

# PLANNING COMMISSION AGENDA

CHAIRPERSON:

Marvin Hansen



VICE CHAIRPERSON:

Adam Peck

COMMISSIONERS: Mary Beatie, Chris Tavarez, Chris Gomez, Adam Peck, Marvin Hansen

**MONDAY, FEBRUARY 28, 2022**  
**VISALIA CONVENTION CENTER**  
**LOCATED AT 303 E. ACEQUIA AVENUE, VISALIA, CA**  
**MEETING TIME: 7:00 PM**

1. CALL TO ORDER –
2. THE PLEDGE OF ALLEGIANCE –
3. CITIZEN'S COMMENTS – This is the time for citizens to comment on subject matters that are not on the agenda but are within the jurisdiction of the Visalia Planning Commission. You may provide comments to the Planning Commission at this time, but the Planning Commission may only legally discuss those items already on tonight's agenda.  

The Commission requests that a five (5) minute time limit be observed for Citizen Comments. You will be notified when your five minutes have expired.
4. CHANGES OR COMMENTS TO THE AGENDA –
5. CONSENT CALENDAR - All items under the consent calendar are to be considered routine and will be enacted by one motion. For any discussion of an item on the consent calendar, it will be removed at the request of the Commission and made a part of the regular agenda.
  - No items on the Consent Calendar
6. PUBLIC HEARING – Rafael Garcia, Senior Planner  

Tentative Parcel Map No. 2021-06: A request by AW Engineering to subdivide a site made up of two parcels and totaling 3.66 acres to create a total of four parcels and a remainder lot in the R-1-5 (Single-family Residential, 5,000 sq. ft. minimum site area per dwelling unit) zone. The existing site is located at 4234 South Demaree Street (APN: 126-020-081, 126-020-082). The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15315, Categorical Exemption No. 2021-47.

7. PUBLIC HEARING – Josh Dan, Associate Planner

Conditional Use Permit No. 2022-01: A request by Harvey Godinez to establish a tattoo studio in the C-MU (Mixed Use Commercial) Zone. The project site is located at 1625 East Noble Avenue in the Mary's Vineyard Shopping Center. (APN: 100-020-017). The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15301(b), Categorical Exemption No. 2022-08.

8. PUBLIC HEARING – Josh Dan, Associate Planner

Zoning Text Amendment No. 2021-10: A request by the City of Visalia to amend Chapter 8.46 Definitions regarding Tobacco Stores, Zoning Ordinance Section Chapter 17.04 Definitions regarding Smoke Shops / Tobacco Stores, 17.25.030 (Zoning Use Matrix) line R78, and to amend Chapter 17.32 Special Provisions to implement performance standards regarding smoke shops/tobacco stores, which are conditionally permitted in the C-MU (Commercial Mixed-Use) and D-MU (Downtown Mixed-Use) Zones, Citywide. The requested action is considered exempt under Section 15061(b)(3) Per Section 15061 (b) (3) of the State Guidelines for the California Environmental Quality Act (CEQA).

9. CITY PLANNER/ PLANNING COMMISSION DISCUSSION –

- a. Planning Commission meeting for March 28<sup>th</sup> to be held at the Visalia Convention Center.
- b. Medical Clinic CUP appeal set for March 7<sup>th</sup> at the Visalia Convention Center.
- c. CZA for CarMax approved by City Council on February 22, 2022.
- d. Historic Preservation Ordinance Update directed by City Council at the February 22, 2022 Work Session meeting.

The Planning Commission meeting may end no later than 11:00 P.M. Any unfinished business may be continued to a future date and time to be determined by the Commission at this meeting. The Planning Commission routinely visits the project sites listed on the agenda.

For Hearing Impaired – Call (559) 713-4900 (TTY) 48-hours in advance of the scheduled meeting time to request signing services.

Any written materials relating to an item on this agenda submitted to the Planning Commission after distribution of the agenda packet are available for public inspection in the City Office, 315 E. Acequia Visalia, CA 93291, during normal business hours.

**APPEAL PROCEDURE**

**THE LAST DAY TO FILE AN APPEAL IS THURSDAY, MARCH 10, 2022, BEFORE 5 PM**

According to the City of Visalia Zoning Ordinance Section 17.02.145 and Subdivision Ordinance Section 16.04.040, an appeal to the City Council may be submitted within ten days following the date of a decision by the Planning Commission. An appeal form with applicable fees shall be filed with the City Clerk at 220 N. Santa Fe, Visalia, CA 93291. The appeal shall specify errors or abuses of discretion by the Planning Commission, or decisions not supported by the evidence in the record. The appeal form can be found on the city's website [www.visalia.city](http://www.visalia.city) or from the City Clerk.

**THE NEXT REGULAR MEETING WILL BE HELD ON MONDAY, MARCH 14, 2022**



## REPORT TO CITY OF VISALIA PLANNING COMMISSION

**HEARING DATE:** February 28, 2022

**PROJECT PLANNER:** Josh Dan, Associate Planner  
Phone: (559) 713-4003  
E-mail: [josh.dan@visalia.city](mailto:josh.dan@visalia.city)

**SUBJECT: Zoning Text Amendment No. 2021-10:** A request by the City of Visalia to amend Chapter 8.46 Definitions regarding Tobacco Stores, Zoning Ordinance Section Chapter 17.04 Definitions regarding Smoke Shops / Tobacco Stores, 17.25.030 (Zoning Use Matrix) line R78, and to amend Chapter 17.32 Special Provisions to implement performance standards regarding smoke shops/tobacco stores, which are conditionally permitted in the C-MU (Commercial Mixed-Use) and D-MU (Downtown Mixed-Use) Zones.

### STAFF RECOMMENDATION

Staff recommends that the Planning Commission adopt Resolution No. 2022-06, recommending that the City Council approve adoption of Zoning Text Amendment No. 2021-10, which incorporates a proposed 750-foot buffer requirement from other smoke shops/tobacco stores and specified sensitive uses. This recommendation is based on the findings contained therein and summarized as follows:

- The Zoning Text Amendment is consistent with the goals, objectives, and policies of the City's General Plan.
- The Zoning Text Amendment establishes objective standards to limit exposure and visibility of these uses near specified sensitive uses or within close proximity of existing Smoke Shop/Tobacco Store, consistent with the stated goals of the City of Visalia General Plan and Zoning Ordinance to preserve and promote the public health, safety, and welfare of the city.

### RECOMMENDED MOTION

I move to recommend that the City Council approve Zoning Ordinance Text Amendment No. 2021-10 based on the findings and conditions in Resolution No. 2022-06.

### REASON for ZONING TEXT AMENDMENT

Zoning Text Amendment (ZTA) No. 2021-10 is a city-initiated request to address the increase in applications for smoke shops and concern for smoke shop proximities to sensitive land uses.

Concerns have been raised by City Council members and the general public, based on a recent entitlement request, that allowing smoke shops / tobacco stores near schools or other areas where youth congregate may increase the promotion of such products to youth and essentially serve as advertising for tobacco products. Concerns have also been raised that allowing multiple smoke shops / tobacco stores to congregate in proximity to these uses would also increase their prominence within the community, suggesting that tobacco products are popular and overlook the consideration of potential health risks. This is documented by the Centers for Disease Control and Prevention (CDC), wherein social and physical environments, such as mass media portrayals of tobacco products, seeing other youth use tobacco products, or seeing parents use tobacco products, can make youth more likely to try such products. In addition, access availability and visibility of tobacco products can increase the likelihood of youths using tobacco. Allowing stores near locations where youths congregate increases the visibility of such products and creates a

greater likelihood of youths seeing persons use tobacco products and consider such usage as favorable or desirable.

Visalia's comprehensive Zoning Ordinance update in 2017 included the calling out and definition of "Smoke Shop/Tobacco Store" as a specific stand-alone use regulated by zone district. Prior to the 2017 Zoning Ordinance update, this use was not specifically defined nor called out in the Zone Matrix. Currently these uses are conditionally permitted use in the C-MU (Commercial Mixed-Use) and D-MU (Downtown Mixed-Use) Zones. This proposed ZTA will establish and describe separation distance standards around smoke shops stores from sensitive land uses and preventing over concentration of smoke shops in any one area.

The proposed Zoning Ordinance changes are as follows:

- Amend Chapter 8.46 Definitions regarding Tobacco Stores to align with the existing 30 percent threshold in the Zoning Ordinance and other proposed changes to Chapter 17 (Zoning);
- Amend Section 17.04.030 Definitions "Smoke Shop / Tobacco Store" to include vaping and adjust the calculated area from net floor area to the more consistent gross floor area found throughout the Zoning Ordinance;
- Amend Section 17.25.030 (Zoning Use Matrix) line R78 to note the inclusion of special use standards; and,
- Amend Section 17.32 Special Provisions to include performance standards regarding "Smoke Shop / Tobacco Stores".

## **BACKGROUND**

The City of Visalia Zoning Ordinance, in Section 17.04.030, defines Smoke Shop/Tobacco Store as follows:

*"Business with sales of tobacco, either loose or prepared as cigarettes and products for smoking constituting more than thirty (30) percent of gross sales and/or thirty (30) percent of net lease area."*

A Smoke Shop/Tobacco Store is conditionally permitted per the City of Visalia Zoning Ordinance in the Commercial Mixed Use (C-MU) and Downtown Mixed Use (D-MU) zones subject to the provisions as prescribed in Chapter 17.38 Conditional Use Permit (CUP).

In recent years, the City of Visalia has seen an increase in requests for CUPs to operate a Smoke Shop/Tobacco Store. Since the 2017 update, staff have received nine smoke shop submittals through SPR, which have resulted in seven smoke shop conditional use permit application submittals with only four having been approved by the Planning Commission. In 2021, a Smoke Shop/Tobacco Store CUP was proposed on Houston Avenue within 400 feet of Houston Elementary School. This particular CUP was approved because the current Zoning Ordinance is silent regarding this type of commercial activity near schools.

As a result of this outcome, the City Council, during a work session item at the November 15, 2021, meeting, considered potential zoning ordinance changes that could place restrictions on proximity of this type of use from sensitive land uses and determined that additional regulation would be in the interest of the public health, safety, or welfare. During this discussion, the City Council directed staff to considered zoning ordinance changes that could be considered for adoption to reduce the visibility of tobacco products/stores, particularly in areas where minors congregate.

