

# City of Sacramento

## Legislation Text

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**File #:** 2019-00985, **Version:** 1

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**Title:**

**(Pass for Publication) Ordinance Amending Various Provisions of Title 17 of the Sacramento City Code, Relating to Tobacco Retailing (M17-008) [Two-Thirds Vote Required]**

**File ID:** 2019-00985

**Location:** Citywide

**Recommendation:**

1) Pass a Motion waiving Rule 7.K.3.b of the Council Rules of Procedure, which requires that the text of an ordinance brought to council be the same as the text that was submitted to the Law and Legislation Committee (2/3 vote required); 2) review an Ordinance amending various provisions of title 17 of the Sacramento City Code, relating to tobacco retailing; and 3) pass for publication the Ordinance title as required by Sacramento City Charter 32c to be adopted August 27, 2019.

**Contact:** Evan Compton, Principal Planner, (916) 808-5260, Community Development Department

**Presenter:** None

**Attachments:**

- 1-Description/Analysis
- 2-Ordinance (Redline)
- 3-Ordinance (Clean)
- 4-Prior version of amendments proposed from 2017 for documentation purposes only

**Description/Analysis**

**Issue Detail:** At the August 22, 2017 City Council meeting, Councilmember Ashby detailed issues of crime, loitering, and potential harm to youth related to the use of tobacco in her district. She requested that an ordinance be prepared to provide the City greater oversight of these issues by amending the city code criteria for when a tobacco retailer would need a conditional use permit (CUP). The current city code requires a CUP only for tobacco retailers that are 15,000 square feet or less and located within 1,000 feet of a public or private K-12 school.

The original requested code amendment to expand the CUP requirements for tobacco retailers was heard by the Planning and Design Commission on November 2, 2017, which approved the amendments with some suggested edits, discussed below. The amendment was presented to the Law and Legislation Committee (L&L) on November 28, 2017, which voted to pursue regulation of these operators through title 5-i.e. business license regulation-instead of through title 17 (i.e. conditional use permits through land use regulation). On April 16, 2019, city council adopted an ordinance amending title 5, related to business licensing of tobacco retailers; the ordinance did not address CUPs.

At the April 16, 2019 council meeting, Councilmember Ashby requested the CUP ordinance be brought to council for consideration. Staff proposes to refine the 2017 draft as follows: the proposed ordinance before council would require a conditional use permit from the Zoning Administrator citywide for: 1) all tobacco retailers with stores 15,000 square feet or less in size; and 2) tobacco retailers that are greater than 15,000 square feet in size if they devote more than 250 square feet of shelving space to tobacco products and associated tobacco products and paraphernalia (as defined). Tobacco retailers that are greater than 15,000 square feet and devote less than 250 square feet to tobacco products are allowed by right. The zoning districts allowing tobacco retailing are Multi-Unit Dwelling (R-4), Multi-Unit Dwelling (R-4A), High-Rise Residential (R-5), Residential Mixed Use (RMX), Office Business Low (OB), Office Business Mid-Rise Mixed-Use (OB-2), Office Business High-Rise Mixed Use (OB-3), Shopping Center (SC), Limited Commercial (C-1), General Commercial (C-2), Central Business District (C-3), Heavy Commercial (C-4), Light Industrial (M-1), Light Industrial (M-1(S)), Heavy Industrial (M-2), Heavy Industrial (M-2(S)), Transportation Corridor (TC), and Highway Commercial (HC) zones. The amendment would also prohibit tobacco retailing in the Sports Complex (SPX) zone, which is the former arena site in Natomas.

**Policy Considerations:** The City of Sacramento 2035 General Plan policies encourage a healthy lifestyle for Sacramento residents to improve overall public health. The Public Health and Safety Goal 5.1 state that a goal of the General Plan is to: “Improve the provision of human services and promote public health and safety.”

**Economic Impacts:** Not applicable.

**Environmental Considerations:** The proposed ordinance is exempt from CEQA as CEQA only applies to projects that have the potential for causing a significant effect on the environment. (CEQA Guidelines section 15061(b)(3); the so-called “common sense exemption.”) 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. (*Ibid.*) Here, it can be seen with certainty that the proposed ordinance will not have a significant effect on the environment. Under the existing city code, a conditional use permit is only required for tobacco retailers if the tobacco retailer has 15,000 square feet or less of gross floor area *and* is located within 1,000 feet of a school. In all other instances, the use is treated as “retail” and generally allowed by right provided the use does not

exceed certain square footage limitations, depending on the zone. The proposed ordinance expands the situations in which a conditional use permit will be required for tobacco retailing to *any* store that has 15,000 square feet or less (regardless of proximity to a school) and *any* store that allocates more than 250 square feet of shelving to tobacco products and tobacco paraphernalia (regardless of proximity to school or total square footage). Accordingly, what was once allowed by right will now require a conditional use permit to operate. This may have the effect of limiting the number of operators, but in no event will it result in an increase in the number of operators as compared to the existing baseline. Accordingly, it can be seen with certainty that the proposed ordinance will not have a significant effect on the environment.

