

ORDINANCE NO.

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF STOCKTON MAKING FINDINGS AND ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW AND RELOCATION OR PHYSICAL EXPANSION OF EXISTING TOBACCO RETAILER BUSINESSES, ALSO KNOWN AS SMOKE SHOPS, WITHIN THE CITY OF STOCKTON TO BECOME EFFECTIVE IMMEDIATELY

The City of Stockton ("City") is a municipal corporation duly organized as a Charter City under the constitution and laws of the State of California; and

The City Council has broad discretion pursuant to Article III, Section 300 of the City Charter; California Constitution Article XI, Section 5; and the general laws of the state, including, but not limited to, the California Planning and Zoning Law (Gov. Code section 65000 et seq.), to legislate for public purposes and for the general welfare, including, but not limited to, matters of public health and safety; and

The City protects the public health, safety, and welfare of the community through numerous avenues, including by establishing and enforcing zoning, licensing, and health and safety regulations on specified commercial activities; and

Government Code section 65858, subdivision (a) provides that the legislative body of a city may, to protect the public safety, health, and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal the City Council is considering or studying or intends to study; and

The City has seen a proliferation of tobacco retailer businesses, also known as smoke shops, within the City; and

There are currently 163 tobacco retailer businesses, 78 of which are identified as smoke shops who have an active business license in the City of Stockton. Staff and the Police Department do not currently know the number of additional establishments operating without a business license in the City; and"

The City is concerned about this recent proliferation of tobacco retailer businesses, locations of tobacco retailer businesses, the harmful effects of tobacco and other products sold at these establishments containing industrial hemp on the health, safety, and welfare of City residents and especially youth; and

Tobacco retailer businesses have also been a source of unlawful activities in the City, which, if not curtailed present an immediate threat to the public health, safety, and welfare; and

Tobacco retailer businesses can be a target for theft and vandalism, as well as may be affiliated with the sale of illegal cannabis products and drug paraphernalia that encourage illegal activity; and

Within the last year, the Stockton Police Department conducted inspections at various tobacco retailers throughout the City and found evidence of and confiscated illegal tobacco products including flavored tobacco, found evidence of cannabis-infused items, and illegal gambling.; and

On November 8, 2022, California voters upheld the state law (“SB 793”) prohibiting a tobacco retailer, or any of the tobacco retailer’s agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale, most flavored tobacco products including flavored e-cigarettes and menthol cigarettes, as well as tobacco product flavor enhancers in retail locations; and

On October 7, 2023, Governor Newsom signed into law AB 935, strengthening the enforcement of the flavored tobacco retail law and broadening the definition of retail location; and

Cities still retain the authority to draft and enforce local flavored tobacco bans for products; and

On September 23, 2024, the California Department of Public Health (“CDPH”) promulgated emergency regulations related to industrial hemp and the threat to public health, safety, and welfare, particularly to minors; and

The CDPH regulations come after California Governor Gavin Newsom directed the CDPH to draft emergency regulations, citing the increasing amounts of safety concerns from the adverse health effects of intoxicating hemp food and beverage products; and

The emergency regulations aim to combat hemp products containing tetrahydrocannabinol (“THC”) that skirt the age and sale restrictions that have been placed on recreational marijuana sold through licensed and regulated dispensaries; and

Hemp products have been found to be sold in tobacco retailer businesses, or smoke shops, with marketing aimed toward children featuring colorful packaging designs and sweet candy flavors; and

As currently defined under state law, “industrial hemp” is permitted to contain a delta-9 THC concentration of no more than 0.3 percent on a dry weight basis; however, the emergency regulations prohibit industrial hemp final form food and beverage products, specifically, from containing any detectable level of THC; and

The emergency regulations expand on the number of psychoactive cannabinoids that will need to be undetectable in industrial hemp final form products, including edibles such as gummies, other candies and drinks as well as restricting the serving sizes such products contain to five servings or less and limiting sales of the products to consumers who are at least 21 years of age; and

Aside from new regulations related to hemp, many state laws have been adopted, which acknowledge the public health impacts of tobacco, especially flavored tobacco products, and specifically its effect on minors. For example, state law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees. State law also prohibits smoking in playgrounds. State law also prohibits smoking within twenty (20) feet of the main entrances and exits of public buildings; and

Efforts by other jurisdictions to crack down on these businesses with increased enforcement and tough regulations, is indicative of both the need for more stringent regulations and the type of violations and activities the Stockton Police Department is likely to encounter as it increases its own efforts; and

Government Code section 36937 authorizes the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety; and

Government Code section 65858 provides that to protect against any current and immediate threats to public health, safety, or welfare, the City Council may adopt, as an urgency measure, an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City plans to study; and

This temporary moratorium will provide staff with the opportunity to study the various options to more effectively regulate tobacco retailer businesses; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON AS FOLLOWS:

SECTION 1. Recitals.