In response to this direction from City Council, staff prepared an interim ordinance, as an urgency measure, requiring a 750-foot buffer from sensitive land uses. This distance was determined based on similar distance requirements in the Municipal Code for adult-oriented businesses. This interim ordinance was adopted and extended under the provisions of Government Code Section 65858, which permits the adoption of interim zoning ordinances as an urgency measure upon findings that there is a current and immediate threat to the public health, safety, or welfare.

The adoption of the urgency ordinance has afforded staff with the necessary time to study the extent of revisions necessary to address smoke shops and consider different buffer distances and their impact to land inventory.

## PROJECT EVALUATION

Based on the direction provided by City Council, staff analyzed suitable performance standards which would reduce the visibility of “Smoke Shops / Tobacco Stores” from sensitive land uses. Sensitive land uses include existing or planned public or parochial elementary schools, middle schools, high schools, licensed day care facilities, libraries, parks, or other recreational facilities where minors congregate, and to prevent over concentration of smoke shops and the adverse effect they may have on sensitive land uses. Staff has identified suitable performance standards to be proximity buffers. Analysis regarding buffers and a staff recommendation is provided in the sections below.

### **Minimum Proximity Requirements**

At the November 15<sup>th</sup> City Council Work Session, staff was directed to analyze buffers from sensitive land uses (as noted above) and from other smoke shops in the following increments: 750-feet, 800-feet, 900-feet, and 1,000-feet.

The distances set forth above were measured consist with the City’s mailed notification practices, which is in a straight line, without regard to structures, as a radius from the identified sensitive land use / existing smoke shop parcel. Parcels inside any portion of the buffer are considered within the buffer and therefore not eligible.

Currently, the Downtown Mixed Use zone is comprised of 453 parcels within the downtown area while the Commercial Mixed Use zone is comprised of 939, citywide. Table-1 below breaks down the number of remaining parcels that could be potentially eligible for a smoke shop retail establishment to locate on which would be outside of the specified buffers as noted above. Maps illustrating the buffers and the corresponding inventories are included in the Attachments section of the staff report.

Staff has also created an interactive map of the proposed buffers in relation to the identified sensitive land uses and existing smoke shops. This interactive map can be accessed at the following link:

<https://visalia.maps.arcgis.com/apps/webappviewer/index.html?id=6520e34713ff47da815f1c2c02956a72>

Table-1.1:

<b>Zone</b>	<b>Total Existing Parcels</b>	<b># Parcels Outside 750-ft Buffer</b>	<b># Parcels Outside 800-ft Buffer</b>	<b># Parcels Outside 900-ft Buffer</b>	<b># Parcels Outside 1,000-ft Buffer</b>
<b>D-MU</b>	<b>453</b>	<b>34</b>	<b>25</b>	<b>12</b>	<b>5</b>
<b>C-MU</b>	<b>939</b>	<b>496</b>	<b>454</b>	<b>382</b>	<b>327</b>
<b>Total</b>	<b>1,392</b>	<b>530</b>	<b>479</b>	<b>394</b>	<b>332</b>

\* The table denotes the number of parcels available for establishment of new smoke shops outside of buffer areas.

750-ft Buffer :

This increment was mirrored from the existing and already implemented restrictions regarding adult-oriented businesses from sensitive land uses (VMC 17.62.030 “Minimum proximity requirements”). It is also the measurement currently listed in the Urgency Ordinance (Ord. 2021-10) regarding smoke shops. The table above and attached map (see Exhibit “A”) detail the impact the 750-ft buffer would have on available parcels within the two zones. Once applied, the D-MU Zone is reduced to 34 parcels and the C-MU Zone is reduced to 496 parcels, removing 862 parcels from eligibility.

800-ft Buffer :

Although not much further from the 750-ft. buffer, the 800-ft buffer measurement (see Exhibit “B”) further reduces the total parcel inventory by an additional 51 parcels. This buffer removes a cumulative total of 913 parcels from potential eligibility for the conditionally permitted use. Once applied, the D-MU Zone is reduced to 25 parcels and the C-MU Zone is reduced to 454 parcels.

900-ft Buffer :

The 900-ft buffer measurement (see Exhibit “C”) reduces the total parcel inventory by an additional 85 parcels. This buffer removes a cumulative total of 998 parcels from potential eligibility for the conditionally permitted use. Once applied, the D-MU Zone is reduced to 16 parcels and the C-MU Zone is reduced to 382 parcels.

1,000-ft Buffer :

The 1,000-ft buffer measurement (see Exhibit “D”) reduces the total parcel inventory by an additional 62 parcels. This buffer removes a cumulative total of 1,060 parcels from potential eligibility for the conditionally permitted use. Once applied, the D-MU Zone is reduced to 5 parcels and the C-MU Zone is reduced to 327 parcels.

Recommended Buffer

Staff concludes that consideration for the 750-ft buffer is the optimal choice. The 750-ft buffer is a standard which is already codified for another complex land use (i.e., adult-oriented businesses), and staff would argue it is appropriate to remain consistent in application of regulations to issues carrying similar concerns from the public. Additionally, the 750-ft buffer would still retain a suitable D-MU parcel inventory centered around Main and Willis Streets and Santa Fe and Murray Streets as seen in the attached maps and mapping tool link. With each incremental increase in the radius used to establish a buffer, the resulting buffer area removes a greater ratio of parcels.

## Church Proximity Requirements

Staff was also directed by the City Council to consider churches as one of the sensitive land uses. Staff analyzed this request and concluded that listing churches would cause issues with the number of commercial sites that would be available to smoke shops due to churches being a conditionally permitted use in all zoning districts. However, based on the direction to establish suitable performance standards which would reduce the visibility of "Smoke Shops / Tobacco Stores" from places where minors congregate, staff listed parochial schools as a sensitive land use. Church sites that have an on-site parochial school now fall under the sensitive land use category.

## **Smoke Shop / Tobacco Stores performance standards (VMC Section 17.32.164):**

Staff has drafted the following Section 17.32.164 for Smoke Shops/Tobacco Store performance standards. The draft ordinance solidifies Council's direction by providing performance standards to prevent overconcentration of smoke shops and their potential adverse effects upon sensitive land uses. The new code section to be added to the Special Provisions chapter of the Zoning Ordinance is listed below:

### Section 17.32.164 Smoke Shop / Tobacco Store performance standards.

- A. Smoke Shops / Tobacco Stores businesses shall be conditionally permitted in the C-MU (Mixed Use Commercial Zone) and D-MU (Mixed Use Downtown Zone) as they are identified on the Zoning map. In addition, no Smoke Shop / Tobacco Store shall be located:
1. Within seven hundred fifty (750) feet of any other Smoke Shop / Tobacco Store located either inside or outside the city limits; and
  2. Within seven hundred fifty (750) feet of any existing or planned public or parochial elementary schools, middle schools, high schools, licensed day care facilities, libraries, parks, or other recreational facilities where minors congregate, located either inside or outside of the city limits; and
  3. As used in this section, "Existing" means existing at the time the permit application is submitted. "Planned" means property designated on the general plan of the city for such use, or other official planning documents of the city, or property owned or leased by the city for such use.
- B. In addition to the location requirements stated above all Smoke Shops / Tobacco Stores shall meet the following performance standards:
1. Hold a valid California Cigarette and Tobacco Products Retailer's License issued by the State Board of Equalization in accordance with State law, and a copy of this license shall be prominently displayed in a publicly visible location at the establishment.
  2. Meet all requirements stated in Visalia Municipal Code Chapter 8.46 for the sale of tobacco paraphernalia and tobacco products.
  3. No smoking, as defined in Visalia Municipal Code Chapter 8.48, shall be permitted within the Smoke Shop / Tobacco Store.

In addition, the Zone Use Matrix shall be amended to simply add reference to the line item for the new performance standards in Section 17.32.164.

Table 17.25.030 Line R78:

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

**Update to the Smoke Definitions Utilized in the Municipal Code:**

Staff has compiled an inventory of existing smoke shops / tobacco stores, including stores operating prior to the 2017 comprehensive zoning ordinance update (attached as Exhibit “E”). Currently there are a total of 16 smoke shops / tobacco stores operating within the city limits. Existing smoke shops that were operating prior to the 2017 zoning ordinance update are considered pre-existing non-conforming and are subject to the “grandfathered” provisions of the Zoning Ordinance (i.e., Section 17.40.060 Nonconforming Uses).

Concerns raised by the public at previous public hearings have regarded smoke shops selling vape products to underaged youths. This new type of smoking is popularized not only in public but is also listed as merchandise sold at proposed smoke shops. Staff notes that they would consider e-cigarettes and products used for vaping to fall within the current general definition as products for smoking but suggest updating the current ordinances with terms that describe current smoking products to clarify requirements. Currently, vaping is not explicitly listed in the Zoning Ordinance definition. Section 17.04.030 of the Zoning Ordinance defines “Smoke Shop/Tobacco Store” as follows:

“A business with sales of tobacco, either loose or prepared as cigarettes and products for smoking constituting more than thirty (30) percent of gross sales and/or thirty (30) percent of net lease area.”

In reviewing the Municipal Code staff noted that Chapter 8.46.030, which was drafted in 2000, deals with regulating the sales of tobacco products to minors. These older definitions omit vaping and e-cigarettes. As part of this proposed Zoning Ordinance update staff is proposing to update this section and as noted above cross reference the applicable standards.

Staff would suggest the following amendment to the definition of “Smoke Shop/Tobacco Store be considered:

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



stores, or similar uses that only sell conventional cigars, cigarettes, e-cigarettes or tobacco as an accessory tobacco sale use.

It should be noted that retail establishments such as drugstores, convenience stores, markets and grocery stores are permitted to sell tobacco products without the requirement of a CUP and are not subject to the performance standards so long as they do not exceed the 30 percent threshold as noted above.

In addition, staff proposes updating the definitions utilized in Chapter 8.46 as follows:

#### **8.46.030 Definitions:**

As used in this chapter, those terms identified in this section shall, unless the contexts indicates otherwise, be ascribed the meaning contained herein.

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

“Minor” means any person under eighteen (18) years of age.

“Tobacco paraphernalia” means any item designed or marketed for the consumption, use, or preparation of tobacco products, excluding lighters and matches.

“Tobacco product” means any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhaling, snuffing, or other manner of ingestion or absorption in the human body any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, chewing tobacco, hookah, pipe tobacco snuff; and any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, a vaping device, electronic cigar, electronic pipe, or electronic hookah.

