

ORDINANCE NO. 1681

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
SAN CLEMENTE APPROVING ZONING AMENDMENT 17-
043, AMENDING MUNICIPAL CODE TITLE 17 (ZONING),
CHAPTERS 17.28 (SPECIAL USES), 17.36 (COMMERCIAL
ZONES AND STANDARDS), 17.40 (MIXED-USE ZONES
AND STANDARDS), AND 17.88 (DEFINITIONS), TO
REGULATE SMOKE OR TOBACCO SHOPS**

WHEREAS, smoke or tobacco shops are uses allowed in the City; and

WHEREAS, the potentially negative impacts of smoke or tobacco shops are not only isolated to the City as other California cities have acted to regulate; and

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness;ⁱ and

WHEREAS, despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;ⁱⁱ
- In California, from 2013 to 2015, approximately 15% of 9th and 11th grade students report using electronic smoking devices;ⁱⁱⁱ
- Unless smoking rates decline, an estimated 5% of all California youth who are alive today will die prematurely from smoking-related diseases;^{iii iv}
- In 2017, 22.8% of high school students in California had tried cigarette smoking;^v
^{vi}

WHEREAS, the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day;^{vii} and

WHEREAS, the density of tobacco retailers near schools has been associated with increased youth smoking rates;^{viii} and

WHEREAS, adults who smoke have a harder time quitting when residential proximity to tobacco retailers is smaller^{93x} and density is higher;^x and

WHEREAS, the Municipal Code does not address smoke or tobacco shops; and

WHEREAS, on October 4, 2016, the City Council Initiated this zoning amendment to address issues related to thrift stores, smoke and vape shops, secondhand dealers,

check-cashing stores and pawn shops, consistent with the General Plan. The intent of the amendments is to require scrutiny through the public review process and impose specific standards for check cashers, pawnbrokers, secondhand dealers, and smoke or tobacco shops to minimize the potential negative impacts of these uses; and

WHEREAS, the City, by virtue of the police powers delegated to it by the California Constitution, is authorized to enact laws to promote the health, safety, and general welfare of its residents; and

WHEREAS, a primary goal of the San Clemente General Plan is to "*retain and enhance established...commercial and industrial districts...that improve the community's quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health*" (p. LU-3); and

WHEREAS, State CEQA Guidelines sections 15378(b)(2) and 15378(b)(5) provide that ongoing administrative activities and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment do not constitute a "project" as defined by the State CEQA Guidelines (Cal. Code Regs., title 14, § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required; and

WHEREAS, on August 7, 2019, the Planning Commission held a duly noticed public hearing on the proposed Zoning amendments, considered testimony and other evidence, and recommended the City Council approve and adopt this Ordinance establishing regulations for smoke or tobacco shops and remove references to check cashers and pawnbrokers; and

WHEREAS, on September 1, 2019, the City Council held a duly noticed public hearing on this Ordinance, considered the agenda report, including the policy considerations discussed therein, and the written and oral testimony received. The City Council has also reviewed and considered the Planning Commission's recommendation, and the agenda report and other evidence that was considered by the Commission, in connection with the proposed amendments that affect the City's Zoning code.

NOW, THEREFORE, the City Council of the City of San Clemente, California, hereby ordains as follows:

Section 1. Incorporation of Recitals.

The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. CEQA Findings.

Based upon all the evidence presented in the administrative record, including but not limited to the staff report for the proposed Zoning Amendment, the City Council hereby

finds and determines that this Zoning Amendment is not a "project" for purposes of CEQA and is exempt from further CEQA review pursuant to State CEQA Guidelines sections 15378(b)(2) and 15378(b)(5).

Section 3. Zoning Amendment (ZA) Findings.

With regards to Zoning Amendment 17-043, the City Council finds the following:

A. The Zoning Amendment is consistent with the General Plan, because it fulfills the General Plan's goals and policies, including the following:

1. A "primary goal" of the General Plan Land Use Element is to *"retain and enhance established...commercial and industrial districts...that improve the community's quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health"* (p. LU-3). The introduction of specific standards and a public review process will ensure the maintenance of the public health, safety and welfare and reduce potential negative impacts related to operations of smoke or tobacco shops, allowing the City to better retain and enhance the community's quality of life, appeal of attractions, small-town character, and long-term environmental and fiscal health.
2. Land Use Element Policy LU-2.03 *"requires[s] that commercial projects abutting residential neighborhoods be designed and operated to protect residents from the effects of noise, light, odors, vibration traffic, parking and other operational impacts."* This Zoning Amendment requires a Conditional Use Permit for smoke or tobacco shops. To approve a Conditional Use Permit, the Planning Commission must make findings, which include that *"[t]he proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity"* (SCMC § 17.16.060(F)(1)(c)) and *"[t]he proposed use will not negatively impact surrounding land uses"* (SCMC § 17.16.060(F)(1)(d)). These findings enable the Planning Commission to consider the neighborhood compatibility concerns contemplated by Policy LU-2.03. Further, appropriate conditions of approval may be imposed in conjunction with the approval of such uses to further mitigate potential impacts.

