

“Tobacco Retailers” Ordinance FAQ

May 19, 2015

The city is currently considering an ordinance that would define a “tobacco retailer” to include the sale of tobacco products, paraphernalia, electronic cigarette materials and similar establishments. The ordinance establishes a definition for such places of business, and requires dispersion from other sensitive uses.

Q: How are tobacco retailers currently defined?

A: Although the zoning code lists “tobacco shop” as a permitted use in some districts (see below), tobacco shop is not defined. Since there is no definition, the City has historically interpreted a tobacco shop to be any business whose principal use is the sale of tobacco related products. And, since the code defines “principal use” as “...the main use of land or buildings as distinguished from subordinate or accessory use,” the City has historically considered any business with more than 50% of sales from tobacco products and paraphernalia and/or with more than 50% of floor and display area devoted to tobacco products and paraphernalia to be a tobacco shop.

Q: How are tobacco retailers currently regulated?

A: The zoning code lists a “tobacco shop” as a permitted use in most of the Mixed-Use and Commercial zoning districts. Since tobacco shop is not listed in the employment, downtown, residential and Special District groups, it is currently not allowed in those district groups.

Q: How are paraphernalia shops (head shops) and electronic cigarette shops currently defined and regulated?

A: These shops are currently considered “general retail” uses, generally allowed in Mixed-Use and Commercial, Downtown and Employment District groups. There are no specific regulations for general retail uses.

Q: What happens to existing places of business that would qualify as a tobacco retailer under the ordinance?

A: Any business that meets the new definition and is in place before the effective date of the ordinance will become legal non-conforming use. The use may continue per the provisions governing nonconforming uses in the City's Zoning Ordinance and State Law. In general summary, the use may continue, but may not be expanded, and if the use is discontinued for a period of twelve consecutive months, the use may not be re-established.

Q: How many electronic cigarette, shops paraphernalia shops or tobacco shops are there in the City?

A: At best guess, there appears to be four electronic cigarette "vape" shops, five tobacco shops, and one paraphernalia shop currently. There may be existing places that could meet the new definition of tobacco retailer, depending on the amount of floor area devoted to the sale of qualifying materials.

Q: So, any new business that sells tobacco e-cigarettes or paraphernalia is prohibited?

A: No. Only those places that provide over 20% of floor area to the materials will be regulated.

Q. Would any of the pending E-Cigarette "vaping" bills (2015 AB 106, 2015 AB 146, or 2015 SB 132), if enacted, impact this ordinance?

A. No, each of those proposed laws regulate the use of e-cigarette "vaping" products, not the sale or distribution of them. Since this proposed ordinance does not regulate the *use* of vaping products, it would not be impacted.