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

- ~~1. Wall space or any other display area such as tables, racks, or display structures; or~~
- ~~2. Gross revenues. any establishment, structure, facility, or stand that devotes more than thirty (30) percent of either its gross floor space or display area to the retail sale, display, marketing, bartering, trading or exchange of any combination of tobacco, tobacco products, or exchange of tobacco paraphernalia, including electronic smoking devices and accessories, except grocery stores, supermarkets, convenience stores, or similar uses that only sell conventional cigars, cigarettes, e-cigarettes or tobacco as an accessory tobacco sale use.~~

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

Staff concludes that the recommended changes proposed will regulate the sale of tobacco products, as well as minimize access to smoke shop products to youth and prevent the overconcentration of smoke shops in the City of Visalia. The changes as provided in the report ensure the protection of the public health, safety, and welfare of the community.

### **Environmental Review**

The requested action is considered exempt under Section 15061(b)(3) Per Section 15061 (b) (3) of the State Guidelines for the California Environmental Quality Act (CEQA). A Notice of Exemption has been prepared for the project because Section 15061 (b) (3) states that the project is exempted from CEQA if the activity is covered by the common sense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed text amendment to establish performance standards for smoke shops will not have a significant effect on the environment.

### **RECOMMENDED FINDINGS**

1. That the proposed Zone Text Amendment is consistent with the intent of the General Plan, and Zoning Ordinance, and is not detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
2. That the proposed Zone Text Amendment is not inconsistent with any other Element of the General Plan.
3. That the project is exempt from further review under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) (common sense exemption).

### **APPEAL INFORMATION**

The Planning Commission's recommendation on Zoning Ordinance Text Amendment No. 2021-10 is advisory only and is automatically referred to the City Council for final action.

#### **Attachments:**

- Related Plans and Policies
- Resolution No. 2022-06 - Draft Ordinance Smoke Shops / Tobacco Stores
- Exhibit A – 750-ft Buffer Map
- Exhibit B – 800-ft Buffer Map
- Exhibit C – 900-ft Buffer Map
- Exhibit D – 1,000-ft Buffer Map
- Exhibit E – Map of Existing Smoke Shops
- Exhibit F – Visalia Municipal Code Chapter 8.46 (Exposure of Minors to Tobacco Products)
- Exhibit G – Visalia Municipal Code Chapter 8.48 (Smoking)

**Chapter 17.44  
ZONING AMENDMENTS**

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**Sections:**

- 17.44.010 Purpose.**
- 17.44.020 Initiation.**
- 17.44.030 Application procedures.**
- 17.44.040 Public hearing—Notice.**
- 17.44.050 Investigation and report.**
- 17.44.060 Hearing.**
- 17.44.070 Action of city planning commission.**
- 17.44.090 Action of city council.**
- 17.44.100 Change of zoning map.**
- 17.44.110 New application.**
- 17.44.120 Report by city planner.**

**17.44.010 Purpose.**

As a general plan for Visalia is put into effect, there will be a need for changes in zoning boundaries and other regulations of this title. As the general plan is reviewed and revised periodically, other changes in the regulations of this title may be warranted. Such amendments shall be made in accordance with the procedure prescribed in this chapter.

**17.44.020 Initiation.**

A. A change in the boundaries of any zone may be initiated by the owner of the property within the area for which a change of zone is proposed or by his authorized agent. If the area for which a change of zone is proposed is in more than one ownership, all of the property owners or their authorized agents shall join in filing the application, unless included by planning commission resolution of intention.

B. A change in boundaries of any zone, or a change in a zone regulation, off-street parking or loading facilities requirements, general provision, exception or other provision may be initiated by the city planning commission or the city council in the form of a request to the commission that it consider a proposed change; provided, that in either case the procedure prescribed in Sections 17.44.040 and 17.44.090 shall be followed.

**17.44.030 Application procedures.**

A. A property owner or his authorized agent may file an application with the city planning commission for a change in zoning boundaries on a form prescribed by the commission and that said application shall include the following data:

1. Name and address of the applicant;
2. Statement that the applicant is the owner of the property for which the change in zoning boundaries is proposed, the authorized agent of the owner, or is or will be the plaintiff in an action in eminent domain to acquire the property involved;

3. Address and legal description of the property;
  4. The application shall be accompanied by such sketches or drawings as may be necessary to clearly show the applicant's proposal;
  5. Additional information as required by the historic preservation advisory board.
- B. The application shall be accompanied by a fee set by resolution of the city council sufficient to cover the cost of processing the application.

**17.44.040 Public hearing—Notice.**

The city planning commission shall hold at least one public hearing on each application for a change in zone boundaries and on each proposal for a change in zone boundaries or of a zone regulation, off-street parking or loading facilities requirements, general provisions, exception or other provision of this title initiated by the commission or the city council. Notice of the public hearing shall be given not less than ten days or more than thirty (30) days prior to the date of the hearing by publication in a newspaper of general circulation within the city, and by mailing notice of the time and place of the hearing to property owners within three hundred (300) feet of the boundaries of the area occupied or to be occupied by the use that is the subject of the hearing.

**17.44.050 Investigation and report.**

The city planning staff shall make an investigation of the application or the proposal and shall prepare a report thereon that shall be submitted to the city planning commission.

**17.44.060 Hearing.**

- A. At the public hearing, the city planning commission shall review the application or the proposal and may receive pertinent evidence as to why or how the proposed change is necessary to achieve the objectives of the zoning ordinance prescribed in Section 17.02.020.
- B. If the commission's recommendation is to change property from one zone designation to another, the commission may recommend that conditions be imposed so as not to create problems adverse to the public health, safety and general welfare of the city and its residents.

**17.44.070 Action of city planning commission.**

The city planning commission shall make a specific finding as to whether the change is required to achieve the objectives of the zoning ordinance prescribed in Section 17.02.020. The commission shall transmit a report to the city council recommending that the application be granted, conditionally approved, or denied or that the proposal be adopted or rejected, together with one copy of the application, resolution of the commission or request of the Council, the sketches or drawings submitted and all other data filed therewith, the report of the city engineer and the findings of the commission.

**17.44.080 [Reserved].**

**17.44.090 Action of city council.**

- A. Upon receipt of the resolution or report of the city planning commission, the city council shall review the application or the proposal and shall consider the resolution or report of the commission and the report of the city planning staff.

B. The city council shall make a specific finding as to whether the change is required to achieve the objectives of the zoning ordinance prescribed in Section 17.02.020. If the council finds that the change is required, it shall enact an ordinance amending the zoning map or an ordinance amending the regulations of this title, whichever is appropriate. The city council may impose conditions on the change of zone for the property where it finds that said conditions must be imposed so as not to create problems inimical to the public health, safety and general welfare of the city and its residents. If conditions are imposed on a change of zone, said conditions shall run with the land and shall not automatically be removed by a subsequent reclassification or change in ownership of the property. Said conditions may be removed only by the city council after recommendation by the planning commission. If the council finds that the change is not required, it shall deny the application or reject the proposal.

**17.44.100 Change of zoning map.**

A change in zone boundary shall be indicated on the zoning map.

**17.44.110 New application.**

Following the denial of an application for a change in a zone boundary, no application for the same or substantially the same change shall be filed within one year of the date of denial of the application.

**17.44.120 Report by city planner.**

On any amendment to the zoning code changing property from one zone classification to another, the city planner shall inform the planning commission and the city council of any conditions attached to previous zone changes as a result of action taken pursuant to Sections 17.44.060, 17.44.070 and 17.44.090.

RESOLUTION NO. 2022-06

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

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

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

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

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

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

**BE IT FURTHER RESOLVED** that the Planning Commission of the City of Visalia recommends approval to the City Council of the proposed Zone Text Amendment based on the following specific findings and evidence presented:

1. That the proposed Zone Text Amendment is consistent with the intent of the General Plan, and Zoning Ordinance, and is not detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
2. That the proposed Zone Text Amendment is not inconsistent with any other Element of the General Plan.

3. The Zoning Text Amendment establishes objective standards to limit exposure and visibility of these uses near specified sensitive uses or within close proximity of existing Smoke Shop/Tobacco Store, consistent with the stated goals of the City of Visalia General Plan and Zoning Ordinance to preserve and promote the public health, safety, and welfare of the city.
4. That the project is exempt from further review under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) (common sense exemption).

**BE IT FURTHER RESOLVED** that the Planning Commission of the City of Visalia recommends approval to the City Council of the Zone Text Amendment described herein in Attachment "A", in accordance with the terms of this resolution and under the provisions of Section 17.44.070 of the Ordinance Code of the City of Visalia.

## Resolution No. 2022-06

### ATTACHMENT A

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

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

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

#### **1. TITLE 8 Health and Safety**

##### **Chapter 8.46.030 Definitions**

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

“Minor” means any person under eighteen (18) years of age.

“Tobacco paraphernalia” means any item designed or marketed for the consumption, use, or preparation of tobacco products, excluding lighters and matches.

“Tobacco product” means any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhaling, snuffing, or other manner of ingestion or absorption in the human body *any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including but not limited to cigarettes, cigars, chewing tobacco, hookah, pipe tobacco snuff; and any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, a vaping device, electronic cigar, electronic pipe, or electronic hookah.*

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



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

~~—2. Gross revenues: any establishment, structure, facility, or stand that devotes more than thirty (30) percent of either its gross floor space or display area to the retail sale, display, marketing, bartering, trading or exchange of any combination of tobacco, tobacco products, or exchange of tobacco paraphernalia, including electronic smoking devices and accessories, except grocery stores, supermarkets, convenience stores, or similar uses that only sell conventional cigars, cigarettes, e-cigarettes or tobacco as an accessory tobacco sale use.~~

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

## **2. TITLE 17 Zoning**

### **Chapter 17.04 Definitions regarding Smoke Shops / Tobacco Stores**

“Smoke Shop / Tobacco Store” means any establishment, structure, facility, or stand that devotes more than thirty (30) percent of either its gross floor space or display area to the retail sale, display, marketing, bartering, trading or exchange of any combination of tobacco, tobacco products, or exchange of tobacco paraphernalia, including electronic smoking devices and accessories, except grocery stores, supermarkets, convenience stores, or similar uses that only sell conventional cigars, cigarettes, e-cigarettes or tobacco as an accessory tobacco sale use.