B. The Zoning Amendment will actually promote the public health, safety, and welfare, because it allows the City to better address the potential negative impacts of smoke or tobacco shops as part of the permit process.

Section 4. Municipal Code Title 17 (Zoning) Amendments.

Municipal Code Title 17 (Zoning), Chapter 17.28 (Special Uses) is amended to add Section 17.28.293 (Smoke or Tobacco Shops) as follows:

17.28.294 - Smoke or Tobacco Shops.

- A. Purpose and Intent. The purpose of this Section is to provide regulations, which mitigate the potential negative effects of smoke or tobacco shops on and enhance compatibility with other uses.
- B. Applicability. This Section applies to all smoke or tobacco shops.
- C. Review Requirements. Please refer to the use tables in Chapters 17.32, Residential Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
- D. Minimum Standards.
 - 1. Location. Please refer to the permitted and conditional use tables in Chapters 17.36, Commercial Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
 - 2. Hours of Operation. Hours of operation shall be determined through the Conditional Use Permit process, with 7:00 a.m. being the earliest a smoke or tobacco shop is allowed to open and 10:00 p.m. the latest a smoke or tobacco shop is allowed to close.
 - 3. Adjacent Uses. No smoke or tobacco shop shall be located within 500 feet of a residentially zoned property, school, hospital, playground, or public park, or any place where children are expected to be present. No smoke or tobacco shop shall be located in a Neighborhood Commercial Zone within 500 feet of existing development with residential uses. The distance requirement shall be measured from property lines of each use.
 - 4. Concentration of Uses. No smoke or tobacco shop shall be located within 500 feet of another smoke or tobacco shop. The distance requirement shall be measured from property lines of each use.
 - 5. Windows and Lighting. There shall be unobscured windows and adequate interior lighting levels during business hours to maintain clear visibility of tobacco shop operations from the exterior of the tenant space.
 - 6. Security Plan. In conjunction with the submittal of an application for a Conditional Use Permit, the applicant shall submit a security plan to prevent vandalism, breaking and entering, and other crimes at the establishment and to protect the safety of customers, employees, and other persons at the establishment. The security plan shall be subject to staff review and approval by the Planning Commission.
 - 7. No Smoking on Premises. No smoking shall be permitted on the premises at any time.

8. Minor Supervision. It is unlawful for a smoke or tobacco shop to knowingly allow or permit a minor, not accompanied by his or her parent or legal guardian, to enter or remain within any smoke or tobacco shop.
9. No Sales by Minors. No sales may be solicited or conducted on the premises by minors.
10. Signage. Smoke or tobacco shops shall post clear signage stating that minors may not enter the premises unless accompanied by a parent or legal guardian. At least one such sign shall be placed in a conspicuous location near each public entrance to the smoke or tobacco shop. It shall be unlawful for a smoke shop and tobacco store to fail to display and maintain, or fail to cause to be displayed or maintained, such signage.

Section 5. Municipal Code Title 17 (Zoning), Chapter 17.36 (Commercial Zones and Standards), Section 17.36.020 (Commercial Use Regulations), Table 17.36.020 (Commercial Zone Uses), part 1 (Commercial) is amended to: (1) add rows for smoke or tobacco shops, and (2) amend table footnote 1, as follows:

17.36.020 - Commercial Use Regulations.

**Table 17.36.020
Commercial Zone Uses**

| Use | Zones | | | | | | | | | | NOTE |
|------------------------|-----------|-----------|-----------|---------|---------|---------|---------|---------|---------|----------|------|
| | NC 1.1 | NC 1.2 | NC 1.3 | NC 2 | NC 3 | CC 1 | CC 2 | CC 3 | CC 4 | RMF 1 | |
| 1. Commercial | | | | | | | | | | | |
| ... | | | | | | | | | | | |
| Smoke or Tobacco Shops | | | C | | | C | C | C | C | | 1 |
| ... | | | | | | | | | | | |

Footnote 1:

Refer to Chapter 17.28, Special Uses, of this title for special provisions for the referenced land use.

Section 6. Municipal Code Title 17 (Zoning), Chapter 17.40 (Mixed-Use Zones and Standards), Section 17.40.030 (Mixed-Use Regulations), Table 17.40.030 (Mixed-Use Zone Uses), Part 1 (Commercial) is amended to add rows for smoke or tobacco shops as follows:

17.40.030 - Commercial Use Regulations.