**Sustainability:** Not applicable.

**Commission/Committee Action:** On November 2, 2017, the Planning and Design Commission (PDC) reviewed a draft ordinance that modified the conditional use permit criteria for tobacco retailers. The commission discussed issues related to how existing tobacco retailers would be affected by ordinance provisions if it was adopted. The commission discussed a substitute motion that would have modified the ordinance by: 1) changing the conditional use permit hearing body from Zoning Administrator to Planning and Design Commission so that any appeal of the decision could be heard by the City Council; 2) requiring existing tobacco retailers 15,000 square feet or less in area to be subject to the new conditional use permit requirements if a change in ownership of the business occurred; and requiring existing tobacco retailers 15,000 square feet or less in area to be subject to the new conditional use permit requirements if they violated the requirements of their existing Tobacco Retailers Permit issued under the provisions of Title 5. The motion did not receive a second, however, the commission directed that the conversation be noted as part of their action. The commission, by a vote of 11 ayes and two noes, voted to recommend approval of the ordinance to require a CUP and forwarded the recommendation to City Council. Like the ordinance before council today, the 2017 version of the ordinance amended the same sections of the code (i.e. the same zones) with the need for a CUP focusing on the size of the store and the amount of shelving devoted to tobacco products. As explained in the background section, the current proposed ordinance generally requires a CUP in more instances than the prior proposal, though the prior version prohibited tobacco retailing within 600 feet of a public or private school. In addition, the current ordinance requires approval of the CUP by the zoning administrator, whereas the prior version required PDC approval. Appeals of a ZA decision are heard by the PDC; appeals of a PDC decision are heard by the city council.

On November 28, 2017, the Law and Legislation Committee considered the prior draft of the ordinance and voted to pursue regulation through the title 5 process (business license regulation) as opposed to the title 17 process (CUPs through the land use entitlement process). L&L heard further hearings on the proposed title 5 regulations on July 24, 2018, October 23, 2018, and March 19, 2019. The final ordinance that was recommended by Law and Legislation to City Council was for Title 5 changes exclusively. The City Council subsequently adopted Ordinance 2019-0012 with those

changes on April 16, 2019.

Since the proposed ordinance related to conditional use permit criteria attached to this report for review and adoption has been modified since the 2017 Planning and Design Commission and the Law and Legislation Committee hearings, a list of the substantial changes have been included in the background section of this report and the original draft ordinance previously reviewed has been attached to this report for documentation purposes.

**Rationale for Recommendation:** The proposed ordinance is consistent with the General Plan policies to promote a safe and healthy lifestyle for residents of the City of Sacramento.

**Financial Considerations:** Not applicable.

**Local Business Enterprise (LBE):** Not applicable.

**Background:** The proposed draft ordinance for review and adoption in Attachments 2 (redline) and 3 (clean version) are a little different than the prior code amendments that were reviewed in 2017 by the Planning and Design Commission and Law and Legislation in Attachment 4. The table below highlights the major differences between these two versions and the current city code.

<b>Tobacco Retailer Requirements</b>	<b>Draft Ordinance for Review and Adoption</b>	<b>Prior 2017 Version</b>	<b>Current City Code</b>
<i>Definitions</i>	Refers to current title 5 definitions for consistency	Not consistent with recently adopted title 5 amendments	Consistent with title 5 definition language
<i>CUP criteria and locational standard.</i>	Requires a Zoning Administrator Conditional Use Permit if 15,000 square feet or less citywide; or if over 15,000 square feet and more than 250 square feet of shelf space is devoted to tobacco and associated paraphernalia.	Prohibits tobacco retailers within 600 feet of a school. Requires a Zoning Administrator Conditional Use Permit if less than 15,000 square feet and more than 2% or 250 square feet of shelf space, whichever is greater, is devoted to tobacco and associated paraphernalia.	Requires a Zoning Administrator Conditional Use Permit if under 15,000 square feet and within 1,000 feet of school.

<i>Level of Review</i>	Zoning Administrator Level where a conditional use permit is required; allows an appeal to Planning and Design Commission	Planning and Design Commission Level where a conditional use permit is required; allows an appeal to the City Council	Zoning Administrator Level where a conditional use permit is required; allows an appeal to Planning and Design Commission
<i>Sports Complex (SPX) zone in Natomas</i>	Tobacco retailing is prohibited in the SPX zone.	Tobacco retailing is prohibited in the SPX zone.	Currently allowed with Zoning Administrator conditional use permit or by right depending on size of tenant space and proximity to school.

The current draft ordinance does not prohibit tobacco retailing within 600 feet of a public or private school. Instead, the ordinance requires a CUP for all small stores (15,000 square feet or less) and big stores (greater than 15,000 square feet) that devote 250 square feet or more to tobacco products. The CUP process will allow the decisionmaker to take into account a variety of factors, including the public health, safety, convenience, or welfare of persons residing, working, visiting, or recreating in the surrounding neighborhood. Big stores that devote less than 250 square feet to tobacco are allowed by right. The other differences between the two versions of ordinances are minor. For example, the changes to the definitions section in Title 17 for tobacco in the current version conform to the recent changes to Title 5, which were not in effect at the time of the 2017 draft version.