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

### **Section 17.25.030 Commercial, Office, and Industrial Zone Use Table**

[Table 17.25.030, Commercial, Mixed Use, Office, and Industrial Zones Use Matrix]

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

**4. Chapter 17.32 Special Provisions**

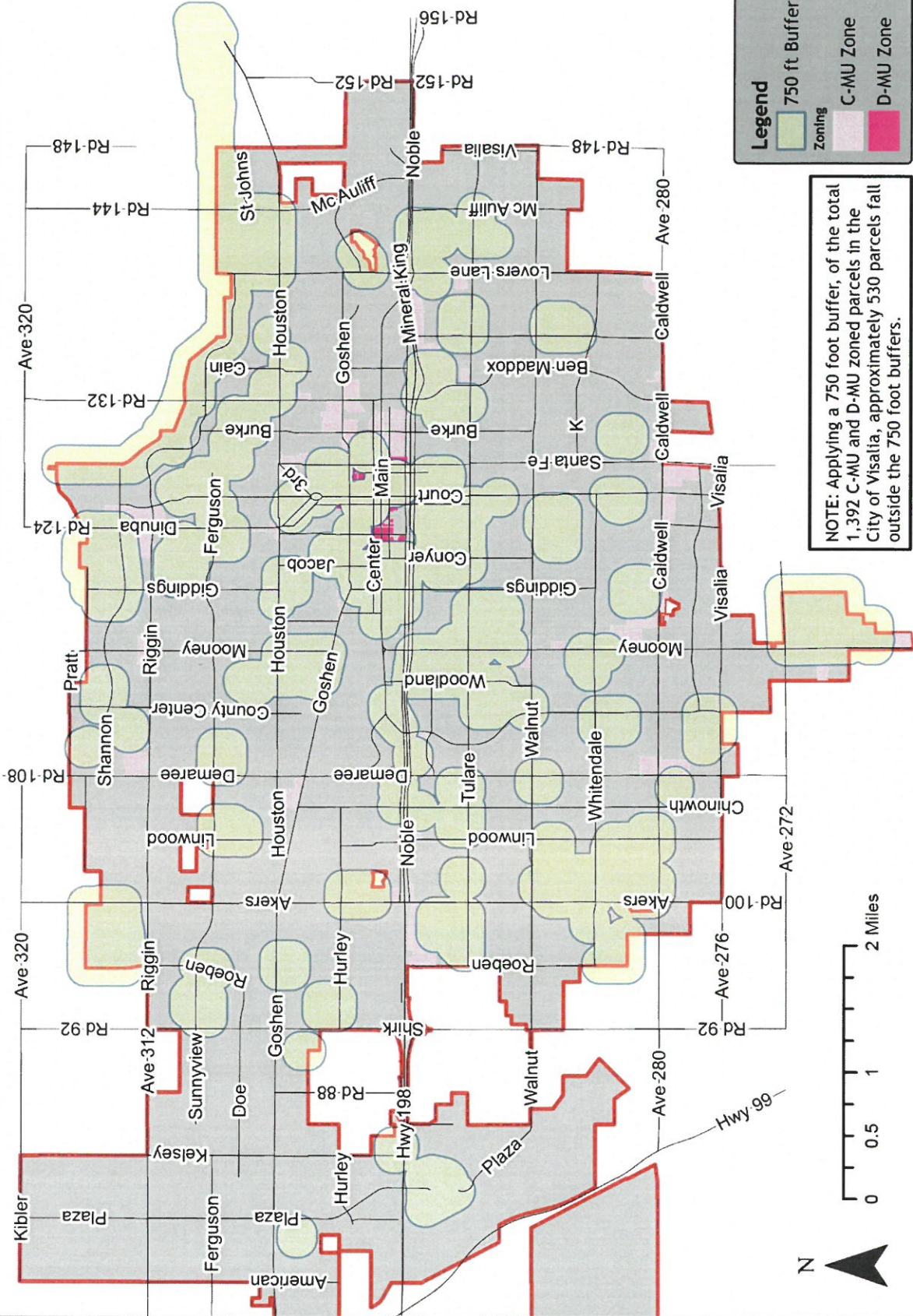
**Section 17.32.164 Smoke Shop / Tobacco Store performance standards.**

- A. Smoke Shops / Tobacco Stores businesses shall be conditionally permitted in the C-MU (Mixed Use Commercial Zone) and D-MU (Mixed Use Downtown Zone) as they are identified on the Zoning map. In addition, no Smoke Shop / Tobacco Store shall be located:
  1. Within seven hundred fifty (750) feet of any other Smoke Shop / Tobacco Store located either inside or outside the city limits; and
  2. Within seven hundred fifty (750) feet of any existing or planned public or parochial elementary schools, middle schools, high schools, licensed day care facilities, libraries, parks, or other recreational facilities where minors congregate, located either inside or outside of the city limits; and
  3. As used in this section, "Existing" means existing at the time the permit application is submitted. "Planned" means property designated on the general plan of the city for such use, or other official planning documents of the city, or property owned or leased by the city for such use.
- B. In addition to the location requirements stated above all Smoke Shops / Tobacco Stores shall meet the following performance standards:
  1. Hold a valid California Cigarette and Tobacco Products Retailer's License issued by the State Board of Equalization in accordance with State law, and a copy of this license shall be prominently displayed in a publicly visible location at the establishment.
  2. Meet all requirements stated in Visalia Municipal Code Chapter 8.46 for the sale of tobacco paraphernalia and tobacco products.
  3. No smoking, as defined in Visalia Municipal Code Chapter 8.48, shall be permitted within the Smoke Shop / Tobacco Store.

# EXHIBIT "A"



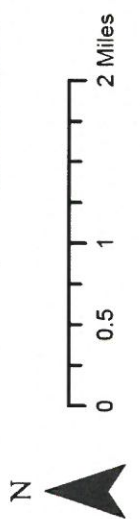
## SUITABILITY ANALYSIS TO SITUATE SMOKE SHOPS IN THE CITY OF VISALIA APPLYING A 750 FOOT BUFFER



**Legend**

- 750 ft Buffer
- Zoning
- C-MU Zone
- D-MU Zone

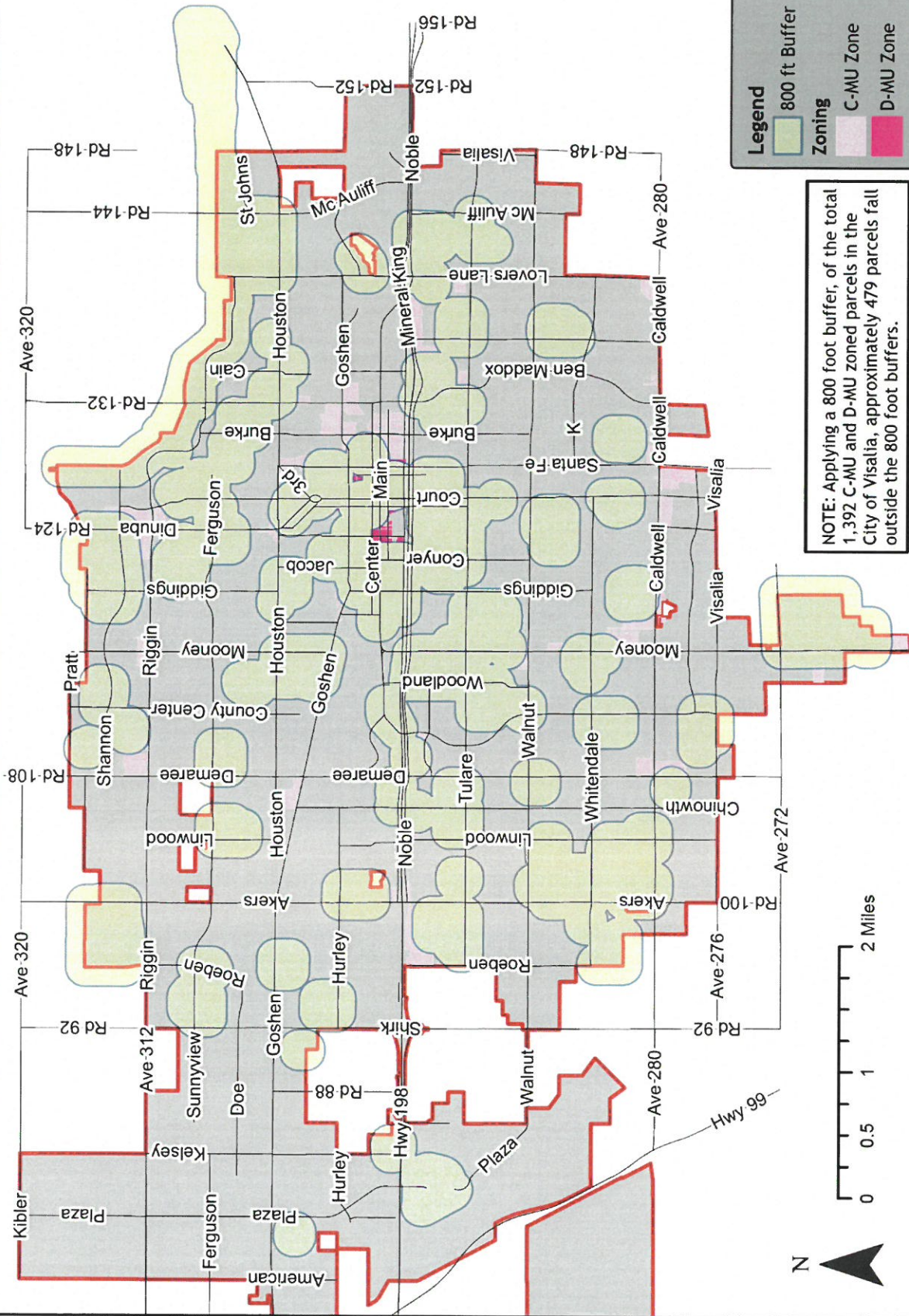
NOTE: Applying a 750 foot buffer, of the total 1,392 C-MU and D-MU zoned parcels in the City of Visalia, approximately 530 parcels fall outside the 750 foot buffers.



