration of Tobacco Retailer Permit. A permit that is not timely renewed shall expire at the end of its term. To renew a permit not timely renewed under subsection A above, the renewal applicant must:

1. Submit the permit fee and renewal application form; and

2. Submit a signed affidavit affirming the proprietor has not sold and will not sell any tobacco product or tobacco paraphernalia after the permit expiration date and before the permit is renewed.

C. If the proprietor has engaged in tobacco retailing during a period in which its permit is invalid, a permit may only be re-issued to eligible applicants following the applicable periods set forth in Section 9.32.150. (Ord. 2209 § 3, 2020)

**9.32.110 Fees for tobacco retailer permit.**

The fee is \$550.00 to issue, or \$450.00 to renew, a tobacco retailer permit. The fee shall be adjusted July 1st 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 \$5.00 increments. (Ord. 2209 § 3, 2020)

**9.32.120 Tobacco retailer permit nontransferable.**

A. A tobacco retailer permit may not be transferred from one person to another or from one location to another. A new permit is required if a tobacco retailing location has a change in proprietor, or a person issued a permit changes a business location for tobacco retailing.

B. Notwithstanding any other provision of this chapter, prior violations at a location shall continue to be counted against a location and permit ineligibility periods shall continue to apply to a location unless:

1. The location has been transferred to new proprietor in an arm's length transaction; and

2. The new proprietor provides the city with clear and convincing evidence that the new proprietor has acquired or is acquiring the location in an arm's length transaction. (Ord. 2209 § 3, 2020)

**9.32.130 Compliance monitoring.**

Compliance with this chapter shall be monitored by the community development department. In addition, any peace officer may enforce the provisions of this chapter. The city manager may designate additional persons to monitor compliance with this chapter.

A minimum of two compliance visits to each tobacco retailer permit location shall occur each year.

Nothing in this section creates a right of action in any permittee or other person against the city or its agents.

Any and all investigating officials of the city shall have the right to enter a tobacco retailer or tobacco store's business location 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. (Ord. 2209 § 3, 2020)

#### **9.32.140 Violation.**

A. It is a violation of this chapter to do any of the following:

1. Conduct tobacco retailing without a permit;
2. Conduct tobacco retailing at a location that is not permitted;
3. Conduct tobacco retailing at a location that is not fixed;
4. Conduct tobacco retailing that involves the delivery of tobacco products or tobacco paraphernalia from a fixed location in the city to a customer at a different location in the city;
5. Fail to fulfill the permittee obligations set forth in Section 9.32.070;
6. 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 prohibited by Section 9.32.030;
7. 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 device prohibited by Section 9.32.050;
8. Sell or offer for sale tobacco products which do not meet the minimum package sizes and prices in Section 9.32.065;
9. Honor coupons or provide discounts to allow a consumer to purchase a tobacco product for less than full retail price as set forth in Section 9.32.065(C);
10. Violate any local, state or federal law applicable to tobacco products, tobacco paraphernalia or tobacco retailing;

B. Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter;

C. Each sale in violation of this chapter shall be regarded as a new and separate offense. Each day any

violation of this chapter continues shall be regarded as a new and separate offense. The remedies provided in this chapter shall be cumulative and exclusive.

D. Violations of this chapter are hereby declared to be public nuisances.

E. No monetary fines under the municipal code are to be assessed on employees of the permittee for such employee's violations of this chapter. Violations of this chapter are subject to tobacco retailer permit suspension or revocation as provided in Section 9.32.160. (Ord. 2209 § 3, 2020)

#### **9.32.150 Tobacco retailing without a valid permit.**

In addition to any other penalty authorized by law, if the city finds or a court of competent jurisdiction determines, after notice and an opportunity to be heard, that any person has engaged in tobacco retailing at a location without a valid tobacco retailer permit, either directly or through the person's agents or employees, the person shall be ineligible to receive a permit as follows:

A. Upon a first violation of this section at a location within any five year period, no new permit may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until 30 days have passed from the date of the violation.

B. Upon a second violation of this section at a location within any five year period, no new permit may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction), until one year has passed from the date of the violation.

C. Upon a third or subsequent violation of this section at a location within any five year period, no new permit may issue for the person or the location (unless ownership of the business at the location has been transferred in an arm's length transaction). (Ord. 2209 § 3, 2020)

#### **9.32.160 Suspension or revocation of tobacco retailer permit.**

A. Suspension or Revocation of Tobacco Retailer Permit for Violation. In addition to any other penalty authorized by law, a tobacco retailer permit shall be suspended or revoked if the city finds or a court of competent jurisdiction determines, after the permittee is afforded notice and an opportunity to be heard, that the permittee, or any of the permittee's agents or employees, has violated any provision of this chapter.

1. Upon a finding of a first violation of this chapter at a location within any five year period, the permit shall be suspended for 30 days.

2. Upon a finding of a second violation of this chapter at a location within any five (5) year period, the permit shall be suspended for one year.

3. Upon a finding of three or more violations of this chapter at a location within any five year period, the permit shall be revoked.

B. Revocation of Tobacco Retailer Permit Wrongly Issued. A permit shall be revoked if the community development department finds, after the permittee is afforded notice and an opportunity to be heard, that one or more of the bases for denial of a permit under Section 9.32.090 existed at any time before the permit issued. Such a revocation shall be without prejudice to the filing of a new permit application. (Ord. 2209 § 3, 2020)

### 9.32.170 Notices.

A. Whenever the business license division or community development department denies an application for a permit or permit renewal, the community development department shall issue a written notice of denial sent by either regular mail to the applicant's address for notice listed on the permit application, or by personal delivery. The notice must include:

1. The reason for denial;
2. A statement that the applicant may request a hearing on the denial of a permit by submitting a hearing request, in writing, to the city clerk within 10 calendar days of the date of the notice; and
3. A statement that the failure to request a hearing on the notice of denial will constitute a waiver of all hearing and appeal rights, and the denial of the permit will be final.

B. Whenever the city determines that a person has violated any provision of this chapter, the community development department shall send a written notice of the violation to the person by personal service or regular mail to the person's address for notice listed on the permit application, if the person is a permit holder, otherwise to the location at which the violation occurred. The notice of violation may be combined with the notice of suspension or revocation below.

C. Whenever the community development department determines that grounds for suspension or revocation exist, it shall send a written notice of the suspension or revocation to the permit holder by personal service or by regular mail with proof of service, to the permit holder's address listed for notice in the permit application. The notice must include:

1. A statement that the permit holder's permit is being suspended or revoked under this chapter;

2. The code section(s) violated, or applicable state or federal law violated, and a brief description of the violation(s);

3. The address or other description of the location where the violation(s) occurred;

4. The date of the applicable violation(s);

5. The time period of the suspension or revocation;

6. A statement that the permit holder may request a hearing on the suspension or revocation by submitting a hearing request, in writing, to the city clerk within 10 calendar days of the date of the notice;

7. A statement that the failure to request a hearing on the notice of suspension or revocation will constitute a waiver of all hearing and appeal rights, and the suspension or revocation will be final.

D. Service of notice shall be deemed complete at the time of personal service or the time the notice is deposited in the mail. Failure of any person to receive notice shall not affect the validity of any proceedings hereunder. (Ord. 2209 § 3, 2020)

### 9.32.180 Hearing and appeal.

A. Request for Hearing. Any recipient of a notice of: denial of an application for a permit; denial of a renewal of a permit; or violation of this chapter described in Section 9.32.170 (a "notice") may contest the determination described in the notice by completing a request for hearing form and returning it to the city clerk within 10 days from the date of the notice. The request for hearing shall include a statement of the specific action protested, together with any facts claimed to support the protest, as well as a statement of relief sought. If such a timely request for hearing is made, it shall stay enforcement of the contested notice. If the request for hearing is found not timely or incomplete by the city clerk, the city clerk shall provide a written response to the requestor rejecting the hearing request.

