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SUBJECT: REVIEW BY AIRPORT LAND USE COMMISSION OF TEXT AMENDMENT APPLICATION NO. P23-03410 TO MODIFY USE REGULATIONS FOR TOBACCO AND VAPOR SALES WITHIN THE CITY OF FRESNO.

To Whom It May Concern:

The City of Fresno has filed Text Amendment Application No. P23-03410 to modify use regulations for tobacco and vapor sales within the City of Fresno boundaries.

Text Amendment Application No. P23-03140 proposes to amend the Citywide Development Code and modify Section 15-2761 for tobacco and vapor sales. The Text Amendment was initiated pursuant to Fresno City Council Resolution No. 2022-052 (attached) and proposes to amend Section 15-6208 and Section 15-2761 of the Fresno Municipal Code (FMC) relating to terms and definitions and the sale of tobacco pursuant to FMC Section 15-5803-A(1). The purpose of the amendment is to establish regulations for Smoke Shops and amortize existing Smoke Shop establishments by allowing up to seven (7) establishments per City Council District.

Summary of Text Amendment

Text Amendment Application No. P23-03410 proposes to add terms and definitions to FMC Section 15-6208 (Definitions) and amend FMC Section 15-2761 (Tobacco and Vapor Sales) of the Citywide Development Code to provide additional regulations for tobacco and vapor sales as a primary use. As proposed, the proposed Text Amendment includes:

I. Clarifications:

- a. New Definitions: Multiple new definitions have been added to Fresno Municipal Code Section 15-6802 to make the Ordinance cohesive with State law and provide clarity on terms.
- b. Types of Smoke Shops: Defines “Existing Smoke Shops” versus “New Smoke Shops” and discusses how the various provisions of the Ordinance apply to each, including

amortization.

- c. Applicability of Location Restrictions: A clarification has been added that Existing Smoke Shops which change the nature of their business or wind down and close operations are not subject to the location restrictions.
- d. Fresno Municipal Code Citations: Changes have been made to reference additional Fresno Municipal Code Sections regarding administrative and criminal citations imposed on the business owner for violations of the Fresno Municipal Code.
- e. Grammatical Corrections: Various clarifications have been added throughout, including grammatical changes and changes to the terms used, to aid in understanding.

II. Procedural Changes:

- a. Permitting: More details on how New Smoke Shops may be permitted have been added, including the requirement to obtain both a Conditional Use Permit and a Business License.
- b. Public Notice of Available Permits: Provisions regarding how the City is to provide notice to the public on the availability of Smoke Shop Conditional Use Permits for Council Districts are outlined. This includes sections on lottery drawings whenever the number of applications for a Conditional Use Permit exceeds the number of available Conditional Use Permits for Smoke Shops.
- c. Annual Inspections: The annual inspections are now listed as being unannounced, and the Smoke Shop Operator will be required to pay the City for the cost of said inspections.
- d. Fines for Sales to Minors: The fine for sales to a minor has increased from \$1,000 to \$2,500.
- e. City Cost Recovery: A change has been added to permit the City to seek recovery of its costs for Code Enforcement and public nuisance abatement.
- f. City Remedies: Changes have been added to permit the City to seek any and all remedies available by law or in equity against Smoke Shop Owners and Operators which violate the Ordinance or the Fresno Municipal Code.
- g. Administrative Oversight: Provisions have been added to permit the City Manager, or designee, to issue rules and regulations interpreting and enforcing the provisions of the Ordinance.

III. Substantive Changes:

- a. Amortization of Existing Smoke Shops: Provisions regarding Amortization of Existing Smoke Shops have been added. Amortization gives Existing Smoke Shops up to 18 months to change the nature of their business or wind them down and close operations. Alternatively, Existing Smoke Shops may apply for a Conditional Use Permit alongside New Smoke Shops.
 - 1. Extension of Amortization Period: The amortization section provides an

opportunity for Existing Smoke Shop Owners/Operators to file a request for extension to the initial 18 months provided if they need more time to wind down their business. This request for extension would be handled via the appeals system provided in the Development Code, with Planning Commission being the Review Authority. This section also provides the criteria by which the Review Authority shall make their decision regarding granting or denying the request for extension.