# EXHIBIT "B"



## SUITABILITY ANALYSIS TO SITUATE SMOKE SHOPS IN THE CITY OF VISALIA APPLYING A 800 FOOT BUFFER



**Legend**

- 800 ft Buffer
- Zoning
- C-MU Zone
- D-MU Zone

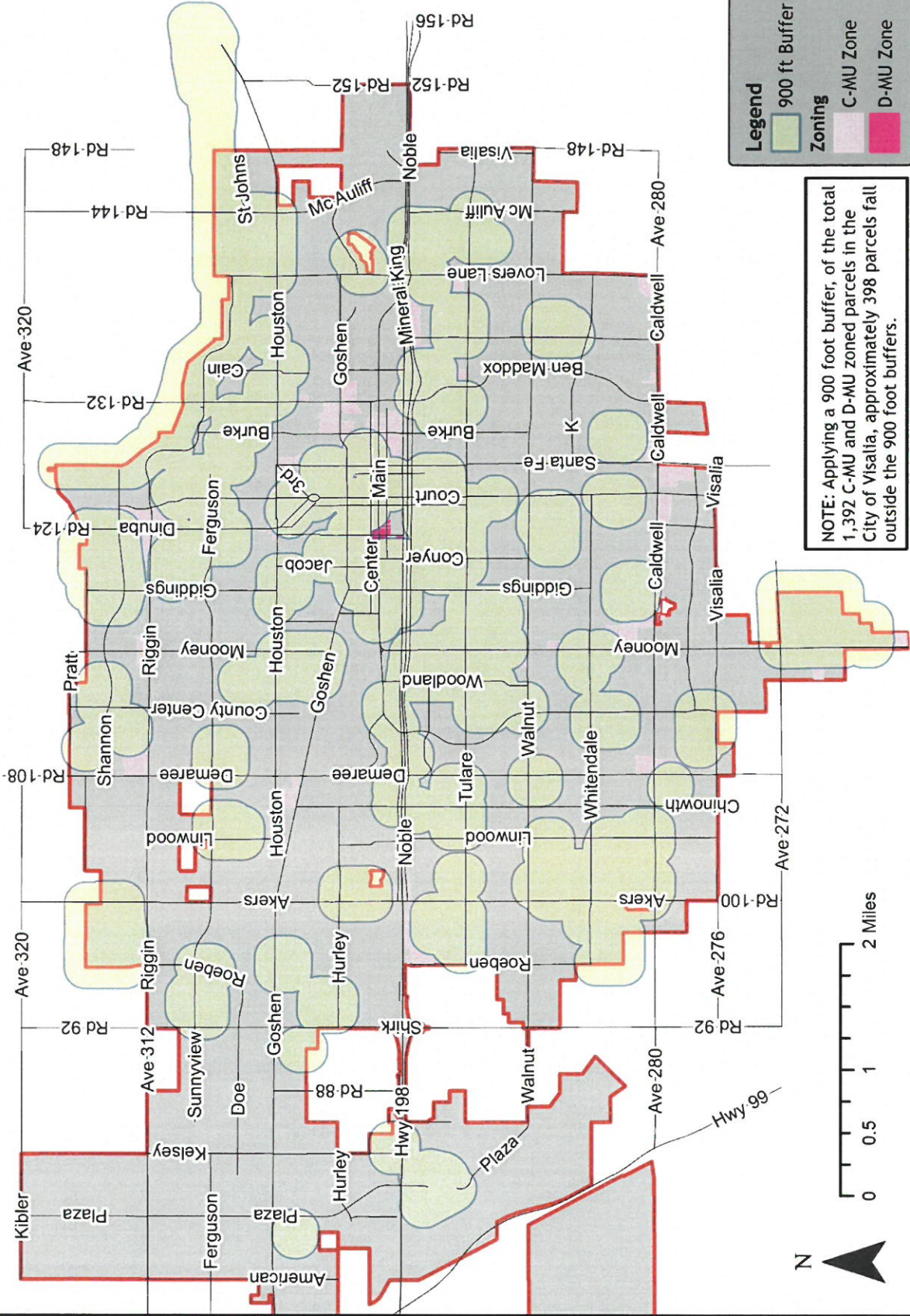
NOTE: Applying a 800 foot buffer, of the total 1,392 C-MU and D-MU zoned parcels in the City of Visalia, approximately 479 parcels fall outside the 800 foot buffers.



# EXHIBIT "C"



## SUITABILITY ANALYSIS TO SITUATE SMOKE SHOPS IN THE CITY OF VISALIA APPLYING A 900 FOOT BUFFER



**Legend**

- 900 ft Buffer
- Zoning
- C-MU Zone
- D-MU Zone

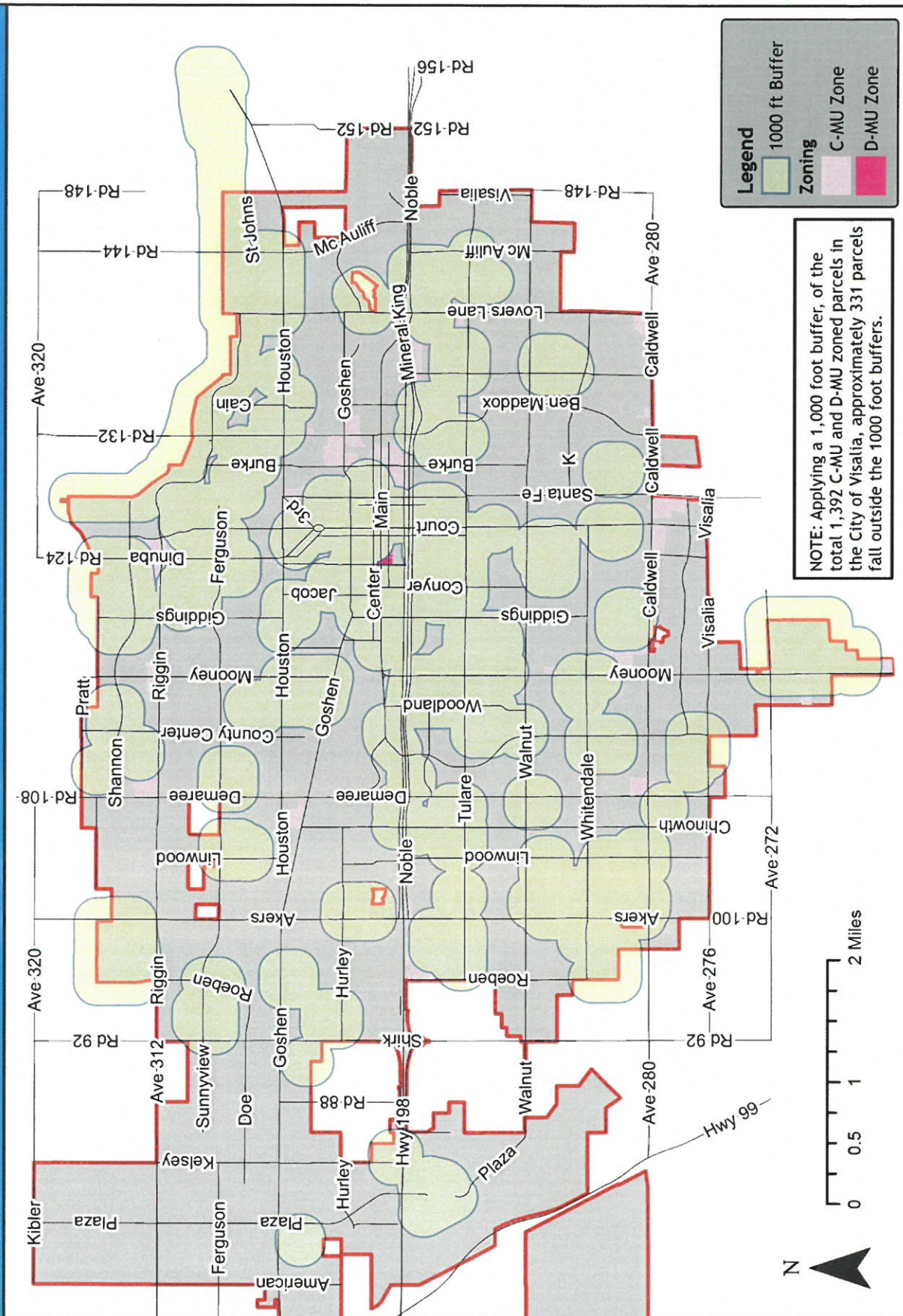
NOTE: Applying a 900 foot buffer, of the total 1,392 C-MU and D-MU zoned parcels in the City of Visalia, approximately 398 parcels fall outside the 900 foot buffers.