B. The person requesting the hearing shall be notified of the time and place set for the hearing at least 10 days prior to the date of the hearing. Written notice of the time and place for the hearing shall be provided in person or by mailing a copy thereof, postage prepaid, to the mailing address provided in the request for hearing form. Service shall be deemed to be complete at the time notice is personally served or deposited in the mail. The failure of any person to receive notice of hearing shall not affect the validity of any proceedings under this chapter.

C. If the community development department submits an additional written report concerning the notice to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least five days prior to the date of the hearing.

D. The failure of any person to file a request for hearing in accordance with this section shall constitute waiver of that person's rights to administrative determination of the merits of the notice and any penalties assessed.

E. Hearing Officer. The city manager shall designate the hearing officer.

F. Hearing Procedure.

1. A hearing before the hearing officer shall be set for a date that is not less than 10 business days and not more than 30 calendar days from the date that the request for hearing is filed in accordance with the provisions of this chapter, unless otherwise agreed to by the community development department and person requesting the hearing.

2. The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Oral evidence shall be taken only upon oath or affirmation. The community development department and the person requesting the hearing shall have the right to call witnesses, introduce documentary and physical evidence.

3. The failure of the person requesting the hearing to appear at the hearing shall constitute a forfeiture of the hearing and a failure to exhaust administrative remedies.

4. The notice and any additional report or information submitted by the community development department shall constitute prima facie evidence of the respective facts contained in those documents and records.

5. The hearing officer may continue the hearing and request additional information from the community development department or the person requesting the hearing prior to issuing a written decision.

G. Hearing Officer's Decision.

1. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the action described in the notice and shall list in the decision the reasons for that decision.

2. If the hearing officer determines that the action described in the notice should be upheld, the hearing officer set forth a written decision including the applicable penalty as set forth in Section 9.32.160.

3. The person requesting the hearing shall be served with a copy of the hearing officer's written decision. The decision shall include a statement that: person requesting the hearing may request an appeal of the hearing officer's decision by submitting an appeal request, in writing, to the city clerk within 10 calendar days of the date of the hearing officer's decision; failure to request an appeal will constitute a waiver of all appeal rights, and the decision of the hearing officer will be final.

4. The employment, performance evaluation, compensation and benefits of the hearing officer shall not be directly or indirectly conditioned upon the amount of fines or penalties upheld by the hearing officer.

H. Appeal to City Manager.

After receipt of the hearing officer's written decision, the person requesting the hearing may appeal by sending a written appeal request to the city clerk within 10 days from the date of the hearing officer's decision. The appeal request should include facts that may justify rescinding the hearing officer's decision. If such an appeal request is timely made, it shall stay enforcement of the appealed hearing officer's decision. The city clerk will forward the appeal request and supporting documents concerning the original notice and request for hearing to the city manager. The city manager will review all information and determine if the hearing officer's decision will stand. The city manager, at his or her discretion, may hold a public hearing on the matter and accept oral and written testimony. The person requesting the hearing will be notified in writing of the city manager's decision concerning the appeal within 30 days after sending the written appeal request. The decision of the city manager shall be final.

I. Judicial Review.

Judicial review of the city manager's decision and any penalties imposed under this chapter shall be taken under California Government Code Section 53069.4(b) and commenced within 20 days of the date of service of the decision. (Ord. 2209 § 3, 2020)

### **9.32.190 Enforcement.**

A. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

B. The community development director, hearing officer, or city manager shall suspend or revoke a permit for a violation of this chapter as set forth in Section 9.32.160.

1. A violation of this chapter may be documented by an administrative citation issued by a police

officer or community services officer of the police department, or a code enforcement officer of the community development department. A copy of the administrative citation may be provided to the person violating this chapter, and another copy provided to the community development department for it to commence enforcement as provided in this Section 9.32.190. (Ord. 2209 § 3, 2020)

**9.32.200 Sale of tobacco products from or self-service displays.**

Tobacco stores may have self-service displays of tobacco products only when in compliance with the Stop Tobacco Access to Kids Enforcement Act (STAKE) in California Business and Professions Code Sections 22950-22963, and other applicable federal and state laws. (Ord. 2209 § 3, 2020)

**9.32.210 Severability.**

If any section or portion of this chapter is found to be invalid by a court of competent jurisdiction, such finding shall not affect the validity of the remainder of the chapter, which shall continue in full force and effect. (Ord. 2209 § 3, 2020)

**Chapter 9.34**

**GRAFFITI ABATEMENT**

**Sections:**

- 9.34.010 Purpose.**
- 9.34.020 Definitions.**
- 9.34.030 Declaration of nuisance.**
- 9.34.040 Removal by person who has created, caused or committed graffiti.**
- 9.34.050 Abatement at owner’s expense.**
- 9.34.060 Abatement at owner’s expense; notice to abate.**
- 9.34.070 Abatement at owner’s expense; hearing.**
- 9.34.080 Owner’s expense of abatement.**
- 9.34.090 Abatement at expense of person creating, causing or committing graffiti; hearing.**
- 9.34.100 Removal limitations.**
- 9.34.110 Police department procedures.**
- 9.34.120 Cumulative remedies.**
- 9.34.130 Severability.**

**9.34.010 Purpose.**

A. The purpose of this chapter is to provide a program and enforcement tools in addition to those already provided by state law to remove graffiti from public and private property and to prevent and control the further spread of graffiti in the city by administering and financing graffiti removal, educating the community on the prevention of graffiti and enforcing graffiti laws.

B. The increase of graffiti on public and private buildings, structures, and other places is creating a condition of blight within the city which results in deterioration of property and business values for adjacent and surrounding properties, all to the detriment of the city.

C. The city council finds and determines that graffiti is detrimental to the public health, safety, and general welfare and constitutes a public nuisance which must be abated so as to avoid the detrimental impact of such graffiti on the city and to prevent the further spread of graffiti. It is further the intent of the city council, through the adoption of this chapter to give notice to all who disregard the property rights of others that the city will strictly enforce all laws prohibiting graffiti, including, but not limited to: Sections 594, 594.1, 594.6, 640.5 and 640.6 of the California Penal Code; Section 13202.6 of the California Vehicle Code; and the provisions of this chapter. (Ord. 1713 § 1, 1997)

**9.34.020 Definitions.**

For purposes of this chapter, the following words or phrases shall have meanings as provided in this section:

A. “Abatement” means removing or covering over of graffiti by such means and in such manner and to such extent as is necessary in the interest of the general health, safety, and welfare of the community as determined by the city manager.

B. “City manager” includes the city manager or the city manager’s designee.

C. “Expense of abatement” includes, but is not limited to, court costs, costs of removal of graffiti, costs of repair and replacement of defaced property, recording costs, costs of providing notice to the property owners and/or responsible party, law enforcement costs incurred by the city in identifying and apprehending the person who created, caused, or committed graffiti on property within the city of Pleasanton, costs of administering and monitoring the participation of a person, and if the person is a minor, the minor and the minor’s parent or guardian in a graffiti abatement program, and attorney fees by the prevailing party pursuant to Government Code Section 38773.5(b).

D. “Graffiti” means any unauthorized inscription, word, figure, mark, design, or other inscribed material that is written, marked, etched, scratched, drawn, sprayed, painted, pasted, or otherwise affixed to any surface on any property to the extent that same was unauthorized by the owner thereof or, despite authorization, is deemed by the city council to be a public nuisance.