- b. Numerical Limit on Smoke Shops: The limit on the number of Smoke Shops within any given Council District is set at 7. Thus, given the existence of 7 Council Districts, no more than 49 Smoke Shops may be permitted within the City.
 - 1. Resolutions to Increase or Decrease Numerical Limit on Smoke Shops: A section has been added which allows individual City Councilmembers to bring forth a Resolution to City Council for approval, as a body, to increase the number of Smoke Shops permitted in their District from 7. Similarly, individual City Councilmembers would be permitted to bring forth a Resolution to City Council for approval, as a body, to decrease the number of Smoke Shops permitted in their District. However, the Ordinance does not allow the number of Smoke Shops per District to be reduced to below 7.
- c. Graffiti Abatement: A graffiti abatement requirement has been added which is imposed upon Smoke Shop Operators.
- d. Security Footage: A requirement to maintain security footage for longer than two weeks when a criminal offense has taken place has been added.
- e. Egregious Violations: Language regarding “egregious violations” has been added. Egregious violations include problems caused by a Smoke Shop, such as illegal drug activity, smoke and vapor product sales to minors, prostitution, gambling, and other disturbances of the peace, which will subject the Smoke Shop to an immediate 30-day suspension of their right to operate. Smoke Shops which have been closed pursuant to this section will only be permitted to reopen upon a premises inspection and written permission from the City Manager. If they do not remedy the egregious violation, or a second egregious violation occurs, then the Director of Planning may pursue revocation of the Conditional Use Permit.
- f. Training Deadline: A 60-day time limit to obtain requisite training in tobacco sales for owners, operators, and employees has been added.
- g. Non-Operating Rule: A “non-operating rule” has been added. If Smoke Shops shut down voluntarily for more than one year, they must obtain a new CUP to begin operating again.

The appropriateness of the proposed text amendment is being examined with respect to its consistency with the goals of the Fresno General Plan; compatibility with surrounding existing and proposed uses; and avoidance or mitigation of potentially significant adverse environmental impacts. These factors are being evaluated as described above. Upon completion of this evaluation, it can be concluded that Text Amendment Application No. P23-03410 is appropriate.

Sincerely,



Phillip Siegrist, Planning Manager
Development Services Division

Enclosures:

- Fresno City Council Resolution 2022-0052
- Proposed Text Amendment
- Draft Environmental Assessment

Add to Section 15-6802 (DEFINITIONS):

CIGARETTE shall have the same meaning as Section 30003 of the Revenue & Taxation Code, including any amendments or successor statutes thereto.

ELECTRONIC CIGARETTE (or E-Cigarette) shall have the same meaning as Sections 31001(c) and 30121(c) of the Revenue & Taxation Code, including any amendments or successor statutes thereto.

EXISTING SMOKE SHOP means any smoke shop lawfully established, with one business license per Smoke Shop location, pursuant to the Municipal Code prior to the effective date of Section 15-2761.

SMOKE AND VAPOR PRODUCTS include, but may not be limited to, Tobacco Products and Smoking Paraphernalia.

SMOKE SHOP means any business that primarily sells or offers for sale any Smoke and Vapor Products, but shall not include: Tobacco Retailers; establishments that sell Smoke and Vapor Products for onsite consumption (such as cigar lounges); or establishments operating under Article 33 of Chapter 9 (Cannabis Retail Business and Commercial Cannabis Business).

SMOKE SHOP OPERATOR includes all Persons who own and/or operate the Smoke Shop. An owner is any Person who owns 5% or more of the Smoke Shop.

SMOKING shall have the same meaning as Section 22950.5(c) of the Business and Professions Code, including any amendments or successor statutes thereto.

SMOKING PARAPHERNALIA means any device, substance, or accessory intended for the smoking of tobacco, cannabis, vaping or electronic cigarette, illicit drug use, or any other substance.

TOBACCO PRODUCT shall have the same meaning as provided in 22950.5(d) of the Business and Professions Code, including any amendments or successor statutes thereto.

TOBACCO RETAILER means any establishment whose business includes the incidental sale of Smoke and Vapor Products, such as supermarkets and convenience stores.

SEC. 15-2761. SMOKE SHOPS – PERMIT AND OPERATIONAL REQUIREMENTS

- A. **Purpose.** The purpose of this section is as follows:
 - 1. To establish regulations for Smoke Shops, as defined in Section 15-6802 of this Code.
 - 2. To amortize existing Smoke Shops and allow up to seven Smoke Shops per City Council District, unless otherwise provided pursuant to Subsection 15-2761(D)(4) hereinafter.
- B. **Applicability; Exemptions.**
 - 1. **All Smoke Shops will be required to comply with this section.**
 - a. **New Smoke Shops.** Any New Smoke Shop established after the effective

date of this section shall obtain a Conditional Use Permit as provided herein and shall comply with all requirements of this section.

- b. **Existing Smoke Shops.** All Existing Smoke Shops must comply with all the requirements of this section, including the amortization provisions.
- c. **Exemptions.** This section does not apply to temporary uses issued a Temporary Use Permit for special events such as fairs or cultural festivals and established in compliance with all City laws and ordinances.