# EXHIBIT "D"



## SUITABILITY ANALYSIS TO SITUATE SMOKE SHOPS IN THE CITY OF VISALIA APPLYING A 1000 FOOT BUFFER

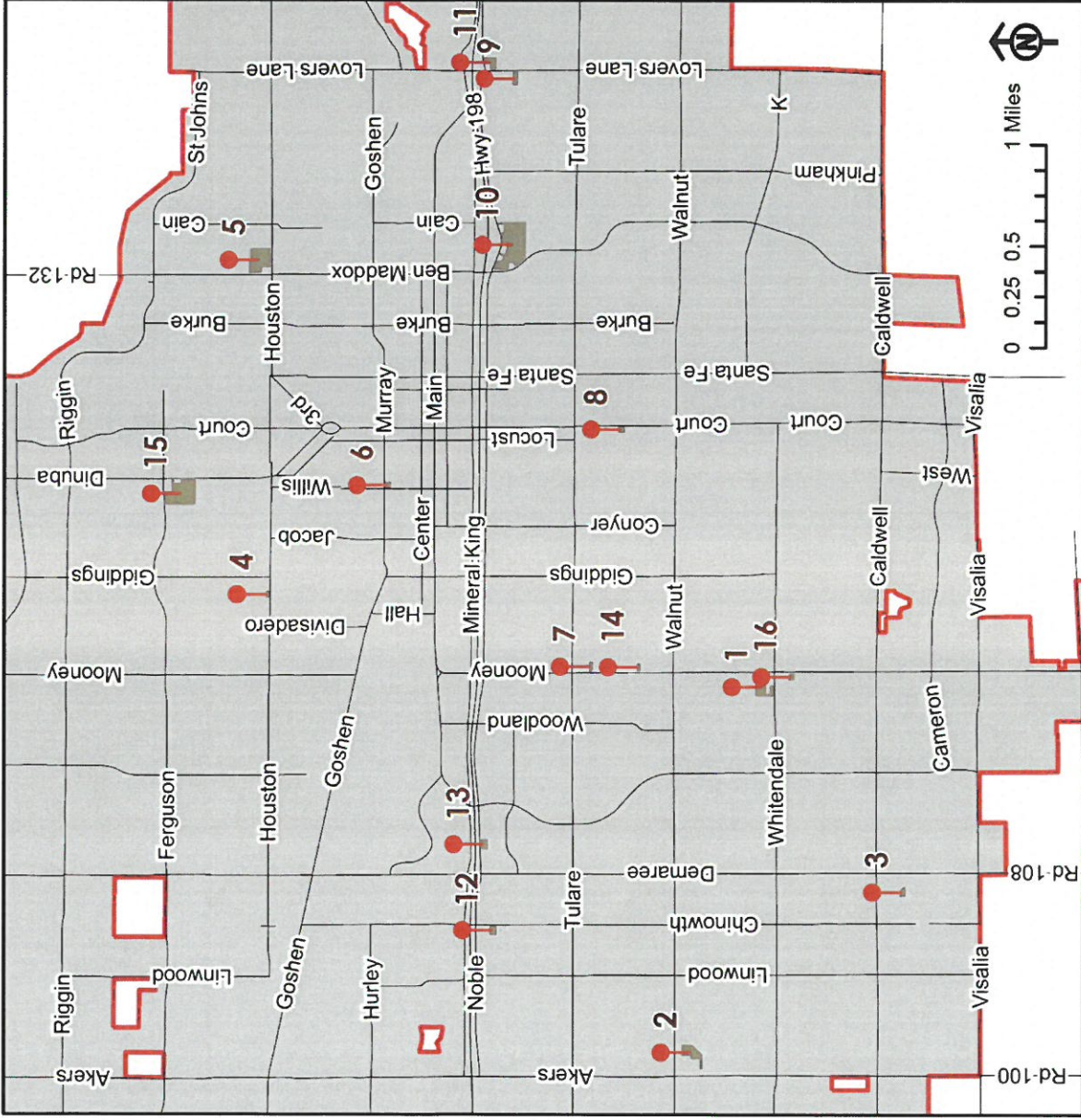


NOTE: Applying a 1,000 foot buffer, of the total 1,392 C-MU and D-MU zoned parcels in the City of Visalia, approximately 331 parcels fall outside the 1000 foot buffers.

# EXHIBIT "E"



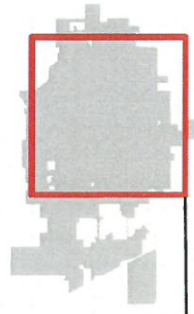
## SMOKE SHOP LOCATIONS



### Legend

- Existing Smoke Shop Location (Red dot)
- Existing Smoke Shop Parcels (Gray rectangle)
- Major Streets (Thin black line)
- City Limits (Red outline)

NUMBER	BUSINESS NAME
1	SUPER 1 CIGARETTE
2	MR NICE GUYS SMOKE SHOP
3	CIGARETTE DEPOT
4	HOUSTON SMOKE SHOP
5	BARGAIN CIGS & PIPES
6	HUFF & PUFF SMOKE SHOP
7	MOONEY SMOKE SHOP
3	SMOKIN DEALS SMOKE SHOP
9	SMOKE CITY VISALIA INC
10	SUPER 3 CIGARETTE SMOKE SHOP
11	PUFF & PASS SMOKE SHOP
12	CIGARETTES 4 LESS
13	SMOKE SHACK THE
14	OMEGA TOBACCO
15	TRIPLE 7 CIGS & PIPES
16	VISALIA VAPES



# EXHIBIT "F"

## Chapter 8.46 EXPOSURE OF MINORS TO TOBACCO PRODUCTS

Sections:

8.46.010 Legislative purpose.

8.46.030 Definitions.

8.46.050 Use of tobacco by minor.

8.46.060 Display of tobacco products.

### **8.46.010 Legislative purpose.**

The city of Visalia has determined that in order to protect the health, safety, and welfare of those citizens within the city and metropolitan area, under the age of eighteen (18) years, it is necessary to regulate the sale, acquisition, or possession of tobacco products facilitated by self-service displays. (Ord. 2000-11 § 1 (part), 2000)

### **8.46.030 Definitions.**

As used in this chapter, those terms identified in this section shall, unless the contexts indicates otherwise, be ascribed the meaning contained herein.

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

"Minor" means any person under eighteen (18) years of age.

"Tobacco product" means any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhaling, snuffing, or other manner of ingestion or absorption in the human body.

"Tobacco shop" means a business establishment in which fifty (50) percent or more of any one or more of the following is devoted to or attributable to the sale of tobacco products:

1. Wall space or any other display area such as tables, racks, or display structures; or
2. Gross revenues.

"Wholesale retailer" means any large-scale retail establishment with supporting goods and services designated to service a regional service trade area and located within the PCR zone. (Ord. 2000-11 § 1 (part), 2000)

### **8.46.050 Use of tobacco by minor.**

No minor shall, in the streets or in any public place, smoke a cigar, pipe, cigarette, or shall use tobacco in any form. (Ord. 2000-11 § 1 (part), 2000)

### **8.46.060 Display of tobacco products.**

It shall be unlawful for any person, firm, corporation, business, partnership, or other entity doing business within the city of Visalia to store, stock, keep, or display for sale or transfer any tobacco product in any area other than a place that is locked and secured, or is otherwise made inaccessible to the public and which is accessible only to the employees of the business. This prohibition shall not apply to "tobacco shops" or "wholesale retailers." (Ord. 2000-11 § 1 (part), 2000)



# EXHIBIT "G"

## Chapter 8.48 SMOKING

### Sections:

- 8.48.010 Purpose and findings.
- 8.48.020 Authority.
- 8.48.030 Definitions.
- 8.48.040 Smoking prohibitions, public places.
- 8.48.050 Stores.
- 8.48.060 Banks.
- 8.48.070 Hotels/motels.
- 8.48.080 Terminals.
- 8.48.090 Buses and taxis.
- 8.48.100 Theaters.
- 8.48.110 Recreational facilities.
- 8.48.120 Recreation halls.
- 8.48.130 Restaurants.
- 8.48.140 Places of exhibition.
- 8.48.150 Hospitals.
- 8.48.160 Schools.
- 8.48.170 Day care facilities.
- 8.48.180 Smoking prohibitions, workplace.
- 8.48.190 Places where smoking permissible.
- 8.48.200 Posting requirements.
- 8.48.210 Retaliation prohibited.
- 8.48.220 Violation--Smoking or posting.
- 8.48.230 Enforcement.
- 8.48.240 Other applicable laws.
- 8.48.250 Severability.

#### **8.48.010 Purpose and findings.**

- A. The U.S. Environmental Protection Agency (EPA) has determined that tobacco smoke is a major source of indoor air pollution, and the Surgeon General's 1986 report on the health consequences of involuntary smoking includes that exposure to tobacco smoke places healthy nonsmokers at increased risk for developing lung cancer. Other health hazards on involuntary smoking include respiratory infection, broncho-constriction, and broncho-spasm. While all members of the population are truly at increased risk due to exposure to second-hand tobacco smoke, it constitutes a special health hazard for children, the elderly and people with chronic lung disorders, including asthmatics and those with obstructive airway disease and cardiovascular disease.
- B. The Surgeon General labels smoking "the largest single preventable cause of death and disability for the U.S. population."
- C. Employees, subjected to prolonged exposure to second-hand smoke in the workplace, have been found in scientifically conducted studies to experience a loss of job productivity and some have been forced to take periodic sick leave because of reactions to said second-hand smoke. Furthermore, studies have shown higher costs to the employer are associated with smoking in the workplace due to increases in absenteeism, accidents, cost of medical care, loss of productivity, and cleaning and maintenance requirements. A recent scientific study has reported that second-hand smoke from tobacco may cause a significant amount of cardiovascular disease in the United States and that the number of deaths from this cause may exceed the deaths caused by lung disease associated with second-hand smoke.
- D. Smoking in public places and workplaces is a major cause of fires and damage to merchandise and equipment as well as costly maintenance and repairs to furniture and fixtures.
- E. The health care costs produced by smoking-related ailments and diseases constitute a heavy and avoidable financial drain on our community.
- F. Opinion surveys show that a majority of the citizens of Visalia favor restriction on smoking in areas accessible to the general public.
- G. Air pollution caused by smoking is an offensive annoyance and irritant. Smoking results in serious and significant physical discomfort of non-smokers and constitutes a public nuisance.
- H. Research concludes that exposure to second-hand smoke is the third leading cause of preventable death, after smoking and alcohol.
- I. Second-hand smoke has been found by the Environmental Protection Agency to be a known carcinogen.
- J. The U.S. Surgeon General has concluded that second-hand smoke is a cause of lung cancer and other diseases in healthy nonsmokers.
- K. The U.S. Surgeon General has concluded that children exposed to second-hand smoke have more respiratory infections and lung problems than children who are not exposed to secondary smoke.
- L. Numerous government and privately sponsored scientific studies have concluded that approximately forty thousand (40,000) deaths per year occur from lung cancer, other cancers, and heart disease due solely to exposure to second-hand smoke.
- M. Accordingly, the city council declares that the purpose of this chapter is to protect the health, safety and general welfare of the residents of, persons employed in, and persons who frequent the city who would benefit by the regulation of smoking, and to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke. (Prior code § 4047)

### **8.48.020 Authority.**

This chapter is enacted pursuant to provisions of Health and Safety Code Sections 25946 and 25949 for the purpose of restricting and regulating smoking in order to reduce the hazards and nuisance which smoking causes those who are involuntarily exposed. (Prior code § 4048)

### **8.48.030 Definitions.**

As used in this chapter, those terms identified in this section shall, unless the context indicates otherwise, be ascribed the meaning contained herein.

**Bar.** The term "bar" means an area which is devoted to the serving of alcoholic beverages for consumption on the premises, in which the serving of food, if any, is incidental to the consumption of alcoholic drinks. The dining area of a restaurant utilized primarily for the serving and consumption of food shall not constitute a bar, even though alcoholic beverages may be served therein.

**Commercial Enterprise--Nonprofit Entity-- Person--Public Agency.**

1. The term "commercial enterprise" means any business entity formed for the profit making purposes, including, but not limited to, professional corporations and other entities under which legal, medical, dental, engineering, architectural, or other professional services are delivered, and also any person charged with the responsibility of controlling conduct on behalf of the enterprise upon any premises regulated by this chapter.