E. “Property” means real or personal property, whether publicly or privately owned, within the city of Pleasanton. (Ord. 1713 § 1, 1997)

**9.34.030 Declaration of nuisance.**

The city council finds and declares that the existence of graffiti anywhere within the city is a public and private nuisance and may be abated as provided in this chapter. (Ord. 1713 § 1, 1997)

**9.34.040 Removal by person who has created, caused or committed graffiti.**

Any person who has created, caused or committed graffiti within the city shall have the duty to abate the same immediately, but not longer than 72 hours after notice by the city or by the owner of the property involved. Each instance of failure by any person to abate graffiti following notice shall constitute a separate violation. Every day that said graffiti is not abated after no-

**Title 18**  
**ZONING**

**Chapters:**

- 18.04 General Provisions**
- 18.08 Definitions**
- 18.12 Administrative Provisions**
- 18.20 Design Review**
- 18.24 Districts Generally**
- 18.28 A Agricultural District**
- 18.32 R-1 One-Family Residential Districts**
- 18.36 RM Multi-Family Residential Districts**
- 18.40 O Office District**
- 18.44 C Commercial Districts**
- 18.46 MU Mixed Use Districts**
- 18.48 I Industrial Districts**
- 18.52 Q Rock, Sand and Gravel Extraction District**
- 18.56 P Public and Institutional District**
- 18.60 S Study District**
- 18.64 RO Residential Overlay District**
- 18.68 PUD Planned Unit Development District**
- 18.72 C-O Civic Overlay District (Rep. by Ord. 1718 § 1, 1997)**
- 18.74 Downtown Revitalization District**
- 18.76 H-P-D Hillside Planned Development District**
- 18.78 West Foothill Road Corridor Overlay District**
- 18.80 Core Area Overlay District**
- 18.81 Active Ground-Floor Overlay District**
- 18.82 SF Service Facilities Overlay District**
- 18.84 Site, Yard, Bulk, Usable Open Space and Landscaping Regulations**
- 18.86 Reasonable Accommodation**
- 18.88 Off-Street Parking Facilities**
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- 18.96 Signs**

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## Chapter 18.40

### O OFFICE DISTRICT

#### Sections:

- 18.40.010 Purpose.**
- 18.40.020 Required conditions.**
- 18.40.030 Permitted and conditional uses.**
- 18.40.040 Prohibited uses.**
- 18.40.050 Underground utilities.**
- 18.40.060 Off-street parking.**
- 18.40.070 Off-street loading.**
- 18.40.080 Signs.**
- 18.40.090 Design review.**

#### **18.40.010 Purpose.**

In addition to the objectives prescribed in Section 18.04.010 of this title, the O office district is included in this title to achieve the following purposes:

- A. To provide opportunities for offices of a semicommercial character to locate outside of commercial districts;
- B. To establish and maintain in portions of the city the high standards of site planning, architecture and landscape design sought by many business and professional offices;
- C. To provide adequate space to meet the needs of modern offices, including off-street parking of automobiles and, where appropriate, off-street loading of trucks;
- D. To provide space for semipublic facilities and institutions that appropriately may be located in office districts;
- E. To minimize traffic congestion and to avoid the overloading of utilities by preventing the construction of buildings of excessive size in relation to the amount of land around them;
- F. To protect offices from the noise, disturbance, traffic hazards, safety hazards, and other objectionable influences incidental to certain commercial uses;
- G. To protect offices from fire, explosion, noxious fumes and other hazards. (Prior code § 2-6.35)

#### **18.40.020 Required conditions.**

- A. All uses shall comply with the regulations prescribed in Chapter 18.84 of this title;
- B. All professional pursuits and businesses shall be conducted entirely within a completely enclosed structure, except for off-street parking and loading areas;
- C. No use shall be permitted, and no process, equipment or material shall be employed which is found by the planning commission to be objectionable to persons residing or working in the vicinity or injurious to property located in the vicinity by reason of odor, insect nuisance, fumes, dust, smoke, cinders, dirt, refuse, water-carried wastes, noise, vibration, illumination, glare, unsightliness or truck traffic, or to involve any hazard of fire or explosion. (Prior code § 2-6.36)

#### **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. (Ord. 2208 § 3, 2020; Ord. 2155 § 3, 2017; Ord. 2113 § 1, 2015; Ord. 2086 § 2, 2014; Ord. 1995 § 2, 2009; Ord. 1950 § 2 (Exh. A), 2007; Ord. 1880, 2003; Ord. 1743, 1998; Ord. 1726 § 1, 1997; Ord. 1668 § 1, 1995; prior code § 2-6.37)

**18.40.040 Prohibited uses.**

The following uses shall not be permitted in the office district:

- A. Any use not specifically or conditionally permitted by this chapter, unless a determination is made under Chapter 18.128 of this title.
- B. Firearm sales. (Ord. 2155 § 3, 2017; Ord. 1880, 2003; Ord. 1738 § 1, 1998)

**18.40.050 Underground utilities.**

Electric and communication service wires to a new structure shall be placed underground from the nearest utility pole. If the city engineer finds, upon application by the property owner, that compliance is not feasible or economically justifiable, he or she shall permit different service arrangements. The property owner shall comply with the requirements of this section without expense to the city and shall make the necessary arrangements with the public utility involved. (Ord. 2155 § 3, 2017; Ord. 2000 § 1, 2009; Ord. 1738 § 1, 1998; prior code § 2-6.39)

**18.40.060 Off-street parking.**

Off-street parking facilities shall be provided for each use in the O district as prescribed in Chapter 18.88 of this title. (Ord. 2155 § 3, 2017; Ord. 1738 § 1, 1998; prior code § 2-6.40)

**18.40.070 Off-street loading.**

Off-street loading facilities shall be provided for each use as prescribed in Chapter 18.92 of this title. (Ord. 2155 § 3, 2017; Ord. 1738 § 1, 1998; prior code § 2-6.41)

**18.40.080 Signs.**

No sign, outdoor advertising structure or display of any character shall be permitted in the O district except as prescribed in Chapter 18.96 of this title. (Ord. 2155 § 3, 2017; Ord. 1738 § 1, 1998; prior code § 2-6.42)

**18.40.090 Design review.**

All permitted and conditional uses in the O district shall be subject to design review as prescribed in Chapter 18.20 of this title. Applicants are advised to confer with the zoning administrator before preparing detailed plans. (Ord. 2155 § 3, 2017; Ord. 1738 § 1, 1998; prior code § 2-6.43)

allowed by the zoning administrator upon making the finding that such displays are not detrimental to the public health, safety or general welfare. Such displays shall not contain signing (unless they are submitted as a sign). The zoning administrator’s decision with regard to what constitutes a decorative display may be appealed to the planning commission by the affected merchant or property owner. The requirements of Section 18.144.030 of this title shall not govern such an appeal.

- C. In a C-N and C-C district all products shall be sold primarily at the retail site.
- D. No use shall be permitted, and no process, equipment, or material shall be employed which is found by the zoning administrator or planning commission, as applicable, to be objectionable to persons residing or working in the vicinity or injurious to property located in the vicinity by reason of odor, insect nuisance, fumes, dust, smoke, cinders, dirt, refuse, water-carried wastes, noise, vibration, illumination, glare, unsightliness, or heavy truck traffic, or to involve any hazard of fire or explosion. No exterior illumination closer than 200 feet to the boundaries of a site or interior illumination closer than 10 feet to a window within 200 feet of the boundary of a site and visible beyond the boundary of a site, whether related to a sign or not, shall exceed the intensity permitted by Chapter 18.96 of this title regarding illumination. (Ord. 2155 § 3, 2017; Ord. 2055 § 2, 2012; Ord. 1656 § 1, 1995; Ord. 1104 § 1, 1983; prior code § 2-7.07)

**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.

**Table 18.44.080**

**PERMITTED AND CONDITIONAL USES**

The following uses shall be permitted uses or conditional uses in a commercial, mixed-use, office, or industrial district according to the following legend:			
P	Permitted Use	MU-T	Mixed Use Transitional
C	Conditional Use	CR	Regional Commercial District
MCUP	Minor Conditional Use	CS	Service Commercial District
TC	Temporary Conditional Use	CF	Freeway Interchange Commercial District
CN	Neighborhood Commercial District	O	Office District
CC	Central Commercial District	IP	Industrial Park District
MU-D	Mixed Use Downtown	IG	General Industrial District
If a property is zoned PUD, then the PUD shall be consulted for permitted and conditionally permitted uses before consulting this table. Where there is a conflict between Table 18.44.080 and the PUD, the PUD shall govern.			