C. Legal Nonconforming Smoke Shops; Amortization.

- 1. Existing Smoke Shops, lawfully established pursuant to the Municipal Code prior to the effective date of this ordinance, must come into compliance with all operational requirements within 30 days of the Effective Date of this Ordinance. No Existing Smoke Shop may make a substantial change of mode or character of their operation. A substantial change of mode or character shall include, but not be limited to, structural changes which expand the sales area of Smoke and Vapor Products and related items by more than a cumulative 5% commencing from the effective date of the ordinance, or a period of closure for more than 30 days; transfers of ownership shall not be considered a substantial change of mode or character of operation.
- 2. Existing Smoke Shops may sell or transfer their existing Business License, but the new owner shall also be subject to all provisions of this Code applicable to Existing Smoke Shops.
- 3. Existing Smoke Shops may continue operation for 18 months from the effective date of this Ordinance (the "Amortization Period"), provided they comply with Subsection C.1. The Amortization Period shall be outlined by the City Manager, or designee, pursuant to Section I.1., below. Existing Smoke Shops which are not awarded a Conditional Use Permit, as required by Section D., below, may operate until the end of the Amortization Period. Once the Amortization Period has expired, the Existing Smoke Shop must immediately cease all operations in perpetuity.
 - a. Existing Smoke Shops that can demonstrate that 18 months is an insufficient amount of time to amortize their investment, must submit a request for reconsideration to the Director no later than 90 days prior to the expiration of the Amortization Period. The request for reconsideration shall be subject to the appeal provisions of Section 15-5017, Appeals. Each request for a longer term for amortization shall be considered on the basis of the submitted evidence and any extension provided shall be specific to the individual request. Factors to be considered by the Review Authority in determining if the time provided hereinabove is insufficient for the Existing Smoke Shop which requests reconsideration shall include:
 - i. The precise nature of the nonconforming use.

- ii. The portion of the business that will be affected, on a pro rata basis.
- iii. The total amount of the investment made for the business, including on the property and any improvements thereon, as well as the total investment for the pro rata portion of the business that sells Smoke and Vapor Products, including the present or depreciated value of any property owned.
- iv. The expiration date and termination rights under leases related to the operation of an Existing Spoke Shop. Any new leases or lease extensions, amendments, or renewals entered into in close proximity to the passage of this Ordinance may be a basis for denial of the request for extension.
- v. The ability of the business to recover its investment by changing the use of the property, and the amount of time and additional investment needed to do so.
- vi. Any violations of Federal, State, or local law.
- vii. Any other information the Smoke Shop Operator deems relevant for the City to consider.
- viii. Any other information requested by the City to clarify the request for extension of the Amortization period.

D. Establishment of New Smoke Shops. Up to seven Smoke Shops may operate in each City Council District. New Smoke Shops shall be required to obtain a Conditional Use Permit pursuant to the requirements of Chapter 15, Article 53, Conditional Use Permits. New Smoke Shops and Existing Smoke Shops may apply for available Conditional Use Permits in any given District immediately following the effective date of this ordinance. Any Smoke Shop which receives a Conditional Use Permit shall be subject to all provisions of Chapter 15, Article 53, Conditional Use Permits, including the expiration provisions therein.

1. The City shall provide public notice of an available Conditional Use Permit any time one or more Smoke Shop vacancies become available in a District. Public Notice shall be provided in a newspaper of general circulation for a period of 10 consecutive days. Applicants shall have 60 days from the date of the notice to apply for any available Conditional Use Permit. City shall review timely-filed applications within 60 days of the close of the application period to ensure they meet all requirements set forth in this Ordinance. Should no applications be received within 60 days of publishing the notice, the City shall re-notice the availability following the above process. Councilmembers shall be provided with notice of any applications received for their respective District.
2. The City shall hold a lottery within 120 days of the close of the application period

whenever the number of qualified applications exceeds the number of Conditional Use Permits available within a given Council District. The lottery shall be conducted in a manner determined by the City Manager, or designee, under the authority granted by Section I.1., below. A lottery selection does not confer any right to operate a Smoke Shop, only the right to file an application for a Conditional Use Permit. All other requirements of this Ordinance must be met for the issuance of a Conditional Use Permit.

