



STAFF REPORT TO THE PLANNING COMMISSION

DATE: Regular Meeting of January 19, 2022

TO: Planning Commission

SUBMITTED BY: Ruthann Ziegler, Special Counsel

APPROVED BY: Thomas Lloyd Smith, City Attorney

SUBJECT: Ordinance Amending Antioch Municipal Code Section 9-5.3843 E to Modify the Distance between New Tobacco Retailers and Specified Uses and to Clarify the Limit on New Tobacco Businesses

RECOMMENDED ACTION

It is recommended that the Planning Commission adopt the resolution (Attachment A) recommending the City Council adopt the proposed ordinance (Attachment B) amending the Antioch Municipal Code §9-5.3843.

FISCAL IMPACT

The proposed action will have little or no effect on the City's budget by increasing the distance between new businesses selling tobacco products and specified sensitive uses, such as schools.

DISCUSSION

At a May 25, 2021 City Council meeting, YTAPP (Youth Tobacco Advocacy Policy Project) presented detailed information about the various risks of smoking and its adverse effects, especially on youth, and offered proposed changes to the Antioch Municipal Code. The Council's consensus was to bring back an ordinance reflecting several of YTAPP's proposals.

Two of the six proposals by YTAPP affect use permits and would amend the zoning code. Therefore, staff is bringing the two proposals to the Planning Commission for review and possible recommendation to the City Council. The remaining four proposals will be presented to the City Council at the same time as the Planning Commission's recommendations on the attached ordinance.

The two proposals are:

1. Clarifying the City's existing prohibition on new tobacco retailers

YTAPP asked the Council to limit the number of use permits granted to new tobacco retailers. However, in 2017, the Council adopted Ordinance 2125-C-S, which included a ban on new tobacco retailers. In reviewing that ordinance, staff determined that the ordinance should be clarified regarding the ban. The proposed ordinance makes that clarification.

2. Requiring new tobacco businesses to be at least 1000 feet from schools and similar uses

The City's municipal code currently requires at least 500 feet between a tobacco retailer and other businesses selling tobacco and a school, public park, playground, recreational center, or child care center. (Section 9-5.3843 E(2)(c).) YTAPP asked that this distance be increased to 1000 feet. The attached ordinance includes this proposed change.

ATTACHMENTS

- A. Resolution
- B. Proposed ordinance

ATTACHMENT A

**PLANNING COMMISSION
RESOLUTION NO. 2022-****

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH
RECOMMENDING THAT THE CITY COUNCIL ADOPT AN ORDINANCE
AMENDING SECTION 9-5.3843 E OF THE ANTIOCH MUNICIPAL CODE TO MODIFY
THE DISTANCE BETWEEN NEW TOBACCO RETAILERS AND SPECIFIED USES
AND TO CLARIFY THE LIMIT ON NEW TOBACCO BUSINESSES**

WHEREAS, section 9-5.3843 of the Antioch Municipal Code (“AMC”) establishes regulatory requirements for tobacco retailers in the City of Antioch;

WHEREAS, the Planning Commission is committed to taking the steps necessary to assist the City Council in providing a healthy, safe environment for all City residents and is concerned about the adverse effect of cigarettes and related tobacco products on its residents, especially youth;

WHEREAS, the City Council received a detailed presentation from community youth concerned about the effects of tobacco and requesting additional restrictions on tobacco and tobacco products;

WHEREAS, two of the proposed restrictions presented to the City Council relate to use permits issued by the City and, therefore, must first be reviewed by the Planning Commission before presentation to the City Council for possible action;

WHEREAS, the proposed ordinance increases the distance between certain new businesses selling tobacco and specified sensitive uses, such as schools, and is beneficial to City residents;

WHEREAS, the proposed ordinance clarifies the existing ban on new tobacco retailers in the City, and is beneficial to City residents;

WHEREAS, the proposed ordinance is not considered a project under the California Environmental Quality Act under the common sense exemption (CEQA Guidelines 150361(b)(3)) because it will not have a direct or reasonably foreseeable indirect physical change or effect on the environment;

WHEREAS, the Planning Commission duly gave notice of public hearing as required by law; and

WHEREAS, the Planning Commission on January 19, 2022, duly held a public hearing, received and considered evidence, both oral and documentary.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby find that the public convenience and general welfare require such changes.