	CN	CC	CR (m <sup>1</sup> )	CR (p <sup>2</sup> )	CS	CF	O	I-P	I-G	CC	MU-D	MU-T <sup>35</sup>
<b>CULTURAL AND ENTERTAINMENT</b>												
Adult entertainment establishments <sup>3</sup>		P	P	P	P					P <sup>18</sup>	P <sup>18</sup>	P
Art galleries	P	P	P	P						P	P	P
Auction rooms		C			C	C				C <sup>18</sup>		
Bowling alleys, pool halls, indoor bocce court, and other similar uses		C	P	C	C					C	C	
Game arcades	C	C	C	C						C	C	
Regional attraction, including amusement parks, automobile racing stadiums, drive-in theater, miniature golf, indoor skating rinks, sports arenas, or stadiums			C	C	C	C						
Theaters and auditoriums	C	P	P	P	C					P	P	
<b>EDUCATIONAL</b>												
Nursery schools <sup>4,5</sup>	C		C	C								
Private schools with no more than 20 students at any one time <sup>5</sup>	C		C	C			P					
Private schools with more than 20 students at any one time <sup>5</sup>	C		C	C			C					
Schools and colleges with no more than 20 students in the facility at any one time. This category includes trade schools, business schools, heritage schools, music and art schools, tutoring, but does not include general purpose schools <sup>5,6</sup>	P	P	P	P	P	P	MCUP		P	P <sup>18</sup>	P <sup>18</sup>	MCUP
Schools and colleges with more than 20 students in the facility at any one time. This category includes trade schools, business schools, heritage schools, music and art schools, tutoring, but does not include general purpose schools <sup>5,6</sup>	MCUP	MCUP	MCUP	MCUP	MCUP	MCUP	C		MCUP	MCUP <sup>18</sup>	MCUP <sup>18</sup>	C
<b>ENERGY/ACCESSORY USES</b>												
Accessory uses and structures, not including warehouses, located on the same site as a permitted use and the following accessory structures and uses located on the same site with a permitted use or with a conditional use which has been granted a use permit in accord with the provisions of Chapter 18.124 of this title:												
Emergency standby electricity generator, fuel cell, and/or battery facilities <sup>7</sup> , photovoltaic facilities, small electricity generator facilities <sup>8</sup> , and small fuel cell facilities <sup>9</sup>	P	P	P	P	P	P	P	P	P	P	P	P

These uses shall meet all four of the following parameters:

- i. The use is in compliance with all applicable requirements of Chapter 9.04 (Noise Regulations). The applicant may be required to install noise mitigating measures to ensure compliance with the noise regulations.
  - ii. For indoor music and entertainment, the exterior doors of the establishment shall remain closed when not being used for ingress/egress and self-closing mechanisms shall be installed on all exterior doors.
  - iii. For indoor music and entertainment, the establishment's windows shall remain closed when music/entertainment activities are taking place.
  - iv. The use is in compliance with all applicable requirements of the Pleasanton Municipal Code and all other applicable laws, particularly pertaining to noise, public disturbance, littering, and parking.
- 11 A conditional use permit shall be required for special downtown accessory entertainment uses, as defined in Chapter 18.08 of this title, and the use does not comply with the hour restrictions and/or conditions required for the use to be a permitted use or a temporary conditional use.
  - 12 The use shall be in accord with the provisions of Chapter 18.124 of this title.
  - 13 The city planning commission shall make a specific finding that the use will conform with each of the required conditions prescribed in Sections 18.48.040 through 18.48.120 of this chapter, in addition to the findings prescribed in Section 18.48.060.
  - 14 Wind energy facilities shall meet the following criteria: (1) The facilities shall not exceed a noise level of 45 dBA at any point on any residentially zoned property outside of the property plane where the facilities are located; and (2) The design of the facilities shall be streamlined (without ladders and extra appurtenances) to discourage birds from roosting on the facilities; and (3) Facilities on hillsides or ridges shall not be visible from a public right-of-way.
  - 15 This use with outdoor storage shall be subject to a conditional use permit as prescribed in Chapter 18.124.
  - 16 The following conditions shall apply to microbreweries and wineries: (1) The zoning administrator finds that adequate parking is available for said use; (2) If the zoning administrator determines that the use will be or is creating odor problems, an odor abatement device determined to be appropriate by the zoning administrator shall be installed within the exhaust ventilation system to mitigate brewery odors; (3) The applicant is in compliance with all applicable requirements of Chapter 9.04 of this code; (4) If operation of the use results in conflicts pertaining to parking, noise, odors, traffic, or other factors, the zoning administrator may modify or add conditions to mitigate such impacts, or may revoke the zoning certificate for the use.
  - 17 Basement storage as defined in Section 18.08.057 shall be permitted as warehousing in the central commercial (C-C) zoning district, subject to meeting all of the following criteria:
    - a. Basement storage shall be limited to the C-C zoning district within the downtown specific plan area and limited to commercial buildings only;
    - b. Basement storage shall be limited to nontoxic, nonhazardous materials only. It is the responsibility of the storage space operator to prepare a list of prohibited storage items, to have the list approved by the Livermore-Pleasanton fire department, and to require all storage space users to agree in writing that no items on the list or other hazardous materials will be stored. The storage space shall be used for storage only and no other activities and/or uses are allowed;
    - c. Prior to allowing basement storage, the building owner shall contact the building and safety division and fire department to ensure that the basement meets applicable building and fire codes. If required, the building owner and/or responsible party shall secure all applicable permits and/or make any required changes to the basement space to ensure the space meets current code standards for fire, safety, and accessibility;
    - d. The hours of access for basement storage use shall be: Monday through Friday from 6:00 a.m. to 10:00 p.m. and Saturday and Sunday from 10:00 a.m. to 6:00 p.m. only;
    - e. One parking space per on-site storage employee and one parking space for storage customers. This parking requirement is in addition to the parking required for other uses on-site;
    - f. Prior to allowing and/or renting space for basement storage, the property owner and/or responsible party shall submit a zoning certificate application and secure a business license. The zoning certificate application shall be accompanied by a narrative that describes the type of storage proposed, where parking will be allowed, and the use(s) of the building and shall include a site plan and basement storage floor plan that clearly defines, but is not limited to, the following: (1) The defined area(s) and square-footage in which storage will take place; (2) How the individual storage areas will be delineated (e.g., cages, walls, etc.); (3) Access and ADA accessibility.
  - 18 Use is not permitted on the ground floor when the property is also located in the Active Ground-Floor Overlay District, except where an exemption is granted as set forth in Chapter 18.81.
  - 19 Medical offices shall be subject to parking requirements identified in Chapter 18.88.
  - 20 A temporary outdoor use may be permitted pursuant to Section 18.116.040.
  - 21 All buses shall not be stored on site and no repair work shall be conducted on-site.
  - 22 Commercial radio and television aerials, antennas, and transmission towers shall be a minimum distance of 300 feet from the property lines of all of the following:
    - a. Existing or approved residences or agricultural zoning districts or in planned unit developments with a residential or agricultural zoning designation.
    - b. Undeveloped residential or agricultural zoning districts or undeveloped planned unit developments with a residential or agricultural zoning designation and without an approved development plan, unless designated as a public and institutional land use in the general plan.
    - c. Existing or approved public schools, private schools, and childcare centers, not including schools which only provide tutorial services.
    - d. Neighborhood parks, community parks, or regional parks, as designated in the general plan.
    - e. Existing or approved senior care/assisted living facilities, including nursing homes.