3. At any time that one or more Smoke Shop vacancies become available in a District, the City shall grant a Conditional Use Permit for a New Smoke Shop following the above process.
 4. City Council may increase the number of new Smoke Shops permitted in any given District upon passage of a Council resolution brought forward by the Councilmember of the District for which the limit increase is being requested. The Councilmember who brings forward the Resolution to Increase may do so at any time after the passage of this ordinance.
 5. City Council may decrease the number of Smoke Shops permitted in any given District upon passage of a Council resolution brought forward by the Councilmember of the District for which the limit decrease is being requested. In no event shall the number of Smoke Shops permitted in any given District be reduced to below seven.
- E. **Business License Required.** All Smoke Shops must obtain a Business License in accordance with Chapter 7 of the Fresno Municipal Code. Every Smoke Shop location must have an individual Business License. It shall not be permitted for multiple Smoke Shop locations to operate under the same Business License or Conditional Use Permit.
- F. **Location restrictions.** The following location restrictions apply to all Smoke Shops, except Existing Smoke Shops not seeking a Conditional Use Permit to continue operations after expiration of the Amortization Period.
1. **Near Sensitive Uses.** The Smoke Shop shall not be located within 1,000 feet of the following:
 - a. A public park, playground, recreational area including a trail that is immediately adjacent to a public park, or youth facility, including a boys and girls club, nursery school, preschool, or day care facility;
 - b. A public or private State-licensed or accredited school; or
 - c. An alcohol or other drug abuse recovery or treatment facility.
 2. **Near Other Smoke Shops.** The Smoke Shop shall not be located within 1,000 feet of another Smoke Shop. Smoke Shop Conditional Use Permits shall be granted first come first served, on the basis of the date the application is deemed complete and the provisions of Chapter 15, Article 53, Conditional Use

Permits are met.

3. **Concentration.** Up to seven Smoke Shops may be permitted within each City Council District following the effective date of this Ordinance, except for Existing Smoke Shops during the Amortization Period.

G. Operational Requirements

1. Landscaping.

- a. **New Buildings.** Landscaping shall be provided per the underlying zone district's development standards, and applicable Conditions of Approval.
- b. **Existing Buildings.** Perimeter landscaping and Parking Lot Shading standards shall be provided per the underlying zone district. The Review Authority, at their discretion, may make exceptions to the prescribed standards, however in no case shall the reduction result in a net reduction of 35% or greater in the amount of landscaping provided. Landscaping may also be aggregated to minimize the impact on existing parking areas.

2. **Lighting.** The exterior of the premises, including adjacent public sidewalks and all parking lots under the control of the Smoke Shop, shall be illuminated in accordance with the lighting requirements of the underlying zone district, and applicable Conditions of Approval.

3. Litter and Graffiti.

- a. Trash and recycling receptacles shall be provided near public entrances to and exits from the building.
- b. The Smoke Shop Operator shall provide for daily removal of trash, litter, and debris from the premises and on all sidewalks that abut the premises, including the Smoke Shop's parking areas.
- c. The Smoke Shop Operator shall remove graffiti in accordance with the requirements of Section 9-2514 of the Fresno Municipal Code, including any amendments or successor ordinances thereto.

4. Vending Machines. Internal and external vending machines are prohibited.

- a. No tobacco products or paraphernalia may be sold via vending machine or automatic sales dispenser on the premises of the Smoke Shop.
- b. No food or beverage products may be sold via vending machine or automatic sales dispenser on the premises of the Smoke Shop.

5. Video Surveillance.

- a. Smoke Shops must equip a fully functional color digital video camera system.
- b. The system must continuously record, store, and be capable of playing back images and be fully functional at all times, including during any hours the

business is closed. The system must be maintained in a secured location inside of the business.

- c. The system shall have the correct date and time stamped onto the image at all times.
- d. The camera storage capacity should be for at least two weeks (14 calendar days). Such cameras must be capable of producing a retrievable and identifiable image that can be made a permanent record and that can be enlarged through projection or other means.
- e. If utilizing a digital video recorder, it must be capable of storing at least 14 days of real-time activities.
- f. The system shall be capable of producing a CD or digital playback feature. The Fresno Police Department may request such digital media in relation to a criminal investigation; in such case, the digital media shall be provided to an authorized representative of the Fresno Police Department, upon request, within 24 hours of the request.
- g. The interior of the business must have at least one camera placed to focus on each cash register transaction to include the clerk as well as the customer waiting area.
- h. There shall be a minimum of three cameras placed so as to record activities in the primary customer areas of the business; such cameras must, at minimum, provide surveillance for all entry and exit areas, customer parking, and the cash register. These cameras should be of sufficient quality to be able to identify persons and/or vehicles utilizing the business parking lot.
- i. All interior cameras shall record in color.
- j. All exterior cameras shall record in color and have automatic low light switching capabilities to black and white. Exterior cameras should be in weatherproof enclosures and located in a manner that will prevent or reduce the possibility of vandalism.
- k. An inoperable system may be good cause for revocation of the Conditional Use Permit.
- l. In the event of a security breach, vandalism, theft, or other offense, the Smoke Shop Operator must ensure preservation of the relevant security footage beyond the required two weeks in coordination with the Fresno Police Department.

6. Signage.

- a. The provisions specified under Article 26, Signs, and this subsection shall apply. Where conflict may occur between the provisions of Article 26 and

this subsection, the more restrictive provisions shall govern.

