

ORDINANCE NO. 1718

AN ORDINANCE AMENDING CHAPTER 30, ARTICLE I (GENERAL PROVISIONS), DIVISION 2 SECTION 30-11, AND ARTICLE VI (COMMERCIAL AND MIXED USE ZONING DISTRICTS), DIVISION 3, TABLE 30-202 A. AND SECTION 30-205 OF THE FONTANA CITY CODE, ADDING DEFINITIONS, AMENDING THE TABLE OF PERMITTED USES TO REQUIRE A CONDITIONAL USE PERMIT FOR RETAIL SMOKE/VAPE SHOPS AND HOOKAH/E-LOUNGES IN FULL-SERVICE RESTAURANTS, ESTABLISHING DEVELOPMENT STANDARDS, AND A DISTANCE REQUIREMENT FROM SENSITIVE LAND USES AND OTHER SMOKE/VAPE SHOPS AND HOOKAH/E-LOUNGES.

THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

WHEREAS, on June 24, 2014 a City Council workshop was held regarding ways to regulate smoke/vape shops & hookah lounges. The City Council supported regulating smoke/vape shops with a minor use permit and hookah lounges allowed only as a secondary use to a restaurant, with a conditional use permit; and

WHEREAS, the proposed amendments to the Zoning and Development Code are exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3) of the CEQA Guidelines as the proposed amendments will not have a significant effect on the environment; and

WHEREAS, the Planning Commission has duly noticed and conducted a public hearing on October 21, 2014, concerning the adoption of ZCA NO. 14-002; and

WHEREAS, on October 21, 2014, with a 5-0 vote the Planning Commission modified the City Council direction from the June 24, 2014 workshop and adopted Planning Commission Resolution No. 2014-08, recommending to the City Council the approval of Zoning Code Amendment No. 14-002, to require a Conditional Use Permit for the establishment of retail smoke/vape shops, as well as for hookah/e-lounges as secondary use in full-service restaurants; and

WHEREAS, the City Council of the City of Fontana, at a meeting duly noticed and conducted on January 13, 2015, considered Zoning Code Amendment No. 14-002; and

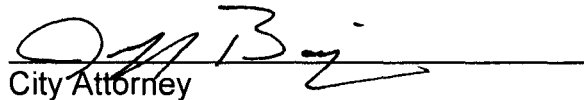
WHEREAS, the proposed amendment to the Zoning and Development Code have been reviewed pursuant to Section No. 15061 (b) (3) (General Rule Exemption) of

the California Environmental Quality Act; therefore a Notice of Exemption has been prepared.

NOW, THEREFORE, BE IT RESOLVED, determined, and ordered by the City Council of the City of Fontana that Chapter 30, of the Fontana Municipal Code be amended as shown in the attached "Exhibit A". This ordinance shall take effect thirty (30) days after the date of its adoption, and prior to the expiration of the fifteen (15) days from the passage, therefore, the Ordinance, or a summary of the Ordinance, shall be published at least once in the Herald News, a newspaper of general circulation in the City of Fontana. Thereafter, this Ordinance shall be in full force and effect.

APPROVED AND ADOPTED by the City Council of the City of Fontana, California, at a regular meeting held on the 27th day of January, 2015.

READ AND APPROVED AS TO LEGAL FORM:


City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance introduced at a regular meeting of said City Council on the 13th day of January, 2015, and was finally passed and adopted not less than five (5) days thereafter on the 27th day of January, 2015, by the following vote to wit:

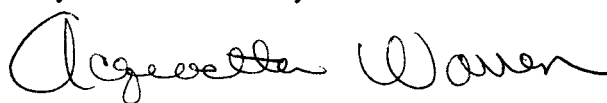
AYES: Mayor Warren, Mayor Pro Tem Tahan, Council Members Roberts, Salazar-Wibert and Sandoval

NOES:

ABSENT:

ABSTAIN:


City Clerk of the City of Fontana


Mayor of the City of Fontana

ATTEST:



City Clerk

Exhibit A

Section 1. Chapter 30, Sections 30-11, and 30-205 and Table 30-202.A. of the Fontana City Code should be amended to include the underlined language as follows:

Sec. 30-11. List of Definitions.

E-cigarettes means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances.

E-lounge means an establishment where customers utilize a heating element that vaporizes liquid solution that releases nicotine or flavored vapor, including but not limited to the use of e-cigarettes.

Hookah lounge means an establishment whose business operation is denoted by the smoking of tobacco or other substances through one or more pipes (commonly known as a hookah, waterpipe, shisha or narghile) designed with a tube passing through an urn of water that cools the smoke as it is drawn through it, or other such smoking device, placed at various tables throughout the business.

Smoke lounge means an establishment devoted to selling tobacco related products to be consumed or smoked on the premises.