All commercial radio and television aerials, antennas, and transmission towers shall be located so as to minimize their visibility and, unless determined by the zoning administrator to be significantly hidden from view, designed to ensure that they will not appear as an aerial, antenna, and/or transmission tower. All such facilities determined by the zoning administrator to be visible from residential land uses, the I-580 and/or I-680 rights-of-way, or other sensitive land uses such as parks, schools, or major streets, shall incorporate appropriate stealth techniques to camou-

flage, disguise, and/or blend them into the surrounding environment, and shall be in scale and architecturally integrated with their surroundings in such a manner as to be visually unobtrusive. All applications for commercial radio and/or television aerials, antennas, and transmission towers shall include engineering analyses completed to the satisfaction of the zoning administrator. Said analyses shall be peer-reviewed by an outside consultant.

If mounted on structures or on architectural details of a building, these facilities shall be treated to match the existing architectural features and colors found on the building's architecture through design, color, texture, or other measures deemed to be necessary by the zoning administrator. Roof-mounted aerials and antennas shall be located in an area of the roof where the visual impact is minimized. Roof-mounted and ground-mounted aerials, antennas, and transmission towers shall not be allowed in the direct sightline(s) or sensitive view corridors, or where they would adversely affect scenic vistas, unless the facilities incorporate the appropriate, creative techniques to camouflage, disguise, and/or blend them into the surrounding environment, as determined to be necessary by the zoning administrator.

All commercial radio and television aerials, antennas, and transmission towers shall conform to the applicable requirements of Cal-OSHA and/or the FCC before commencement of, and during operation. Evidence of conformance shall be provided to the zoning administrator before final inspection of the facility by the chief building official.

If the zoning administrator finds that an approved aerial, antenna, or transmission tower is not in compliance with this title, that conditions have not been fulfilled, or that there is a compelling public safety and welfare necessity, the zoning administrator shall notify the owner/operator of the aerial/antenna/transmission tower in writing of the concern, and state the actions necessary to cure. After 30 days from the date of notification, if compliance with this title is not achieved, the conditions of approval have not been fulfilled, or there is still a compelling public safety and welfare necessity, the zoning administrator shall refer the use to the planning commission for review. Such reviews shall occur at a noticed public hearing where the owner/operator of the aerial/antenna/transmission tower may present relevant evidence. If, upon such review, the planning commission finds that any of the above have occurred, the planning commission may modify or revoke all approvals and/or permits.

- 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.
- 24 Lumberyards shall not include planing mills or sawmills and shall be at least 300 feet from an R or O district.
- 25 The use shall be at least 300 feet from an R or O district.
- 26 Any use not in conjunction with a medical use that includes massage service of four or more technicians at any one time shall be subject to a minor conditional use permit as prescribed in Chapter 18.124. Massage establishments shall meet the requirements of Chapter 6.24.
- 27 Any retail use in the C-R(m), C-R(p), and C-C Districts that includes firearm sales shall be subject to a conditional use permit as prescribed in Chapter 18.124. Firearm sales are prohibited in the C-N, C-F, MU-T, and MU-D Districts. Firearm sales in which no more than 10 firearms are stored on-site at any one time and the majority of firearms are sold through catalogs, mail order, or at trade shows are subject to a conditional use permit in the C-S District.
- 28 The use may include incidental care such as bathing and trimming, provided that all operations are conducted entirely within a completely enclosed building which complies with specifications for soundproof construction prescribed by the chief building official.
- 29 Any use that includes a drive-through shall be subject to a conditional use permit as prescribed in Chapter 18.124.
- 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 percent 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.
- 31 Where: (1) the subject tenant space is located within the Downtown Specific Plan area; and (2) the subject tenant space exceeds 7,500 gross square feet, a retail use shall be subject to a conditional use permit as prescribed in Chapter 18.124.
- 32 Homeless shelters within the SF service facilities overlay district that meet the requirements set forth in Chapter 18.82 shall be a permitted use.
- 33 If the subject tenant space exceeds 75,000 gross square feet, the use shall be subject to a conditional use permit as prescribed in Chapter 18.124. This requirement does not apply to light industrial uses located in Hacienda, an area defined by Ordinance 1325 and as subsequently amended.
- 34 Restaurants and catering establishments with outdoor dining shall be subject to a conditional use permit as prescribed in Chapter 18.124.
- 35 Any use shall operate only between the hours of 6:00 a.m. and 11:00 p.m.

(Ord. 2208 § 3, 2020; Ord. 2194 § 2, 2019; Ord. 2155 § 3, 2017; Ord. 2113 § 1, 2015; Ord. 2086 § 2, 2014; Ord. 2061 § 2, 2013; Ord. 2055 § 2, 2012; Ord. 2039 § 2, 2012; Ord. 2017 § 2, 2011; Ord. 2000 § 1, 2009; Ord. 1995 § 2, 2009; Ord. 1950 § 2 (Exh. A), 2007; Ord. 1880, 2003; Ord. 1850 § 1, 2002; Ord. 1821 § 1, 2001; Ord. 1810 § 1, 2000; Ord. 1743, 1998; Ord. 1738 § 1, 1998; Ord. 1726 § 1, 1997; Ord. 1725 § 1, 1997; Ord. 1668 § 2, 1995; Ord. 1665 § 2, 1995; Ord. 1604 § 1, 1993; Ord. 1603 § 3, 1993; Ord. 1394 § 1, 1989; Ord. 1390 § 1, 1988; Ord. 1379 § 1, 1988; Ord. 1354 § 4, 1988; Ord. 1346 § 2, 1987; Ord. 1340 § 1, 1987; Ord. 1216 § 1, 1985; Ord. 1071 § 2, 1983; prior code § 2-7.08)

#### **18.44.090 Prohibited uses.**

The following uses shall not be permitted in the commercial districts:

Any use not specifically or conditionally permitted by this chapter, unless a determination is made under Chapter 18.128 of this title. (Ord. 2155 § 3, 2017; Ord. 1880, 2003)

**18.44.100     Underground utilities.**

Electric and communication service wires to a new structure shall be placed underground from the nearest utility pole. If the city engineer finds, upon application by the property owner, that compliance is not feasible or economically justifiable, he or she shall permit different service arrangements. The property owner shall comply with the requirements of this section without expense to the city and shall make the necessary arrangements with the public utility involved. (Ord. 2000 § 1, 2009; prior code § 2-7.09)

**18.44.110     Off-street parking.**

Off-street parking facilities shall be provided for each use in the C districts as prescribed in Chapter 18.88 of this title. (Prior code § 2-7.10)

**18.44.120     Off-street loading.**

Off-street loading facilities shall be provided for each use in the C districts prescribed in Chapter 18.92 of this title, except in the C-R district where the zoning administrator and/or planning commission shall establish regulations on a case by case basis in accordance with the purposes of Chapters 18.20 and 18.74, as applicable, of this title. (Ord. 2155 § 3, 2017; Ord. 1591 § 2, 1993; prior code § 2-7.11)

**18.44.130     Signs.**

No sign, outdoor advertising structure, or display of any character shall be permitted in the C districts, except as prescribed in Chapters 18.96 and 18.74, as applicable, of this title. (Ord. 2155 § 3, 2017; prior code § 2-7.12)