2. The term "nonprofit entity" means any corporation, unincorporated association or other entity created for charitable, philanthropic, educational, character building, political, social or other similar purposes, the net proceeds from operations of which are committed to promotion of the objects or purposes of the organization and not to private gain, together with any person charged with the responsibility of controlling conduct on behalf of the entity upon any premises regulated by the provisions of this chapter.

3. A public agency is not a "nonprofit entity" within the meaning of this section.

4. The term "person" means any natural person, partnership, corporation, unincorporated association, joint venture, business trust, joint stock company, club or other organization of any kind.

5. For purposes of this chapter, and to the fullest extent allowed by law, public agencies and their facilities, located within the city, shall be subject to all provisions herein, in the same manner and to the extent as commercial enterprises, persons and non-profit entities.

**Employee.** The term "employee" means any person, who is employed by an employer in the consideration for direct or indirect monetary wages or profit and any person who volunteers his or her services for a nonprofit entity.

**Employer.** The term "employer" means any person, partnership, corporation, including any public entity, or nonprofit entity, who employs the services of one or more individuals.

**Enclosed Area.** The term "enclosed area" means all space between a floor and ceiling which is served by a common heating, ventilating and air conditioning system and is enclosed on all sides by solid walls or windows (exclusive of door or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, office landscaping, or similar structures.

**Members of the General Public.** The term "members of the general public" means shoppers, customers, patrons, patients, students, clients and other similar invitees of a commercial enterprise, public agency or nonprofit entity, and excludes employees thereof, sales

representatives, service repair persons and persons delivering goods, merchandise or services to a commercial enterprise, nonprofit entity or public agency.

**Office.** The term “office” means an area enclosed by walls containing a desk, table or similar furnishings for clerical, administrative or supervisory work, a complex of such enclosures and a building containing such enclosures, whether or not the building is utilized primarily for other purposes such as retailing, wholesaling, or storage, or manufacturing, together with all hallways, stairways, elevators, escalators, restrooms, lobbies, waiting rooms, reception areas, entry areas, and conference rooms within or associated with the complex of such enclosures, including: (1) legal, medical, dental, engineering, accounting, counseling and other professional offices; (2) insurance, real estate, ticket, collection agency, and other offices where business services are offered to or goods or services are offered to or may be ordered by or may be paid for by members of the general public; and (3) offices to which members of the general public are admitted in order to promote the objects or purposes of the public agency or nonprofit entities.

**Organized Outdoor Event.** The term “organized outdoor event” means a scheduled concert, performance, sporting event, public demonstration or other similar occurrences, open to members of the general public taking place outside an enclosed area.

**Proprietor.** The term “proprietor” means each owner, operator, manager or other person having control of an establishment or facility within which smoking is regulated by this chapter.

**Restaurant.** The term “restaurant” means any dinner house, coffee shop, cafeteria, luncheonette, soda fountain, fast food service and other establishment where cooked or otherwise prepared food is sold to members of the general public for consumption on the premises. The term does not include a cafeteria or lunchroom defined as a workplace, whether or not members of the general public incidentally frequent the facility.

**Smoking.** The term “smoking” means lighting, inhaling, exhaling or burning any pipe, cigar, cigarette, weed or plant, or carrying any lighted pipe, lighted cigar, lighted cigarette, lighted weed, lighted plant or other ignited combustible substance in any manner or in any form.

**Tobacco Store.** The term “tobacco store” means a place utilized primarily for the retail sale to members of the general public of tobacco products or accessories and in which the sale of any other products is merely incidental.

**Workplace.** The term “workplace” means any enclosed area which is occupied by two or more employees of a commercial enterprise, nonprofit entity or public agency including to but not limited to the following:

1. A place utilized for the manufacturing, processing, assembly, maintenance or repair of any products, goods, equipment, tools, appliances, furnishings or other object; or the physical storage for purposes of wholesaling, future utilization for operational purposes, or future transfer preceding consumption or other utilization of any products, goods, merchandise, materials, supplies, equipment, tools, appliances or furnishings;
2. A place utilized or operated for a purpose described by Sections [8.48.040](#) through [8.48.190](#) and from which members of the general public are excluded;
3. A place utilized as a union hall, cafeteria, lounge, lunchroom, restroom, conference room, training room, lecture room, or classroom primarily for the use or benefit of employees.

Notwithstanding the provisions of this definition, a private residence including either an attached or detached garage shall not constitute a workplace, except when the residence serves as a licensed or unlicensed day care facility for children or the elderly. (Prior code § 4049)

#### **8.48.040 Smoking prohibitions, public places.**

A. Except as otherwise provided in this chapter, it is unlawful for any member of the general public or any other person including an employee to smoke in the public places named and described in Sections 8.48.040 through 8.48.170 and other public places similarly situated, including but not limited to the following Enclosed Areas:

1. Merchandise display areas, checkout stations, and counters and other pay stations;
2. Hallways;
3. Restrooms;
4. Escalators, elevators and stairways;
5. Lobbies;
6. Reception areas;
7. Waiting rooms;
8. Service lines;
9. Classrooms, meeting or conference rooms, or lecture halls; and
10. Other places in which members of the general public congregate for service or otherwise frequent.

B. It is also unlawful for any member of the general public or any other person, including an employee, to smoke in an area where public seating is provided while attending an outdoor public event, except in designated areas. Seating in areas designated for smoking will not exceed forty (40) percent of the total public seating provided. (Prior code § 4050)

#### **8.48.050 Stores.**

The prohibitions contained in Section 8.48.040 shall be applicable to: (1) the enclosed common areas of shopping malls; (2) automobile dealerships, furniture or other showrooms for the display of merchandise offered for sale at retail; (3) grocery, specialty, department and other stores which sell goods or merchandise at retail, and (4) service stations, stores or shops for the repair or maintenance of appliances, shoes, or motor vehicles, barbershops, beauty shops, cleaners and laundromats, video game, pool hall and other amusement centers, and other similar establishments offering services or products to members of the general public. (Prior code § 4051)

#### **8.48.060 Banks.**

The prohibitions contained in Section 8.48.040 shall be applicable to banks, including savings and loan associations, credit unions and other similar institutions which offer financial services to members of the general public. (Prior code § 4052)

#### **8.48.070 Hotels/motels.**

The prohibitions contained in Section 8.48.040 shall be applicable to hotels and motels in which guests typically rent lodging for continuous periods less than thirty (30) days. Smoking is permissible in rental rooms and in on-premise restaurants, bars and other areas as provided in Sections 8.48.130, 8.48.190(B) and 8.48.190(E). The availability of nonsmoking rooms will be prominently posted in the lobby sign-in area.

The rooms so designated will be posted as smoking prohibited and ash trays removed. Customers seeking accommodations should be routinely advised of the availability of nonsmoking rooms. (Prior code § 4053)

#### **8.48.080 Terminals.**

The prohibitions contained in Section 8.48.040 shall be applicable to depots and other terminals utilized by members of the general public for the purpose of being transported upon or departing from airplanes, trains, buses and taxis. (Prior code § 4054)

#### **8.48.090 Buses and taxis.**

Smoking, by either passengers or operators, shall be prohibited within buses, taxicabs and all public transit conveyances operated by or licensed by the city. (Prior code § 4055)

#### **8.48.100 Theaters.**

The prohibitions contained in Section 8.48.040 shall be applicable to theaters, including motion picture theaters, meeting halls and auditoriums where motion pictures or live theatrical musical or dramatic productions are made to an audience consisting of members of the general public assembled for the purpose of witnessing the performance or presentation; provided that neither this section nor Section 8.48.040 shall be construed to prevent smoking by performers in connection with a stage production or by persons making a presentation concerning addiction to tobacco or other drugs. (Prior code § 4056)

#### **8.48.110 Recreational facilities.**

- A. The prohibitions, contained in Section 8.48.040, shall be applicable to enclosed areas of sports pavilions, gymnasiums, exercise rooms, health spas, boxing arenas, swimming pools, roller and ice skating rinks, bowling alleys and other similar places where members of the general public assemble to either engage in physical exercise, participate in athletic competition or witness sports events.
- B. Smoking is prohibited at all times within the seating areas of an enclosed arena and in the surrounding open concourses where food and beverages are dispensed.
- C. Smoking may be allowed in enclosed on-site restaurants, subject to the provisions of Section 8.48.130, and in enclosed on-site bars.
- D. Smoking may be allowed in bowling alleys on those occasions when league play occupies the majority of bowling lanes in the establishment, and a majority of the members of the league(s) vote to allow smoking. Evidence of the voting procedure and outcome of the vote must be retained by the establishment, for inspection by the city upon request, for the duration of the leagues's play. (Prior code § 4057)

#### **8.48.120 Recreation halls.**

- A. The prohibitions, contained in Section 8.48.040, shall be applicable to those areas of recreation halls and other similar facilities where members of the general public play bingo or cards, dance or engage in recreational, character-building or cultural activities which are designated as nonsmoking.
- B. An owner, manager or operator of a recreation hall shall designate not less than fifty (50) percent of the main activities area of such facility not including restrooms, lounges and kitchens as nonsmoking. Commencing nine months after the adoption of the ordinance codified in this chapter, an owner, manager or operator of a recreation hall shall designate not less than seventy-five (75) percent of the main activities area of such facility not including restrooms, lounges and kitchens as non-smoking. Commencing eighteen (18) months after the adoption of the ordinance codified in this chapter, the owner, manager or operator of a recreation hall shall designate the entire premises of such facility including restrooms, lounges and kitchens as nonsmoking. Signs shall be posted in the manner prescribed by Section 8.48.220. It shall not

constitute a violation of this chapter to smoke in a location where smoking has been authorized by this chapter.

C. The provisions of this section shall not be construed in any manner to restrict or otherwise impair the authority of an owner, manager or operator to increase the nonsmoking area of a recreation hall. (Prior code § 4058)

#### **8.48.130 Restaurants.**

A. Within all restaurants, the prohibitions contained in Section 8.48.040, shall be applicable to lobbies, waiting areas, restrooms and those dining seating areas which are designated as nonsmoking.