BE IT FURTHER RESOLVED that the Planning Commission of the City of Antioch does hereby **RECOMMEND** that the City Council adopt an ordinance amending the Antioch Municipal Code section 9-5.3843 E as proposed in the draft ordinance attached hereto as Exhibit 1.

* * * * *

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch at a regular meeting thereof held on the ____ day of _____ 2022.

AYES:

NOES:

ABSTAIN:

ABSENT:

Forrest Ebbs
Secretary to the Planning Commission

ATTACHMENT B

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
AMENDING SECTION 9-5.3843 E OF THE ANTIOCH MUNICIPAL CODE TO MODIFY
THE DISTANCE BETWEEN NEW TOBACCO RETAILERS AND SPECIFIED USES
AND TO CLARIFY THE LIMIT ON NEW TOBACCO BUSINESSES**

The City Council of the City of Antioch does ordain as follows:

SECTION 1:

The City Council is committed to take the steps necessary to provide a healthy, safe environment for all City residents. Towards that goal, the City is concerned about the adverse effect of cigarettes and related tobacco products on its residents, especially youth.

SECTION 2:

Over the years, the City Council has adopted various ordinances relating to the use of tobacco to protect the health of its residents. The Council received a detailed presentation from community youth concerned about the effects of tobacco and requesting additional restrictions on tobacco and tobacco products.

SECTION 3:

Consistent with the goal referenced above and the presentation, the Council wishes to take additional steps restricting the location and number of new tobacco retailers in the City.

SECTION 4:

Section 9-5.3843 E(2) is amended as follows:

Section 9-5.3843 TOBACCO AND PARAPHERNALIA RETAILERS.

[Subsections A-D, inclusive, unchanged]

E. Exceptions:

- (1) The prohibition describing in division (B) above shall not apply to the following:
 - (a)-(c) [no change]
 - (d) Any tobacco retailer or drug paraphernalia retailer operating with a valid use permit issued by the city prior to the effective date of Ordinance 2125-C-S. Consistent with Ordinance 2125-C-S, such tobacco retailer or drug paraphernalia retailer shall continue to be a nonconforming use and subject to all provisions of this section and the Municipal Code.

- (2) The following business types shall be permitted to sell tobacco products subject to approval of a use permit in zoning districts where such business types are allowed under the Zoning Code:
 - (a) Convenience stores when ancillary to a gas station and having less than 20% of their sales area devoted to tobacco products.

- 1. The sale of drug paraphernalia is prohibited.
 - (b) Retail businesses larger than 5,000 square feet with less than 5% of their sales area devoted to tobacco products.
 - (c) A new use permit shall not be issued for a business that is located within 1000 feet of any school, public park, playground, recreational center, or child care center.

SECTION 5: Severability.

If any section, subsection, provision or part of this ordinance, or its application to any person or circumstance, is held to be unconstitutional or otherwise invalid, the remainder of this ordinance, and the application of such provision to other person or circumstances, shall not be affected thereby and shall remain in full force and effect and, to that end, the provisions of this ordinance are severable.

SECTION 6. CEQA.

The above amendments to the City’s Municipal Code are not considered a project under the California Environmental Quality Act under the common sense exemption (CEQA Guidelines §15061(b)(3) because the proposed amendments will not have a direct or reasonably foreseeable indirect physical change or effect on the environment.

SECTION 7:

This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption and shall be published once within fifteen (15) days upon passage and adoption in a newspaper of general circulation printed and published in the City of Antioch.

* * * * *

I **HEREBY CERTIFY** that the forgoing ordinance was introduced and adopted at a regular meeting of the City Council of the City of Antioch, held on the ____ of ____ 2022, and passed and adopted at a regular meeting thereof, held on the ____ day of ____ 2022, by the following vote:

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

Lamar A. Thorpe, Mayor of the City of Antioch

ATTEST:

Elizabeth Householder
City Clerk of the City of Antioch