**18.44.140     Design review.**

All uses in the C districts involving exterior changes, uses, or improvements shall be subject to design review as prescribed in Chapter 18.20 of this title. Applicants are advised to confer with the zoning administrator before preparing detailed plans. (Ord. 2155 § 3, 2017; prior code § 2-7.13)

## Chapter 18.46

### MU MIXED USE DISTRICTS

#### Sections:

- 18.46.010 Purpose.**
- 18.46.020 Required conditions.**
- 18.46.030 Permitted and conditional uses.**
- 18.46.040 Prohibited uses.**
- 18.46.050 Underground utilities.**
- 18.46.060 Off-street parking.**
- 18.46.070 Off-street loading.**
- 18.46.080 Signs.**
- 18.46.090 Design review.**

#### **18.46.010 Purpose.**

- A. In addition to the objectives prescribed in Section 18.04.010 of this title, the mixed use districts are included in this title to:
  - 1. Provide opportunities for a diversity of compatible and complementary commercial and residential uses within close proximity to one another, including uses that may be located on the same site, in the same building, or on adjacent sites.
  - 2. Encourage convenient access for downtown residents to services, entertainment, shopping and dining, within a short walking or bicycling distance.
- B. In addition to the purposes set forth above:
  - 1. The mixed use-downtown district is intended to foster a dynamic mixed use destination at the southern end of the downtown, that complements and extends the vitality of the existing central-commercial district. This district supports a balanced mix of uses including commercial, hotel, entertainment, office, food halls, live/work and residential uses, and public-serving uses including public parking facilities to serve the needs of the broader downtown area; and
  - 2. The mixed use-transitional district is intended to accommodate a range of lower-intensity commercial uses than allowed in the mixed use-downtown and downtown commercial districts, including retail, office, personal services, food services and, that are compatible with residential uses located both within and adjacent to the district. (Ord. 2194 § 2, 2019)

#### **18.46.020 Required conditions.**

- A. All uses shall comply with the regulations prescribed in Chapter 18.84 of this title, except as otherwise specified in this chapter;
- B. All uses shall be conducted entirely within a completely enclosed structure, except for outdoor dining, and outdoor displays for retail shops that are located immediately in front of the shop and do not impede pedestrian traffic;
- C. No use shall be permitted, and no process, equipment or material shall be employed which is found by the zoning administrator or planning commission, as applicable, to be objectionable to persons residing or working in the vicinity or injurious to property located in the vicinity by reason of odor, insect nuisance, fumes, dust, smoke, cinders, dirt, refuse, water-carried wastes, noise, vibration, illumination, glare, unsightliness or truck traffic, or to involve any hazard of fire or explosion;
- D. Development in the MU-D district shall be subject to planned unit development review and approval by city council. (Ord. 2194 § 2, 2019)

**18.48.020 Special purpose—I-P industrial park district.**

The special purposes of the I-P district are as follows:

- A. To establish and maintain high standards of site planning, architecture and landscape design that will create an environment attractive to the most discriminating industries and research and development establishments seeking sites in northern California;
- B. To provide locations for industries that can operate in close proximity to commercial and residential uses with minimum mutual adverse impact;
- C. To protect light industrial and related uses from nuisances associated with heavy industrial uses. (Prior code § 2-7.18)

**18.48.030 Special purpose—I-G general industrial district.**

The special purpose of the I-G district is to provide locations where industries that are incompatible with most other land uses can operate with minimum restriction and without adverse effect on other uses. (Prior code § 2-7.18(a))

**18.48.040 Required conditions generally.**

All uses shall comply with the regulations prescribed in Chapter 18.84 of this title and with the additional regulations prescribed in this section. The zoning administrator may require submission of evidence of ability to comply with the required conditions or of maintenance of the required conditions as prescribed in Chapter 18.128 of this title regarding determination of compliance with required conditions. (Ord. 2155 § 3, 2017; prior code § 2-7.19)

**18.48.050 Noise restrictions.**

In an I-P district, no use except a temporary construction operation shall be permitted which creates, at any point beyond the boundaries of the site, noise of a maximum sound pressure level greater than the values given in the following table. In an I-G district no use except a temporary construction operation shall be permitted which creates, at any R or O district boundary, noise of a maximum sound pressure level greater than the values given in the following table. The sound pressure levels shall be measured in decibels 0.002 dynes per square centimeter with a sound level meter and associated octave band filter conforming to standards prescribed by the American Standards Association.

<b>Octave Band (Cycles Per Second)</b>	<b>Maximum Permitted Sound Pressure Level (Decibels)</b>
Below 75	72
75—149	67
150—299	59
300—599	52
600—1,199	46
1,200—2,399	40
2,400—4,799	34
4,800 and above	32

(Ord. 2155 § 3, 2017; prior code § 2-7.19(1))

**18.48.060 Emissions.**

No use shall be permitted which creates any emission which endangers human health, can cause damage to animals, vegetation or other property, or which can cause soiling at any point beyond the boundaries of the site. All uses that emit any of the air contaminants listed in the bay area air pollution control district's Regulation 2, shall comply with the regulations contained therein. (Ord. 2155 § 3, 2017; prior code § 2-7.19(2))

18.48.070

**18.48.070 Odor.**

No use shall be permitted which creates annoying odor in such quantities as to be readily detectable beyond the boundaries of the site in an I-P or L-I district or beyond the boundaries of the district in an I-G district when diluted in the ratio of one volume of odorous air to four volumes of clean air. (Ord. 2155 § 3, 2017; prior code § 2-7.19(3))

**18.48.080 Vibration.**

No use except a temporary construction operation shall be permitted which creates vibration sufficient to cause a displacement of 0.003 of one inch beyond the boundaries of the site. (Ord. 2155 § 3, 2017; prior code § 2-7.19(4))

**18.48.090 Heat and cold, glare and electrical disturbance.**

No use except a temporary construction operation shall be permitted which creates changes in temperature or direct or sky reflected glare, detectable by the human senses without the aid of instruments beyond the boundaries of the site. No use shall be permitted which creates electrical disturbances that affect the operation of any equipment beyond the boundaries of the site. No exterior illumination closer than 200 feet to the boundaries of a site or interior illumination closer than 10 feet to a window within 200 feet of the boundary of a site and visible beyond the boundary of a site, whether related to a sign or not, shall exceed the intensity permitted by Chapter 18.96 of this title relating to illumination. (Ord. 2155 § 3, 2017; prior code § 2-7.19(5))

**18.48.100 Radiation.**

No use shall be permitted which emits dangerous radioactivity. (Ord. 2155 § 3, 2017; prior code § 2-7.19(6))

**18.48.110 Insect nuisance.**

No use shall be permitted which creates insect nuisance beyond the boundaries of the site. (Ord. 2155 § 3, 2017; prior code § 2-7.19(7))

**18.48.120 Disposal of industrial waste.**

All uses shall comply with regulations prescribed by city ordinance. (Ord. 2155 § 3, 2017; prior code § 2-7.19(8))

**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. (Ord. 2208 § 3, 2020; Ord. 2155 § 3, 2017; Ord. 2000 § 1, 2009; Ord. 1950 § 2 (Exh. A), 2007; Ord. 1880, 2003; Ord. 1821 § 1, 2001; Ord. 1738 § 1, 1998; Ord. 1665 § 3, 1995; prior code § 2-7.20(1))

**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. (Ord. 2208 § 3, 2020; Ord. 2155 § 3, 2017; Ord. 1950 § 2 (Exh. A), 2007; Ord. 1738 § 1, 1998; prior code § 2-7.20(2))

**18.48.150 Prohibited uses.**

The following uses shall not be permitted in the industrial districts:

Any use not specifically or conditionally permitted by this chapter, unless a determination is made under Chapter 18.128 of this title. (Ord. 2155 § 3, 2017; Ord. 1880, 2003)