**Table 17.40.030
Mixed-Use Zone Uses**

| Use | Zones | | | | | | | |
|------------------------|-------|------|--------|--------|--------|--------|------|------|
| | MU 1 | MU 2 | MU 3.0 | MU 3.1 | MU 3.2 | MU 3.3 | MU 5 | NOTE |
| 1. Commercial | | | | | | | | |
| ... | | | | | | | | |
| Smoke or Tobacco Shops | | | | | | | | |
| ... | | | | | | | | |

Section 7. Municipal Code Title 17 (Zoning), Chapter 17.88 (Definitions), Section 17.88.030 (Definitions) is amended to add the definitions of "e-cigarette," "smoke or tobacco shop," "tobacco paraphernalia," "tobacco product," "tobacco shop," and "tobacco" as follows:

17.88.030 - Definitions.

"Accessory tobacco sale use" means an accessory use at a grocery store, supermarket, convenience store, retail kiosk, or similar primary use, where no more than two percent of a business' gross floor area is used for the display or retail sales of conventional cigars, cigarettes, e-cigarettes or tobacco.

"E-cigarette" means any electronically actuated device or inhaler meant to simulate cigarette smoking that uses a heating element to vaporize a liquid solution, popularly referred to as "juice," and that causes the user to exhale any smoke, vapor, or substance other than that produced by unenhanced human exhalation. The juice used in e-cigarettes typically contains nicotine, and for this reason e-cigarettes and their juice can be classified as both tobacco products and tobacco paraphernalia.

"Smoke or tobacco shop" means any premises dedicated to the display, sale, distribution, delivery, or offering of tobacco, tobacco products, or tobacco paraphernalia, except grocery stores, supermarkets, convenience stores, retail kiosks, or similar uses that only sell conventional cigars, cigarettes, e-cigarettes or tobacco as an accessory tobacco sale use, as defined in this Section.

"Tobacco paraphernalia" means any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in California Health

and Safety Code Section 11054 et seq. Items or devices classified as tobacco paraphernalia include, but are not limited to, the following: pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches are excluded from the definition of tobacco paraphernalia.

"Tobacco product" means any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. The term "tobacco product" excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

"Tobacco shop." See "smoke or tobacco shop."

"Tobacco" means any preparation of the nicotine-rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body.

Section 8. Severability.

If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 9. Effective Date.

This Ordinance takes effect 30 days after adoption of this Ordinance by the City Council.

Section 10. Reference to Existing Provisions.

All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

Section 11. Custodian of Records.

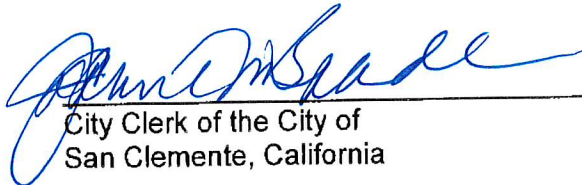
The documents and materials associated with this ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at San Clemente City Hall, 910 Calle Negocio, San Clemente, CA 92672.

Section 12. Certification and Publication.


The City Clerk shall certify to the adoption of this ordinance and shall cause it, or a summary of it, to be published within 15 days of adoption, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code section 36933.

APPROVED AND ADOPTED this 15th day of October, 2019

ATTEST:



City Clerk of the City of
San Clemente, California



Mayor Pro Tem of the City of
San Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)


I, **JOANNE BAADE**, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1681 having been regularly introduced at the meeting of October 1, 2019 was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 15th day of October, 2019, and said ordinance was adopted by the following vote:

AYES: HAMM, WARD, MAYOR PRO TEM BANE

NOES: FERGUSON

ABSENT: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this 6TH day of Nov., 2019.



CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:


CITY ATTORNEY

References

- ⁱ U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.
- ⁱⁱ California Department of Public Health California Tobacco Control Program. *California Tobacco Facts and Figures 2016*. Sacramento, CA: California Department of Public Health. 2016. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>.
- ⁱⁱⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in California. <https://www.tobaccofreekids.org/problem/toll-us/california>. Accessed April 18, 2018.
- ^{iv} U.S. Census Bureau. *Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States, States, Counties and Puerto Rico Commonwealth and Municipalities: April 1, 2010 to July 1, 2017*. U.S. Census Bureau, Population Division 2018. Available at: https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2017_PEPAGESEX&prodType=table.
- ^v Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance - United States, 2017. *MMWR Surveill Summ*. 2018;67(8):1-114. doi: 10.15585/mmwr.ss6708a1.
- ^{vi} Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance — United States, 2017. Supplementary Tables 52-93: Tobacco Use. 2018; https://www.cdc.gov/healthyyouth/data/yrbs/2017_tables/tobacco_use.htm.
- ^{vii} Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health*. 2005;59(7):568-573. doi: 10.1136/jech.2004.029041.
- ^{viii} Henriksen L, Feighery EC, Schleicher NC, Cowling DW, Kline RS, Fortmann SP. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Prev Med*. 2008;47(2):210-214. doi: 10.1016/j.ypmed.2008.04.008.
- ^{ix} Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health*. 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.
- ^x Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty. *Addiction*. 2015;110(1):152-161. doi: 10.1111/add.12718.