

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING SECTION 20.44.160, "TOBACCO
SALES PROHIBITED NEAR SCHOOLS," OF THE
MERCED MUNICIPAL CODE REGARDING
TOBACCO SALES NEAR SCHOOLS AND OTHER
SENSITIVE USES**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Section 20.44.160, "Tobacco Sales Prohibited Near Schools," of the Merced Municipal Code is hereby amended to read as follows:

"20.44.160 Tobacco Sales Prohibited Near Schools.

A. Prohibited within One Thousand (1,000) Feet of Schools and within Six Hundred (600) Feet of Other Youth-Oriented Facilities. New tobacco retailers (including the sale of cigarettes, cigars, e-cigarettes, smokeless tobacco, and all other tobacco products or paraphernalia restricted by the State of California for sale to minors) are prohibited within one thousand (1,000) feet of any parcel which is ~~presently~~ legally occupied at the time an application for a business license to sell tobacco is submitted to the City by a 'school' as defined below and within 600 feet of other youth-oriented facilities' as defined below: by the following:

1. Any public or private elementary, middle, junior high, or high school; The City of Merced shall establish an official 'List of Schools' which are located within the City of Merced by resolution of the City Council after a public hearing. Said list shall be reviewed on an annual basis on or before January 31st of each year. If amendments

are needed, the amendments shall be considered by the City Council at a public hearing;

2. Playgrounds, parks, youth centers, city-owned and operated recreational facilities, and libraries. 'Youth-Oriented Facilities' for this subsection only are defined as day care centers, youth centers, libraries, or public parks. For purposes of this subsection only, a public park shall not include any park designated in Merced Municipal Code Section 9.70.030 as a bike path.

B. Measurement and Exceptions.

1. Measurement. One thousand (1,000) feet and six hundred (600) feet shall be the horizontal distance measured in a straight line from the nearest point on the property boundary to the nearest point of the other property boundary without regard to intervening structures.
2. Exceptions.
 - a. The above prohibition does not apply to any tobacco retailer which is operating legally and continues to operate with a suspension of no more than ninety (90) days at its current location as of the date of this ordinance.
 - b. The above prohibition does not apply to a tobacco retailer which occupies in its entirety a building of more than twenty thousand (20,000) square feet.

c. After a public hearing, the Planning Commission may grant an exception to a new tobacco retailer within 600 feet of a 'youth-oriented facility' only as defined in this subsection through the approval of a Conditional Use Permit following the requirements of Section 20.68.020 of this Code. Not exceptions may be granted for tobacco retailers within 1,000 feet of a 'school'."

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2021, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2021, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

**ATTEST:
STEPHANIE R. DIETZ, CITY CLERK**

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Kimberly C Madang 9/15/21
City Attorney **Date**