**18.48.160 Underground utilities.**

In the I-P, I-G and L-I districts, electric and communication service wires to a new structure shall be placed underground from the nearest utility pole. If the city engineer finds, upon application by the property owner, that compliance is not feasible or economically justifiable, he or she shall permit different service arrangements. The property owner shall comply with the requirements of this section without expense to the city and shall make the necessary arrangements with the public utility involved. (Ord. 2155 § 3, 2017; Ord. 2000 § 1, 2009; prior code § 2-7.22)

**18.48.170 Off-street parking.**

Off-street parking facilities shall be provided for each use as prescribed in Chapter 18.88 of this title. (Ord. 2155 § 3, 2017; prior code § 2-7.23)

**18.48.180 Off-street loading.**

Off-street loading facilities shall be provided for each use as prescribed in Chapter 18.92 of this title. (Ord. 2155 § 3, 2017; prior code § 2-7.24)

**18.48.190 Signs.**

No sign, outdoor advertising structure, or display of any character shall be permitted except as prescribed in Chapter 18.96 of this title. (Ord. 2155 § 3, 2017; prior code § 2-7.25)

**18.48.200 Design review.**

All permitted and conditional uses shall be subject to design review as prescribed in Chapter 18.20 of this title. Applicants are advised to confer with the zoning administrator before preparing detailed plans. (Ord. 2155 § 3, 2017; prior code § 2-7.26)

## Chapter 18.52

### Q ROCK, SAND AND GRAVEL EXTRACTION DISTRICT

#### Sections:

<b>18.52.010</b>	<b>Purpose.</b>
<b>18.52.020</b>	<b>Required conditions.</b>
<b>18.52.030</b>	<b>Permitted uses.</b>
<b>18.52.040</b>	<b>Conditional uses.</b>
<b>18.52.045</b>	<b>Prohibited uses.</b>
<b>18.52.050</b>	<b>Special conditions applying to rock, sand and gravel extraction and processing.</b>
<b>18.52.060</b>	<b>Plan and operating data required.</b>
<b>18.52.070</b>	<b>General plan for reuse required.</b>
<b>18.52.080</b>	<b>Term of use permit—Review required.</b>
<b>18.52.090</b>	<b>Preexisting uses—Terms of review.</b>
<b>18.52.100</b>	<b>Minimum standards.</b>
<b>18.52.110</b>	<b>Off-street parking.</b>
<b>18.52.120</b>	<b>Off-street loading.</b>
<b>18.52.130</b>	<b>Signs.</b>
<b>18.52.140</b>	<b>Design review.</b>

#### **18.52.010 Purpose.**

In addition to the objectives prescribed in Section 18.04.010 of this title, the Q rock, sand and gravel extraction district is included in this title to achieve the following purposes:

- A. To protect the natural resources in the city and assure that their utilization is not prejudiced by the intrusion of incompatible uses;
- B. To indicate clearly to all interested parties the portions of the city that have been designated for rock, sand and gravel extraction and processing subject to compliance with the standards of this chapter;
- C. To protect properties and uses not in the Q district from nuisances incidental to extraction, processing and hauling rock, sand and gravel;
- D. To ensure that general reuse plans for sites used for rock, sand and gravel extraction and processing are maintained and effectuated. (Prior code § 2-7.30)

#### **18.52.020 Required conditions.**

All uses shall comply with the regulations prescribed in Chapter 18.84 of this title, and with the following additional regulations of the I-G district: Sections 18.48.050 through 18.48.120 of this title. (Ord. 2155 § 3, 2017; prior code § 2-7.31)

#### **18.52.030 Permitted uses.**

The following uses shall be permitted:

Any use permitted in the A agricultural district except dwellings. (Prior code § 2-7.32)

#### **18.52.040 Conditional uses.**

The following conditional uses shall be permitted upon the granting of a use permit, in accord with the provisions of Chapter 18.124 of this title:

## Chapter 18.108

### TRAILERS AND TRAILER PARKS

#### Sections:

- 18.108.010**    **Occupancy requirements.**
- 18.108.020**    **Parking restriction.**
- 18.108.030**    **Required conditions for trailer parks.**
- 18.108.040**    **Trailers on school sites.**

#### **18.108.010**    **Occupancy requirements.**

Except as provided in Sections 18.108.040 and 18.116.010, no trailer (mobilehome) shall be occupied or used for living or sleeping purposes unless it is located in a licensed trailer park, provided that a trailer may be used as an office for a construction project. (Prior code § 2-10.26)

#### **18.108.020**    **Parking restriction.**

No trailer, whether designed for living or sleeping purposes or not, shall be parked or stored in an R district, except as prescribed in Sections 18.84.270 and 18.108.040. (Prior code § 2-10.27)

#### **18.108.030**    **Required conditions for trailer parks.**

Trailer parks permitted as conditional uses in the RM and C-F districts shall comply with the regulations prescribed in Chapter 18.84 of this title, except as provided in this section:

- A. The minimum site area for trailer park shall be five acres, provided that preexisting trailer park shall be five acres, conforming by reason of failure to meet the minimum site area requirement. A preexisting trailer park conforming in all respects except site area may be expanded, but shall not be reduced in area.
- B. There shall be 4,000 square feet of site area for each trailer space. A preexisting trailer park shall not be deemed nonconforming by reasons of failure to meet the minimum site area per trailer space requirement, and may be enlarged, provided that there shall be 4,000 square feet of additional site area for each trailer space added.
- C. A trailer park shall meet the usable open space requirements for the district in which it is located; provided, that a trailer park in a C-F district shall meet the open space requirements for the RM-1,500 district; and provided, that each trailer park shall have in addition at least one recreation space not less than 5,000 square feet in area and suitably developed for the use of residents of the trailer park.
- D. Not more than one dwelling unit shall be located on the site of a trailer park in a C-F district.
- E. No trailer or dwelling unit shall be located in a required yard or less than 20 feet from a street property line or another trailer or less than 15 feet from a property line not abutting a street.
- F. All areas used for automobile circulation or parking shall be improved as prescribed for required parking facilities in Section 18.88.040.
- G. The site shall be landscaped as required in Sections 18.84.130 through 18.84.260, and shall have additional landscaping, including trees, shrubs, and lawn, as determined by the board of design review to provide a suitable setting. (Prior code § 2-10.28)

#### **18.108.040**    **Trailers on school sites.**

A trailer may be occupied or used for living or sleeping purposes on a developed public or private school site or college site, provided that such trailer is occupied for the purpose of reducing vandalism and other damage to school facilities. A conditional use permit, in accordance with Chapter 18.124 of this title, is required for installation of a trailer. (Prior code § 2-10.29)

## Chapter 18.109

### RETAILERS OF TOBACCO PRODUCTS AND PARAPHERNALIA

#### Sections:

- 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. (Ord. 2208 § 3, 2020)

#### **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 California Business and Professions Code Section 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 California Business and Professions Code Section 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 percent 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 California Business and Professions Code Section 22962.) This definition may be used throughout Title 18. (Ord. 2208 § 3, 2020)

**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 1,000 feet of a public school, public park, or public recreation facility.
- B. A tobacco retail site which is within 1,000 feet of a public school, public park, or public recreation facility that is existing on the effective date of the ordinance codified in this chapter 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 this code and state and federal law. (Ord. 2208 § 3, 2020)

**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. (Ord. 2208 § 3, 2020)

**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 this code. (Ord. 2208 § 3, 2020)

**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. (Ord. 2208 § 3, 2020)

**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

18.109.070

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. (Ord. 2208 § 3, 2020)