Smoke/tobacco shop means a retailer where more than 40% (percent) of the floor area is dedicated for the sale of pipes, tobacco, flavored tobacco, pipe tobacco, vapor cigarettes, e-cigarettes, nicotine oils/liquids, cigars and cigarettes or similar merchandise and smoking equipment that is directly sold to the consumer.

Vapor cigarettes means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of vaporized oils that contain nicotine.

Vapor lounge means an establishment devoted to selling tobacco related products including but not limited to electronic or vapor cigarettes, to be consumed or smoked on the premises.

Vape shop means a retailer that primarily sells vapor cigarettes, e-cigarettes, nicotine oils/liquids and associated accessories for off-site use.

**Table 30-202.A.
Permitted Uses in Commercial Zoning Districts**

Use	C-1	C-2	RMU
A. Retail sales.			
<u>Smoke/tobacco shop and vape shop</u>	<u>C</u>	<u>C</u>	<u>C</u>
D. Amusement establishments			
<u>Smoking lounge, hookah lounge, vapor lounge, e-lounge (allowed only as a secondary use to a full service restaurant)</u>	<u>C</u>	<u>C</u>	<u>C</u>

Sec. 30-205. Conditional use regulations.

All uses marked with a "C" or "M" in Table 30-202.A. must comply with the conditional use permit or minor use permits procedural requirements outlined in Article II, Divisions 6.5 and 7 of this chapter. In addition, certain conditional uses must comply with the specific development and operational standards outlined below.

(a) *Automobile service and repair stations, customizing and supply.*

- (1) *Applicability.* The provisions of this section shall apply to all new construction of automobile service stations and all places where motor fuels are dispensed.
- (2) *Lot area and frontage.* Each service station site shall have a minimum net lot area as specified in the zoning district in which the service station will be located.

- (3) *Existing stations.* The provisions contained in paragraph (2) above shall not be applicable to existing service stations in the City so long as such service stations remain in use as service stations.
- (4) *Regulations.*
 - a. *Location.* The site shall have direct frontage on a major, primary or secondary highway.
 - b. *Driveway access.* One access drive shall be permitted for each street frontage unless additional access drives will enhance the public health, safety, and welfare.
- (5) *Repair and servicing.* All hydraulic hoists and pits, and all lubrication, greasing, automobile washing and polishing and permitted repair equipment must be enclosed entirely within a building, and all work shall be done within a completely enclosed building. No outdoor storage of inoperative vehicle or vehicles under repair shall be permitted on the site.
- (6) *Signs.* See Chapter 3 of the Municipal Code.
- (7) *Storage and display.* Outside storage and display of new or used merchandise shall not be permitted.
- (8) *Hours of operation.* Hours of operation shall be determined on a case-by-case basis by the Planning Commission.
- (9) *Restroom requirements.* All fuel retailers shall provide both male and female restrooms which are continuously maintained for the use of, and at no charge to customers and employees. The restroom entrances shall be screened from view from adjacent properties and public rights-of-way by decorative structural screening as approved by the Community Development Department.
- (10) *Air/water.* Air and water dispensing equipment shall be provided. Such equipment shall be located in an easily accessible location and shall be maintained at all times. Non-operating equipment shall be repaired within five calendar days.
- (11) *Service bay.* Service bays doors shall be oriented away from the public right-of-way.
- (12) *Renovation of existing facilities.* Renovation of existing facilities which increases assessed evaluation of the facility by more than 30 percent shall comply with the requirements contained herein. When existing conditions

prevent compliance with these requirements, the renovation shall be considered to be in substantial compliance with this ordinance as determined by the Planning Commission.

(13) *Abandonment and revocation.*

- a. If an automobile service station is abandoned or vacated for a period of six consecutive months such abandonment shall be considered to be forfeiture of all rights and privileges granted by a conditional use permit (CUP). A hearing shall be held for the purpose of revoking such permit in accordance with the provision of this article. Within 30 days after revocation of a CUP operation a plan must be presented to the City outlining plans for removal of above or below ground storage tanks.
- b. Any automobile service station that becomes vacant or ceases operation beyond six months shall be required to remove all underground storage tanks (in a method acceptable to the Central Valley Fire Protection District and all other government authorities) remove all gasoline pumps and pump islands, and shall remove freestanding canopies. In order to prevent said action, the owner must supply the manager of planning with written verification prior to the sixth month that an allocation of gas has been received and operation of the station will commence within 30 days of the date of written correspondence. If the service station is to resume operation after the 180 days, then the Director of Community Development or designee shall require processing and approval of a conditional use permit/design review application as well as the required approvals from the appropriate regulatory agency whether it be federal, state, or local to ensure that the facilities will be reasonably upgraded and maintained. This could include but not be limited to such items as replanting existing landscape areas, installing new landscape areas, painting of structures, upgrading or installing trash enclosures, striping parking spaces, installation of signs in conformance with adopted signs provisions in Chapter 3 of the Municipal Code.

(b) Smoke shop and vape shop

(1) Regulations.