- b. In addition to the requirements found in the California Cigarette and Tobacco Products Licensing Act of 2003 and all updated and related State and Federal Laws, including any amendments and successor statutes thereto including any State or Federal regulations, the following copy is required to be prominently posted in a readily visible manner on an interior wall or fixture and not on windows:
 - i. "California State Law Prohibits the Sale of Tobacco Products to Persons Under 21 Years of Age"
 - ii. "No Persons Under The Age Of 21 May Enter Theses Premises"
 - iii. "No Loitering is Allowed On or In Front of These Premises"
 - iv. "No Smoking or Vaping Allowed on These Premises"

7. **Glazing.** At least 50% of any street facing façade must be glazed with a clear, non-tinted material.

- a. No more than 5% of the square footage of each window that is visible to the public from a public thoroughfare, sidewalk, or parking lot of tobacco and vapor sales retail outlet shall bear advertising, signs, or other obstructions of any sort.
- b. Doors must be free from signs regardless of door type or material.
- c. The area covered by signs or advertising shall be measured using the border of such sign, and shall include all areas within a sign or advertisement that may not include writing, such as the clear area within neon signs.
- d. Signage, advertising, or other obstructions inside or outside the Smoke Shop that are not physically attached to the windows or doors, but are visible from a public thoroughfare, sidewalk, or parking lot in the same manner as if they were physically attached is included in the 5% limitation.
- e. Any signage required by law shall not count towards the 5% limitation, but shall nonetheless follow rules related to visual obstruction.
- f. Advertising and signage on windows shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the business, including the area in which the cash registers are maintained, from exterior public sidewalks, parking lots, or entrance to the business.
- g. Any Smoke Shop located within 1,000 feet of a sensitive use, as listed in Subsection G.1, shall not advertise tobacco or vapor sales in a manner visible from the outside of the Smoke Shop, such as from a public thoroughfare, sidewalk, or parking lot.

8. Loitering and Other Nuisance Activities.

- a. The operation of a Smoke Shop shall not result in repeated nuisance activities on the property, which may include, but are not limited to, disturbances of the peace, illegal drug activity, public intoxication, drinking in public, Smoke and Vapor Product sales to minors, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, loitering, excessive littering, graffiti, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or other violations of City, State, or federal laws, especially when contributing to a proportionally high rate of police reports and arrests to the area. Any violations of this section shall be considered an egregious violation of this ordinance and a public nuisance that is imminently dangerous to life, health, safety or adjacent property such that it requires immediate correction or elimination. Such a violation shall subject the Smoke Shop Operator to immediate suspension, pursuant to Section 10-609 of the Fresno Municipal Code, of their right to operate a Smoke Shop within the limits of the City. Suspension of a Smoke Shop Operator's right to operate a Smoke Shop shall continue for 30 calendar days or until the Smoke Shop Operator remediates the egregious violation, and receives written permission from the City Manager, or designee, to resume operation of the Smoke Shop after inspection of the premises to confirm remediation of the egregious violation. Should an egregious violation not be remedied, or a second violation of this section occurs after resumption of operations, the Director may begin proceedings to revoke the Smoke Shop's Conditional Use Permit pursuant to Fresno Municipal Code Section 15-5016. This section shall not apply to Smoke Shop Operators where offenses are the result of third-party conduct beyond the Smoke Shop Operators' control.
- b. The Smoke Shop Operator shall post the property with the appropriate Fresno Municipal Code signs advising that consumption of alcoholic beverages, gambling, trespassing, or loitering on private property is a violation of municipal ordinances. The Smoke Shop Operator must send a letter to the Fresno Police Department, signed and dated by the applicant, every 12 months that authorizes Fresno Police Department peace officers to enter the Smoke Shop premises and remove trespassers when the business is closed to the public, in accordance with Section 602(o) of the California Penal Code, including any amendments or successor statutes thereto. The owners and employees are responsible for abating nuisance activities when they occur during business hours.

9. Training.

- a. **Initial Training.** The Smoke Shop Operator and all employees of the Smoke Shop who are involved in the sale of Smoke and Vapor Products must

complete approved course(s) in training of Smoke and Vapor Product sales and handling within 60 days after approval of the Conditional Use Permit becomes final, or for employees hired after the approval of the Conditional Use Permit, within 60 days from the date of hire. Existing Smoke Shop Operators and employees shall have 60 days from the effective date of this ordinance to come into compliance with the training requirement, and thereafter new owners and employees shall obtain the necessary training within 60 days of the date of hire or from the date of ownership. To satisfy this requirement, a certified program must meet the standards of the California Department of Public Health on the Stop Tobacco Access to Kids Enforcement (STAKE) Act or other certifying or licensing body designated by the State of California. If the Smoke Shop Operator is a legal entity, the manager or executive responsible for the Smoke Shop shall obtain the requisite training.