The above recitals are true and correct and are hereby adopted as the City Council's findings.

SECTION 2. Purpose and Authority.

In the interest of protecting the health, safety, and welfare of the residents in the City of Stockton it is the purpose and intent of this Ordinance to place a temporary moratorium on the issuance of any new permit, license, or other entitlement for any tobacco retailer business, also known as smoke shop, in the City of Stockton. This includes any new permit, license, or other entitlement for the relocation or physical expansion of existing business falling under the definition of a tobacco retailer as defined under this Ordinance. The City Council has the authority to adopt this Ordinance pursuant to California Government Code section 65858 as an urgency measure prohibiting any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

SECTION 3. Findings.

The City Council hereby finds and determines that Tobacco Retailer Businesses constitute an immediate threat to the public health, safety, and welfare. The approval of additional entitlements for Tobacco Retailer Businesses and approval of the relocation or physical expansion of existing Tobacco Retailer Businesses under the City's current regulations will further threaten the public health, safety, and welfare. The adoption of this Urgency Ordinance is therefore necessary for the immediate protection of public health, safety, and welfare. The above recitals are incorporated herein by reference as true and correct and as the Council's findings.

SECTION 4. Definitions.

- A. "Person" means and includes any individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or other legal entity.
- B. "Tobacco Paraphernalia" means any item designed or marketed for the consumption, use, or preparation of a tobacco product.
- C. "Tobacco Product" means: (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, aerosolized, vaporized, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, bidis, kreteks, snuff, e-liquids, or vape juice; (2) any device or component, part, or accessory that delivers nicotine alone or combined with other substances to the person using the device, including, but not limited, to electronic cigarette (or "e-cigarette"), electronic cigar (or "e-cigar"), electronic pipe (or "e-pipe"), vape pen, electronic hookah (or "e-hookah"), cigars, or pipes, whether or not the device or component is sold separately. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration for use as a tobacco cessation product where such product is marketed and sold solely for such an approved purpose.
- D. "Tobacco Retailer Business" means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

SECTION 5. Moratorium Imposed.

- A. Scope. In accordance with the authority granted the City of Stockton under Article XI, Sections 5 and 7 of the California Constitution and California Government Code section 65858, from and after the effective date of this Ordinance, no license,

permit, or other entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved or issued by the City for the establishment, relocation or physical expansion of a Tobacco Retailer Business. Additionally, the establishment, relocation, or physical expansion of the Tobacco Retailer Business is hereby expressly prohibited in all areas and zoning districts of the City.

- B. Exceptions. This Ordinance shall not prohibit the renewal of a business license for an existing Tobacco Retailer Business, provided that the renewal seeks to maintain the business without physical expansion and in its current location, and the Tobacco Retailer Business is operating in a manner, and housed within a building, which complies with all City, State, Federal, or otherwise applicable, codes, rules, regulations, or laws.

SECTION 6. Violation.

Except as otherwise permitted under this Ordinance, the establishment, relocation, or physical expansion of a Tobacco Retailer Business within the limits of the City is declared to be a public nuisance. Violations of this Ordinance may be enforced by any applicable laws or ordinances, including, but not limited to, injunctions or administrative or criminal penalties under the Stockton Municipal Code.

SECTION 7. Term of Ordinance.

This Ordinance shall be in effect from the date of adoption for a period of forty-five (45) days, unless it is extended pursuant to California Government Code section 65858 or other applicable law, as approved by the City Council.

SECTION 8. Environmental Review / California Environmental Quality Act (CEQA).

This Ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this Ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA.

SECTION 9. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions be severed, and the balance of the Ordinance be enforced.

SECTION 10. Effective Date and Publication.

This Ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an interim Urgency Ordinance for preserving the public health, safety, and welfare and shall take effect and be enforced immediately upon adoption pursuant to Government Code section 36937.

PASSED and ADOPTED this 4th day of March, 2025 by the following vote:

AYES:
NOES:
ABSENT:

APPROVED:

CHRISTINA FUGAZI
Mayor of the City of Stockton

ATTEST:

KATHERINE ROLAND, CMC, CPMC
City Clerk of the City of Stockton