- a. The business shall be owner-operated or otherwise exempt from the prohibition of smoking in the workplace set forth in Cal. Labor Code Section 6404.5.
- b. Food for consumption is not permitted on the premises.
- c. No alcoholic beverages shall be sold or consumed on the business premises.
- d. No person under 18 years of age shall be permitted within any area of the business premises in conformance with Section 30-314 where the smoking of tobacco is allowed.
- e. No amusement devices, as said term is defined in Section 30-11 of this code, shall be permitted anywhere within the business.

(2) Development standards.

- a. There shall be no obstructions within the storefront windows and doors which would hinder visual surveillance of the interior of the tenant space from the outside of the premises during operating hours. Obstructions would include signage, window tint, window coverings, advertisements, etc.
- b. The interior of the business shall be maintained with adequate illumination to make the conduct of patrons within the premises readily discernible to persons of normal visual acuity.
- c. All required emergency access/exits or fire lanes shall be provided and maintained as required by the Fontana Fire Department.
- d. The business shall also be in conformity with all other city, state, and federal laws.

(3) Distance requirements.

- a. Distance shall be measured from property line to property line.

- b. The tenant space shall not be located within 1,500 feet of any existing or proposed school, park, religious institution, hospital, youth facility, or other sensitive land uses, whether said uses are within or outside of the corporate boundaries of the City of Fontana.
 - c. The tenant space shall be a minimum distance of 500 feet from any smoke/vape shop and smoking/vape/hookah/e-lounges, as said terms are defined in Section 30-11, whether said uses are within or outside of the corporate boundaries of the City of Fontana.
- (c) E-lounge, hookah lounge, smoking lounge, vapor lounge

(1) Regulations

- a. Allowed only as a secondary use in the outdoor patio area of a full service restaurant.
- b. All business related activities shall be conducted wholly within a building, with the exception of on-site smoking and outdoor seating in conformance with Section 30-314. Operation of outdoor barbecues or braziers or lighting coals shall not be permitted.
- c. The business shall be owner-operated or otherwise exempt from the prohibition of smoking in the workplace set forth in Cal. Labor Code Section 6404.5
- d. No person under 18 years of age shall be permitted within any area of the business premises in conformance with Section 30-314 where the smoking of tobacco is allowed.
- e. No admittance fee, cover charge, or requirement of any charge or minimum payment as a condition of entry shall be permitted.
- f. In the event security problems occur and at the request of the police Department, the business owner/licensee or management, at his or her own expense, shall provide a California licensed, uniformed security guard(s) on the premises, during such hours as requested and directed by the Police Department. All uniformed security guards(s) shall comply

with Fontana City Code section 22-62, and shall be registered with the State of California's Bureau of Security and Investigative Services as a security guard prior to employment within the City of Fontana.

- g. The lounge owner shall be responsible for the removal of all trash and debris or spilled food or beverage items, and shall maintain the outdoor seating area and its adjacent area in a clean, sanitary and trash-free manner.
- h. Music shall be limited to overhead/background music; any music allowed shall not be audible from outside the premises so as to disturb the peace pursuant to Fontana Municipal Code 16-19, 18-63. Such system may be radio, juke box (coin or token operated customer paid mechanism) or similar non-hosted device or unit, but not including any system requiring an attendant or host such as a disk jockey (Dj) or similar person.

(2) Development standards

- a. Adequate ventilation shall be provided for the heating of coals in accordance with all requirements imposed by the Fontana Fire Department, or as otherwise required by federal laws.
- b. Parking shall be provided using the standard for bars and nightclubs.
- c. The occupancy shall not exceed the occupancy limit for the premises established pursuant to Chapter 10 of the California Building Code.
- d. Furnishings for an outdoor seating area shall not exceed one table and two seats for every five lineal feet of building or unit frontage.
- e. Furnishings shall not be placed or allowed to hang over any public right-of-way, required pedestrian access way, required setback or parking area.
- f. A minimum six-foot wide pedestrian walkway shall be maintained to provide unobstructed pedestrian access on the sidewalk.

- g. Portable or non-fixed furnishings shall not be set up outside the premises more than one-half (.5) hours after closing. Permanent or fixed furnishings may remain overnight.
- h. Furnishings shall not contain advertising or depict any product or product name, logo, trademark, or similar identification or advertising display. The design, color and material of the furnishings shall be compatible with the building.
- i. At least one enclosed trash receptacle shall be provided. The design, color and material of the receptacle(s) shall be compatible with the building.
- j. Development standards set forth in Sec No. 30-205(b) (2) shall also apply.

(3) Distance Requirements. See Sec No. 30-205 (b) (3).

Section 2. The proposed amendments to the Zoning and Development Code have been reviewed pursuant to Section No. 15061 (b) (3) (General Rule Exemption), of the California Environmental Quality Act; therefore, a Notice of Exemption has been prepared.