- b. **Annual Training.** The Smoke Shop Operator and all employees shall also be required to complete annual trainings which comply with State standards, including changes to tobacco sales laws and regulations. Smoke Shops shall be required to keep up to date records which prove that all individuals listed above have completed the requisite annual trainings and shall furnish these records to the City during inspections and upon a reasonable request from the City.
10. **Compliance with Laws.** The Smoke Shop must remain in compliance with all local, State, and federal laws, regulations, and orders, as well as all conditions of approval imposed on the use. This includes compliance with annual City business license fees. In the event of non-compliance, the Smoke Shop Operator shall be given written notice by the City and an opportunity to cure. Article 63 of Chapter 15, regarding Enforcement of the Citywide Development Code shall also apply in relation to compliance issues, in addition to the annual inspection requirements listed within Section G.14.e, below.
11. **Posting of Conditions.** A copy of all conditions of approval and training requirements shall either be posted in a conspicuous and unobstructed place near the entrance, cashier counter, or customer service area of the Smoke Shop or posted in an employee area and provided upon request (e.g. via flyer or brochure) to patrons and enforcement officials.
12. **Prohibited Products.** The sale or distribution of one or more of the following is prohibited.
- a. Cannabis or Cannabinoid products. Sale of this product shall immediately subject the Smoke Shop to Conditional Use Permit revocation proceedings pursuant to Fresno Municipal Code Section 15-5016.
 - b. Drug paraphernalia not directly related to legal Smoke and Vapor Products.

- c. Nitrous oxide.
 - d. Flavored tobacco. Sale of this product shall immediately subject the Smoke Shop to Conditional Use Permit revocation proceedings pursuant to Fresno Municipal Code Section 15-5016. Should flavored tobacco products be found during an inspection of the Smoke Shop, the Fresno Police Department or the City's Code Enforcement may seize and destroy said products.
 - e. A maximum of 25% of the floor area of the premises may display Smoking Paraphernalia for sale or viewing.
 - f. Other products prohibited by law.
 - g. Onsite or online gambling activities not related to the California Lottery.
13. **Hours of Operation.** All Smoke Shops must operate within the maximum hours of operation. A Smoke Shop may operate for fewer hours than provided herein but in no case shall the operations extend beyond the hours listed:

TABLE 15-2761-H: SMOKE SHOP HOURS		
	Opening	Closing
Daily	8 AM	10 PM

14. **Non-Operating Rule.** Whenever all of the rights granted by a Conditional Use Permit are discontinued, the following rules to reestablish the use shall apply:
- a. **One Year or Less.** The same Smoke Shop Operator or a different Smoke Shop Operator may reestablish the use pursuant to the preexisting Conditional Use Permit and all conditions applicable thereto.
 - b. **More Than One Year.** A new permit is required.
15. **Additional Requirements.**
- a. Security Plan required. Smoke Shop Operators/Applicants shall submit a security plan consistent with Fresno Police Department policy on sale of age-restricted materials. Prior to the approval of the Conditional Use Permit, the Applicant shall prepare and submit for review by the Fresno Police Department District Commander, a security plan for approval. Approval of the security plan by the District commander or their designee shall not be unreasonably denied. The contents of the Security Plan shall be incorporated as conditions of approval to the Conditional Use Permit. As a part of the annual inspection process, the Security Plan shall be resubmitted for approval by the District Commander.

- b. The Director may require the Smoke Shop Operator/Applicant to submit additional information, of such type and in such form as the Director may specify, as the Director may deem relevant to the application, including, but not limited to, an operational statement, floor plans, architectural renderings, and technical studies, as appropriate.
- c. The Director may refer the application to other City departments to determine whether the Smoke Shop's location will comply with building, health, zoning, and fire ordinances or other applicable ordinances or laws. City departments may conduct an inspection of the premises to determine compliance with the ordinances and other laws they administer, and may subsequently prepare reports summarizing their inspections and recommend whether to approve or deny the application based on their inspections.
- d. Additional and/or security measures such as reduced hours of operation, security guards, door monitors, and burglar alarm systems may be required if harm, nuisance, or related problems are demonstrated to occur as a result of business practices or operations. This will be determined on a case-by-case basis upon review by the Police Department.
- e. Smoke Shops shall be subject to routine unannounced inspections at least annually, to ensure compliance with this section and any additional conditions of the Conditional Use Permit. The Smoke Shop Operator shall reimburse the City for the cost of such inspection(s) pursuant to the City's Master Fee Schedule. If an annual inspection results in a finding that a Smoke Shop Operator is not in compliance with this section or the specific conditions of the Conditional Use Permit, that finding may be used as a basis for amending or revoking the Conditional Use Permit, pursuant to Article 50 of Chapter 15 of the Fresno Municipal Code.
 - i. If a Smoke Shop is determined to be out of compliance with its Conditions of Approval, the person or entity acting as the Smoke Shop Operator may be subject to administrative fines as set by City Council resolution. The fine structure shall consist of progressively higher fines for violations occurring within 24 months of a prior violation, and upon the fourth violation being upheld within a three-year period of the first violation, the Conditional Use Permit for the business shall be subject to revocation. These fines shall be levied in accordance with the Master Fee Schedule.
 - ii. If an Existing Smoke Shop is purchased by a unassociated and unrelated new Smoke Shop Operator seeking to continue operation of the Smoke Shop, and the new Smoke Shop Operator is not subject to administrative fines as set forth above at any other