B. The owner, manager or operator of a restaurant shall designate not less than fifty (50) percent of the available customer seating as nonsmoking. Commencing nine months after the adoption of the ordinance codified in this chapter, the owner, manager or operator of a restaurant shall designate not less than seventy-five (75) percent of the available customer seating as nonsmoking. Commencing eighteen (18) months after the adoption of the ordinance codified in this chapter, the owner, manager or operator of a restaurant shall designate all available customer seating as nonsmoking. The owner, manager or operator of the restaurant shall post signs as prescribed by Section 8.48.200 and remove all ashtrays from tables located in the nonsmoking areas. Where a bar shares the same enclosed area with the restaurant, the bar seats must be counted with the restaurant seats in determining the total number of nonsmoking restaurant seats. The owner, manager or operator shall post a notice at the restaurant entrance that a nonsmoking section is available. It shall not constitute a violation of this chapter to smoke in a location where smoking has been authorized by this chapter.

C. The provisions of this section shall not be construed in any manner to restrict or otherwise impair the authority of an owner, manager or operator to increase the nonsmoking seating in a restaurant or bar. (Prior code § 4059)

#### **8.48.140 Places of exhibition.**

The prohibitions contained in Section 8.48.040, shall be applicable to libraries, museums, galleries, convention halls and similar facilities where members of the general public assemble for the purpose of viewing the exhibition of art, artifacts, objects of historical or cultural significance, products, merchandise, equipment, appliances or services. (Prior code § 4060)

#### **8.48.150 Hospitals.**

The prohibitions, contained in Section 8.48.040, shall be applicable to hospitals, rest and convalescent homes, medical clinics, physical therapy facilities and other places where medical, dental, psychiatric or counseling services are delivered to members of the general public. Operators of facilities treating psychiatric or chemically impaired patients may permit smoking by patients in designated areas; provided, the medical director of such facility has determined in writing that the practice is beneficial for the recovery or treatment of such patients and that the practice will not interfere with the recovery and treatment of nonsmoking patients; and provided, that adequate nonsmoking areas are made available for nonsmoking patients. Neither this section nor Section 8.48.040 shall be construed to prevent smoking in locations or otherwise under conditions in which smoking is expressly authorized by or under statutes or administrative regulations applicable to such licensed facilities. (Prior code § 4061)

#### **8.48.160 Schools.**

The prohibitions, contained in Section 8.48.040, shall be applicable to any school or educational institution operated by a commercial enterprise, public agency or nonprofit entity for the purpose of providing academic classroom instruction, trade, craft, computer or other

technical training, or instruction in dancing, artistic, musical or other cultural skills. (Prior code § 4062)

#### **8.48.170 Day care facilities.**

The prohibitions, contained in Section 8.48.040, shall be applicable to private residences during the time when such residences are operated as licensed or unlicensed day care facilities for children or the elderly. (Prior code § 4063)

#### **8.48.180 Smoking prohibitions, workplace.**

A. Smoking is prohibited in enclosed workplaces under the control of a public or private employer which the general public has access to in the course of conducting business, including but not limited to, open office areas, shared offices, private offices, hallways, restrooms, escalators, elevators, stairways, lobbies, reception areas, waiting rooms, classrooms, meeting or conference rooms, and auditoriums.

B. On-site cafeterias, lunchrooms and lounges shall be deemed workplaces and smoking prohibited therein, whether or not such facilities are open to members of the general public.

C. Each commercial enterprise, nonprofit entity and public agency shall comply with these smoking prohibitions and be responsible for their implementation in the workplace, and "No smoking" signs shall be posted in the manner prescribed by Section 8.48.200. (Prior code § 4064)

#### **8.48.190 Places where smoking permissible.**

A. Smoking may be permitted in all locations where smoking is not prohibited by this chapter, including the following locations:

1. A private residence, including an attached or detached garage, whether or not the residence is utilized for office or other business purposes, except when such residence is operated as a licensed or unlicensed day care facility for children or the elderly;

2. Bars;

3. Tobacco stores, whether operated as a separate business entity or as a physically separated facility within a department store or other business entity;

4. Private clubs during events attended exclusively by members of the organization and their invited guests and from which members of the general public are excluded;

5. Within conference/meeting rooms, public and private assembly rooms, banquet rooms, dining rooms or areas of restaurants, hotels and motels, while these places are occupied for private functions to which only persons specially invited are entitled to attend and from which members of the general public are excluded;

6. Within bowling alleys while the majority of available bowling lanes are occupied by league play and the league(s) have voted to allow smoking;

7. In any enclosed place wherein this chapter specifically permits smoking, notwithstanding the fact that such location is a workplace accessible to the general public.

B. It shall not constitute a violation of Section 8.48.040 a person to smoke in a location where smoking has been authorized in the manner prescribed by this section.

C. The foregoing places are not considered workplaces, subject to the provisions of Section 8.48.180. Employers will, however, attempt to find a reasonable alternative accommodation where feasible for nonsmoking employees who do not wish to be assigned to work in a smoking permissible area.



D. Notwithstanding any provision in this chapter which permits smoking in a place of employment, any nonsmoking employee may object to his or her employer about smoke in his or her workplace. The employer shall attempt to reach a reasonable accommodation, insofar as possible. The area in which smoking is prohibited shall be posted by "No Smoking" signs in the manner prescribed by the provisions of Section 8.48.200. (Prior code § 4065)

#### **8.48.200 Posting requirements.**

A. Each owner, operator, manager or other person having control of an establishment or facility within which smoking is regulated by this chapter shall conspicuously post in every place where smoking is prohibited "No Smoking" signs with letters not less than one inch in height (or the international "No Smoking" symbol consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it).

B. An owner, operator, or manager of a building wherein, pursuant to these regulations, there is no smoking permitted in any space in the building may limit the "No Smoking" postings to first floor entrances and exits and to the elevator lobby areas of all other floors.

C. Motion picture theaters shall show upon the movie or live action screens for at least five seconds prior to the showing of each feature motion picture the message that smoking is prohibited within the audience seating and other areas as specified.

D. Hotels and motels will prominently post in the lobby a sign notifying patrons of the availability of nonsmoking accommodations. The rooms so designated will be posted as nonsmoking rooms and ashtrays removed. (Prior code § 4066)

#### **8.48.210 Retaliation prohibited.**

A. It is unlawful for a commercial enterprise, nonprofit entity or public agency to retaliate against any member of the general public or an employee or applicant for employment of the enterprise, entity or public agency because such member of the general public, employee or applicant seeks enforcement of the provisions of this chapter or otherwise protests smoking by others.

B. Violation of any of the provisions of Section 8.48.200 shall be remedied through criminal or civil action filed in a court of competent jurisdiction for injunctive, criminal prosecutions or other appropriate relief. (Prior code § 4067)

#### **8.48.220 Violation--Smoking or posting.**

A. Any person who violates the prohibitions contained in Sections 8.48.050 through 8.48.170 and any proprietor who violates Section 8.48.200 by failing to post the signs or take the other actions required by this section may be prosecuted as of an infraction, punishable in the manner hereinafter prescribed and/or may have his/her business license revoked.

B. Fines for the crimes made infractions by this section shall be levied in the amounts prescribed. Any person, who violates any provisions of this chapter by smoking in a designated nonsmoking area, shall be guilty of an infraction, punishable by a fine of fifty dollars (\$50.00) for the first violation, and one hundred dollars (\$100.00) for each subsequent violation. Any employer/proprietor, who violates any provisions of this chapter by failure to post required signs, by failure to request violating smokers to extinguish the lit object may be guilty of an infraction punishable by a fine of one hundred dollars (\$100.00) for the first violation, and two hundred fifty dollars (\$250.00) for each subsequent violation and/or may have his/her business license revoked. Subsequent violations may be prosecuted as misdemeanors with fines up to one thousand dollars (\$1,000.00) and/or jail time up to six months. (Prior code § 4068)

#### **8.48.230 Enforcement.**

A. Voluntary enforcement of and mandatory compliance of this chapter shall lie with the employer/proprietor of the establishment. An individual violating this chapter shall be requested by the employer/proprietor not to smoke and shall be made aware of the posted "No Smoking" signs. If the individual continues to violate the chapter, the employer/proprietor shall inform the individual they are guilty of an infraction of a city ordinance punishable by a fifty dollar (\$50.00) fine for the first violation and one hundred dollars (\$100.00) for each subsequent violation.

B. It shall be the responsibility of the chief of the police department to enforce, on behalf of the city, the provisions of this chapter. The chief shall be authorized to prosecute, in the name of the city, criminal actions for the recovery of fines for violations of this chapter made infractions by Section 8.48.220 for violations of Sections 8.48.050 through 8.48.200.

C. In the performance of the enforcement responsibilities assigned by this chapter, the chief of the police department shall:

1. Establish a telephone number through which all complaints by citizens relating to violations of this chapter may be directed or referred;
2. Reduce such complaints to writing, and analyze the frequency and volume thereof in relation to alleged violations of this chapter by or at particular establishments or facilities;
3. Conduct an on-site inspection of any establishment or facility with respect to which the nature and volume of complaints suggests long-standing and pronounced violations of any of the provisions of this chapter;
4. Provide to the owner, operator or manager of any such establishment or facility a copy of the provisions of this chapter and such advisory assistance to rectify future violations as may be necessary to achieve compliance with the provisions of this chapter;
5. Follow up such investigation and advice with a written directive explaining in detail the steps required in order to achieve future compliance with the provisions of this chapter;
6. If the violations do not cease following expiration of a reasonable period of time, request commencement of a criminal or civil proceeding by the city attorney pursuant to the provisions of Section 8.48.250, or civil remedies listed below as may be appropriate to do one, some or all of the following civil remedies:
  - a. Public Nuisance. Any continuing violation of the provisions of this chapter may be declared a public nuisance hereunder, and the city attorney may proceed to abate the same by filing a civil action in a court of competent jurisdiction.
  - b. Licensed Revocation. Any continuing violation of the provisions of this chapter by proprietor may be punishable by the city revoking his/her business license.
  - c. Injunctive Relief. Any continuing violation of the provisions of this chapter by proprietors may be restrained by a temporary restraining order, preliminary and/or permanent injunction. (Prior code § 4069)

#### **8.48.240 Other applicable laws.**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. (Prior code § 4070)

#### **8.48.250 Severability.**

If any provision, clause, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions

of this chapter which can be given effect without the invalid provision(s) or application(s), and to this end the provisions of this chapter are declared to be severable. (Prior code § 4071)