

**CITY OF MERCED**  
**Planning Commission**

**Resolution #4073**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of September 8, 2021, held a public hearing and considered **Zoning Ordinance Amendment #21-03**, initiated by Ashley Investments. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would amend Merced Municipal Code Section 20.44.160 (Tobacco Sales Prohibited Near Schools). This amendment would modify the City's regulations regarding tobacco sales near schools and other sensitive uses to more closely match similar requirements regarding Commercial Cannabis Business Permits. This would include prohibiting tobacco sales within 1,000 feet of schools (same as the current requirement), but reducing the required distance from other sensitive uses (day care centers, youth centers, libraries, and public parks) from 1,000 feet to 600 feet and allowing for exceptions with a Conditional Use Permit granted by the Planning Commission for tobacco sales near other sensitive uses (not including schools). The changes would also include using the same list of schools adopted by the City Council for cannabis permits for tobacco sales; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings/Considerations A through F of Staff Report #21-688 (Exhibit A); and,

**NOW THEREFORE**, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #21-24, and approval of Zoning Ordinance Amendment #21-03, as outlined in Exhibit B and subject to the Findings set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner CAMPER, seconded by Commissioner DELGADILLO, and carried by the following vote:

AYES: Commissioners Camper, Delgadillo, Dylina, Greggains, White, and Chairperson Harris

NOES: None

ABSENT: None

ABSTAIN: None

PLANNING COMMISSION RESOLUTION #4073

Page 2

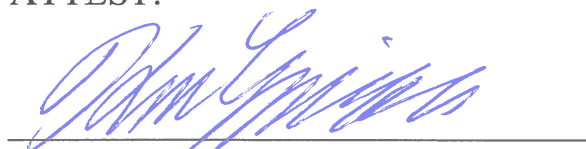
September 8, 2021

Adopted this 8<sup>th</sup> day of September 2021



\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



\_\_\_\_\_  
Secretary

Exhibits:

Exhibit A –Findings/Considerations

Exhibit B—Draft Ordinance

Ref: KIM/PROJECTS/2021/ZOA 21-03-Tobacco Sales/#4073 ZOA#21-03 (Tobacco Sales).docx

**Findings and Considerations**  
**Planning Commission Resolution #4073**  
**Zoning Ordinance Amendment #21-03**

**FINDINGS/CONSIDERATIONS:**

**General Plan Policies Related to This Application**

- A) The proposed zoning ordinance amendment would make changes to the City's regulations regarding tobacco sales near schools and other "youth-oriented" uses. General Plan Implementing Action L-2.3.d calls for the City to review and update the Zoning Ordinance as needed.

**Request from Ashley Investments**

- B) Ashley Investments, represented by Isaac Sargiz, has submitted a request to amend the ordinance (see letter and exhibits at Attachment C of Staff Report #21-688) in order to allow for exceptions in the City Code for uses within 600 feet of parks, day care centers, youth centers, and libraries. This would allow Ashley Investments to develop a 2.8 acre parcel at the southwest corner of R Street and Loughborough Drive (most recently occupied by an In Shape fitness center, previously Circuit City) with a gas station and convenience market, including tobacco sales. This property is 1,158 feet (over 1,000 feet) away from the nearest school, Rivera Elementary and Middle Schools, but is 472 feet (less than 600 feet) away from Fahrens Creek Park. The applicant has indicated that the development is unlikely to move forward without an option to allow tobacco sales.

**Proposed Changes to the Code Regarding Tobacco Sales Near Schools**

- C) The proposed changes would modify the regulations regarding tobacco sales near schools and other sensitive uses to more closely match the City's regulations for Commercial Cannabis Business Permits since the concerns regarding exposure to cannabis sales and tobacco sales to school children are similar. The City also has a web-based tool that allows property owners who are considering cannabis businesses to determine if their parcels are within the prohibited distance from schools and other sensitive uses. It would be helpful if the regulations matched so that the same tool could be used for tobacco businesses as well.

The proposed changes would also allow exceptions to be granted with a conditional use permit for tobacco uses within 600 feet from parks, day care centers, youth centers, and libraries. City staff has received many inquiries from the prospective developers regarding the availability of exceptions from these regulations and there are currently none available except for existing tobacco businesses. The City has a provision prohibiting the sale of alcohol from businesses occupying less than 20,000 square feet, but allows exceptions to be made by the Planning Commission through a conditional use permit process where the merits of each particular business can be considered. With the proposed ordinance change, the same option would be available for tobacco businesses near other sensitive uses (but not schools).

- D) The following changes to Chapter 20.44.160 (Tobacco Sales Near Schools) are proposed in the Draft Ordinance at Exhibit B of Planning Commission Resolution #4073 (Attachment A of Staff Report #21-688) and presented in the modified Chapter at Attachment B of Staff Report #21-688:
- 1) Section 20.44.160(A) would continue to prohibit tobacco sales within 1,000 feet of schools (same as the current requirement), but would reduce the required distance from other “youth-oriented facilities” from 1,000 feet to 600 feet. The list of “youth-oriented facilities” would be modified to match those in the Commercial Cannabis Business Permits section (MMC 20.44.170) and the tobacco section would use the same list of “schools” adopted by the City Council for cannabis permits.
  - 2) Section 20.44.160(B)(1) would be modified to use the same language as for cannabis permits in the measurement of the 1,000 feet and 600 feet.
  - 3) Section 20.44.160(B)(2) would also be modified to allow for exceptions with a Conditional Use Permit granted by the Planning Commission for tobacco sales near other sensitive uses (not including schools).

#### **Time Frames**

- E) If recommended for approval by the Planning Commission on September 8, 2021, the Ordinance revisions would be scheduled for a City Council public hearing on October 18, 2021. A 2<sup>nd</sup> reading and adoption would follow on November 1, 2021, with the Ordinance being effective 30 days later or on or about December 1, 2021.

#### **Environmental Clearance**

- F) The Planning staff has conducted an environmental review of the project in accordance with the requirements of the California Environmental Quality Act (CEQA), and a *Categorical Exemption* is being recommended (see Attachment D of Staff Report #21-688).

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AMENDING SECTION 20.44.160 (TOBACCO  
SALES 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 20.74.160  
“Tobacco Sales Near Schools,” of the Merced Municipal Code is hereby amended  
to read as follows:

- A. Prohibited within 1,000 Feet of Schools and within 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 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 the following a “school” as defined below and within 600 feet of other “youth-oriented facilities” as defined below:
1. ~~Any public or private elementary, middle, junior high, or high school~~ The City 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.** 1,000 feet and 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 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 20,000 square feet.
  - b.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 MMC 20.68.020. No 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:**


**ABSENT:**                **Council Members:**

**ABSTAIN:**              **Council Members:**

**APPROVED:**

\_\_\_\_\_  
\_\_\_\_\_  
**Mayor**

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

**BY:**   
\_\_\_\_\_  
**Assistant/Deputy City Clerk**

(SEAL)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**City Attorney**

\_\_\_\_\_  
**Date**