## Chapter 18.110

### PERSONAL WIRELESS SERVICE FACILITIES

#### Sections:

- 18.110.005 Purpose.**
- 18.110.010 Applicability.**
- 18.110.020 Notice and approval process.**
- 18.110.030 Revocation of approval.**
- 18.110.040 Submittals.**
- 18.110.050 Locational standards.**
- 18.110.060 Co-location.**
- 18.110.070 Stealth techniques.**
- 18.110.080 Height.**
- 18.110.090 Colors and materials.**
- 18.110.100 Landscaping.**
- 18.110.110 Setbacks and projections into yards.**
- 18.110.120 Projections into public rights-of-way.**
- 18.110.130 Number of antennas and facilities permitted.**
- 18.110.140 Noise.**
- 18.110.150 Interference.**
- 18.110.160 Maintenance and safety.**
- 18.110.170 Antennas located on an undeveloped parcel.**
- 18.110.180 Access roads.**
- 18.110.190 Advertising.**
- 18.110.200 Federal Aviation Administration.**
- 18.110.210 Historical and archaeological sites.**
- 18.110.220 Minor modifications.**
- 18.110.230 Cessation of operation on-site.**
- 18.110.240 Fees.**
- 18.110.250 Preexisting and nonconforming personal wireless service facilities.**
- 18.110.260 Length of approvals.**
- 18.110.270 Change in federal or state regulations.**
- 18.110.280 Indemnity and liability.**
- 18.110.290 Severability.**

#### **18.110.005 Purpose.**

The purpose and intent of this chapter is to provide a comprehensive set of standards for the development and installation of personal wireless service facilities. The regulations contained herein are designed to protect and promote public safety and community welfare, property values, and the character and aesthetic quality of Pleasanton, while at the same time not unduly restricting the development of personal wireless service facilities, and not unreasonably discriminating among personal wireless service providers of functionally equivalent services. (Ord. 2086 § 2, 2014; Ord. 1743 § 1, 1998)

#### **18.110.010 Applicability.**

- A. This chapter shall apply to all property owned by private persons, firms, corporations or organizations, and property owned by the city, including public streets and alleys, and property owned by any agencies of the city, or by any local, state, or federal government, agency, or political subdivision thereof required to comply with local government regulations as required by law or by written agreement, with the exception of the following facilities:
1. Amateur (including ham and shortwave) radio facilities on private property provided that the antenna does not exceed 65 feet in height or is not more than 25 feet above the height limit prescribed by the regulations



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- 2166 Amends Ch. 20.70, expedited permitting process for clean energy systems (20.70)
- 2167 Amends § 14.04.140(B), adjustment of bills for meter error or leaks (14.04)
- 2168 Approves application for PUD (Special)
- 2169 Amends §§ 18.110.020 and 18.110.050, personal wireless service facilities (18.110)
- 2170 Amends § 2.34.080(A), library commission meetings (2.34)
- 2171 Amends §§ 14.04.010, 14.04.050(C), 14.04.070 and 14.08.080, water rates and charges (14.04, 14.08)
- 2172 Rezone (Repealed by 2184)
- 2173 Approves development agreement (Special)
- 2174 Approves application for PUD (Special)
- 2175 Amends contract with the California Public Employees' Retirement System (Special)
- 2176 Amends Ch. 14.20 and § 14.04.060, recycled water use (14.04, 14.20)
- 2177 Repeals § 9.04.045, leaf blowers (Repealer)
- 2178 Adds Ch. 3.44, Johnson Drive economic development zone transportation fee (3.44)
- 2179 Adds § 19.16.075; amends §§ 1.24.125, 11.64.060, 13.04.435, 14.04.050, 14.06.040, 17.16.046, 17.16.110, 18.106.060(A), 18.106.070(F), 19.16.030, 19.16.050, 19.16.090, 19.20.130, 19.20.140 and 19.22.070; repeals Ch. 3.40 and §§ 11.52.010—11.52.050, omnibus ordinance (1.24, 11.64, 13.04, 14.04, 14.06, 17.16, 18.106, 19.16, 19.20, 19.22)
- 2180 Adds Ch. 11.58; amends § 1.12.020, regulation of traffic medians (1.12, 11.58)
- 2181 Approves application for PUD (Special)
- 2182 Urgency ordinance prohibiting new or expanded massage establishments in downtown specific plan area (Repealed by 2195)
- 2183 Amends and extends urgency Ord. 2182 regarding massage establishments (Repealed by 2195)
- 2184 Repeals Ord. 2172, rezone (Repealer)
- 2185 Amends § 3.32.010, contracting procedures for public projects (3.32)
- 2186 Approves application for PUD (Special)
- 2187 Approves application for PUD (Special)
- 2188 Amends § 18.110.010(B), personal wireless service facilities (18.110)
- 2189 Rezone (Special)
- 2190 Approves application for PUD (Special)
- 2191 Adds Ch. 6.38; amends §§ 6.36.010 and 13.08.090; repeals § 11.64.120, sidewalk vending (6.36, 6.38, 11.64, 13.08)
- 2192 Adds § 11.36.160 and Ch. 17.14; amends §§ 1.24.010, 2.29.070, 2.38.020, 5.28.010, 11.36.100, 14.04.090, 14.04.130, 17.16.020, 17.16.025, 17.16.050, 18.84.160, 18.124.100, 18.124.270 and Chs. 3.22, 3.26 and 17.40; repeals Ch. 17.46, omnibus ordinance (1.24, 2.29, 2.38, 3.22, 3.26, 5.28, 11.36, 14.04, 17.14, 17.16, 18.84, 18.124)
- 2193 Rezone (Special)
- 2194 Adds §§ 18.08.117 [18.08.017] and 18.08.278 and Chs. 18.46 and 18.81; amends §§ 17.24.020, 17.24.030, 18.08.195, 18.08.338, 18.08.382, 18.44.080, 18.56.030, 18.74.020, Table 18.84.010, 18.84.020, 18.84.030, 18.84.110, 18.84.130, 18.84.140, 18.84.150, 18.84.170, 18.84.220, 18.84.230, 18.88.020, 18.88.050, 18.88.060, 18.88.090, 18.96.020, 18.96.060, 18.120.030 and 18.120.040; re-numbers § 18.08.017 to be 18.08.018, implementation of the downtown specific plan (17.24, 18.08, 18.44, 18.46, 18.56, 18.74, 18.81, 18.84, 18.88, 18.96, 18.120)
- 2195 Amends Ch. 6.24; repeals urgency ordinances 2182 and 2183, massage (6.24)
- 2196 Amends § 11.20.010, speed limits (11.20)
- 2197 Amends Chs. 20.04—20.26, 20.36, 20.55 and 20.65, buildings and construction (20.04, 20.06, 20.08, 20.10, 20.12, 20.16, 20.20, .20.24, 20.26, 20.36, 20.55, 20.65)
- 2198 Authorizes the implementation of a community choice aggregation program (Special)
- 2199 Approves application for PUD (Special)
- 2200 Approves a change of zone, PUD and conditional use permit (Special)
- 2201 Amends § 2.04.020, councilmember salaries (2.04)

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2203	Rezone (Special)
2204	Adds § 18.140.030, fines and restrictions on future development for illegal historic building demolition (18.140)
2205	Amends Ch. 3.28, purchasing and disposition of property (3.28)
2206	Amends § 11.20.010, speed limits in certain zones (11.20)
2207	Rezone (Special)
2208	Adds Ch. 18.109, tobacco restrictions (18.109)
2209	Adds Art. V to Ch. 9.32, tobacco retailer permitting and other regulations (9.32)
2210	Approves application for PUD (Special)
2211	Urgency ordinance establishing a temporary fifteen percent cap on commission charges by third-party food delivery services during the Covid-19 pandemic (Special)

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## SWIMMING POOL, SPA CODE

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