Smoke Shop in the City, the City Manager, with concurrence of the City Attorney, may waive any administrative fines imposed upon the Existing Smoke Shop upon transfer to the new Smoke Shop Operator and upon proof that the new Smoke Shop Operator has cured all previous violations to the satisfaction of the City Manager.

H. Violations of this Section.

1. Violation of these standards at any time may result in the amendment or revocation of a Conditional Use Permit.
2. Fines may be imposed upon business owner and/or Conditional Use Permit holder, in accordance with Sections 1-305 and 1-308 of the Fresno Municipal Code and State law. Fines pursuant to Section 1-305 shall be imposed in accordance with the Master Fee Schedule, except as follows:

Table 15-2761-I: FINES FOR VIOLATIONS		
	Sales to Minors	External Advertising
Misdemeanor	\$2,500 per offense	\$1,000 per offense

3. The City may seek recovery of its costs of enforcement and abatement pursuant to Article 5 (Cost and Penalty Recovery) of Chapter 1 (General Provisions) of this Code. Both the property owner and the Smoke Shop Operator shall be liable to the City for recovery costs as specified under Section 1-504.
4. Remedies shall not be exclusive of each other, and may also include any remedy available to the City at law or equity.
5. Any violation of this section is deemed a public nuisance and may be abated.

I. Promulgation of Regulations, Standards and Other Legal Duties.

1. In addition to any regulations adopted by the City Council, the City Manager or designee is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of Smoke Shop Conditional Use Permits and Business Licenses, the ongoing operation of Smoke Shops and the City’s oversight, or concerning any other subject determined to be necessary to carry out the purposes of this ordinance.
2. Regulations shall be published on the City’s website.
3. Regulations promulgated by the City Manager shall become effective upon date of publication.



RESOLUTION NO. 2022-052

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, INITIATING A TEXT AMENDMENT TO CHAPTER 15, ARTICLE 27, SECTION 15-2761 OF THE FRESNO MUNICIPAL CODE RELATING TO THE SALE OF TOBACCO PURSUANT TO FRESNO MUNICIPAL CODE SECTION 15-5803-A(1)

WHEREAS, on December 3, 2015, the Council of the City of Fresno, (Council) voted to adopt Ordinance Bill No. B-43, adding Chapter 15 to the Fresno Municipal Code, which is a comprehensive update to the City's Zoning Ordinance and is referred to as the "Citywide Development Code"; and

WHEREAS; Section 15-2700 et seq. of the Citywide Development Code sets forth standards for specific uses and activities that are permitted or conditionally permitted in some or all; and

WHEREAS, Fresno Municipal Code section 15-5803-A(1) authorizes the Council to initiate an amendment to the text of the Citywide Development Code by adopting a Resolution of Initiation; and

WHEREAS, the Council desires to amend section 15-2761 of the Citywide Development Code relating to the sale of tobacco to define "smoke shop," create Conditional Use Permit requirements, and include saturation provisions, buffers to sensitive uses, signage restrictions, and potential security measures.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. Pursuant to Fresno Municipal Code section 15-5803-A(1), the Council initiates the necessary proceedings to amend the text of Section 15-2761 of the City of



Fresno's Zoning Ordinance relating to the sale of tobacco.

2. The Council further directs staff to prepare any environmental assessment pursuant to the requirements of the California Environmental Quality Act (CEQA), bring the Text Amendment before the Airport Land Use Commission for consideration upon completion of environmental review, before the Planning Commission for consideration within thirty days of it being reviewed by the Airport Land Use Commission, and back before the Council for consideration within thirty days of the Planning Commission's review.

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing Resolution was adopted by the Council of the City of Fresno, California, at a regular meeting thereof, held on the 17th Day of February, 2022.

AYES :Soria, Arias, Maxwell, Chavez, Bredefeld, Esparza
NOES :None
ABSENT :Karbassi
ABSTAIN :None

TODD STERMER, CMC
City Clerk

BY: [Signature] 2-22-2022
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN CITY
ATTORNEY'S OFFICE

BY: [Signature] 2-22-22
Mary Raterman-Doidge Date
Senior Deputy City Attorney

**CITY OF FRESNO
ENVIRONMENTAL FINDING OF NO POSSIBILITY OF SIGNIFICANT EFFECT
ENVIRONMENTAL ASSESSMENT NO. P23-03410**

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO HAVE NO
SIGNIFICANT EFFECT ON THE ENVIRONMENT PURSUANT TO ARTICLE 20 OF THE
STATE OF CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) GUIDELINES

APPLICANT: City of Fresno
Planning and Development Department,
2600 Fresno Street Room 3043
Fresno, California 93721

PROJECT LOCATION: Areas within the jurisdiction of the City of Fresno, generally located within the corporate boundaries

PROJECT DESCRIPTION:

Current regulations for tobacco and vapor sales included in Fresno Municipal Code (FMC) Section 15-2761 only provide restrictions for signage when establishments are near sensitive uses. Specifically, any establishment located within 400 feet of a park, school (private or public), day care, or other youth-sensitive places (e.g., boys and girls club, youth activity centers) may not advertise smoking sales (such as for tobacco, vapor, or similar products) or related paraphernalia in a manner visible from the outside of the establishment, such as from a public thoroughfare, sidewalk, or parking lot.

Text Amendment Application No. P23-03410, as initiated by the Fresno City Council pursuant to Resolution No. 2022-052, proposes to amend Section 15-6802 (Definitions) and Section 15-2761 (Tobacco and Vapor Sales) of the Citywide Development Code. The proposed text amendment will add the following terms and definitions to Section 15-6208 (Definitions) of the Citywide Development Code: Cigarette, Electronic Cigarette (or E-Cigarette), Existing Smoke Shop, Smoke Shop Operator, Smoking, Smoking Paraphernalia, Tobacco Product; and Tobacco Retailer. The new definitions will make the Ordinance cohesive with State law and provide clarity on specific terms.

In addition, the proposed text amendment would replace existing regulations for tobacco and vapor sales in accordance with Section 15-2761 (Tobacco and Vapor Sales) and establish regulations relating to New and Existing Smoke Shops. The amendment will amortize existing Smoke Shop establishments by allowing up to seven (7) establishments per City Council District (49 Smoke Shops Citywide) and establish permitting and procedural requirements, location restrictions, and operational regulations for all New Smoke Shops.

This project is exempt under Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines.

Finding:

Staff has conducted a preliminary review of the project and has determined that it is exempt from CEQA pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) under the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Because the proposed Text Amendment is for Council to approve in order to modify the established framework for future and existing business establishments engaged in the sale of tobacco and vapor products (e.g. Smoke Shops) and does not commit the City to any specific project, it can be seen with certainty that there is no possibility that accepting the text amendment may have a significant effect on the environment. Therefore, this action is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

Evidence:

The proposed Text Amendment adds to existing definitions and modifies the existing regulations for retail establishments engaged the sale tobacco and vapor products as a primary use, which are not incidental to a larger retail use such as supermarkets and convenience stores; otherwise known as “Smoke Shops.”

There will be no physical change to the environment as a result of the adoption of this Text Amendment as it is an amendment to the application establishments which sell tobacco and vapor products. The Text Amendment does not relate to any physical project.

The regulations of the proposed Text Amendment will not intensify the use of any establishment. The application process already exists within the Fresno Municipal Code and the proposed Text Amendment modifies existing regulations for reviewing and approving a project. As such, the proposed Text Amendment will not intensify any existing uses.

All individual projects under the proposed Text Amendment will be subject to discretionary review with a Conditional Use Permit (CUP). Each individual CUP will be evaluated pursuant to the requirements of CEQA and the appropriate level of environmental review will be completed when the scope and impacts of each individual entitlement are known.

Under the proposed Text Amendment, Existing Smoke Shops will be subject to amortization requirements which allows Existing Smoke Shops up to 18 months to change the nature of their business or wind them down and close operations. Alternatively, Existing Smoke Shops may apply for a CUP alongside New Smoke Shops. The closure of business operations under the proposed amortization requirements will not result in blight, fire hazards, or attractive nuisance given property owners shall comply with the requirements under Section 15-617 (Blighted Vacant Building Ordinance).

Approval of this Text Amendment does not automatically permit the sale of tobacco and vapor products or the establishment of Smoke Shops in any district. Rather, it creates application rules and procedures for Existing and New Smoke Shop establishments seeking to sell tobacco and vapor products. In this way, the actual CUP is not yet approved and is subject to future discretionary approval. Because this Text Amendment does not effectuate any approvals, and does not result in any changes in use or intensity, it can be seen with certainty that there is no possibility that approval of this Text Amendment will have a significant effect on the environment or a reasonably foreseeable indirect effect on the environment.

Therefore, Text Amendment P23-03410 is exempt from CEQA pursuant to the common sense exemption set forth in Section 15061(b)(3) of the CEQA Guidelines.

Date:

Submitted By: _____

Jennifer Clark
City of Fresno
Planning and Development
Department

DRAFT