



STAFF REPORT SAN CLEMENTE PLANNING COMMISSION

Date: August 7, 2019

PLANNER: Gabriel Perez, City Planner

SUBJECT: **Zoning Amendment (ZA) 17-043 – Regulation of Check Cashers, Pawnbrokers, and Smoke or Tobacco Shops**, a request to forward a recommendation to the City Council on the adoption of a City-initiated zoning amendment for regulation of locations and processing requirements of Check Cashers, Pawnbrokers, and Smoke or Tobacco Shops.

REQUIRED FINDINGS

The following findings shall be made to recommend adoption of the proposed Zoning Amendment. The draft Resolution (Attachment 1) and analysis section of this report provide an assessment of compliance with these findings.

Zoning Amendments, Section 17.16.040(F)(1), Required Findings:

- a. The proposed amendment is consistent with the General Plan.
- b. The proposed amendment will not adversely affect the public health, safety and welfare.

Noticing

Public notices were published per City and State requirements and no public comments have been received on this item to date.

BACKGROUND

On October 4, 2016, the City Council initiated a Zoning Amendment (Amendment) to establish standards for the operation of check cashers, pawnbrokers, secondhand dealers, and smoke or tobacco shops. Currently, there are no citywide operational standards for check cashers, pawnbrokers, secondhand dealers and smoke and tobacco shops that would ensure the maintenance of the public health, safety and welfare and reduce potential negative impacts to City's business districts and nearby sensitive uses. The Council directed staff to ensure uses are consistent with the purpose and intent of the zones where they are permitted and designating specific zones where the uses should be allowed.

On October 17, 2018 the Planning Commission reviewed the proposed Amendment to establish regulations for such uses and concerns expressed by Commissioners included:

- Need for more information regarding the referenced 100 code compliance cases, including references to business type and verification of code complaints.
- Further Council clarification on the purpose of the Amendment.
- Concern that secondhand dealers were categorized with check cashers, pawnbrokers, and smoke or tobacco shops in the proposed Amendment.
- Secondhand dealer definition as presented to the Commission would encompass and restrict retail establishments that sell used goods as a portion of their regular sales.

The Commission voted to table the Amendment until staff determined the item should return to the Commission. The Commission also recommended all references to secondhand dealers or thrift stores be eliminated from the ordinance (Attachment 10).

On February 19, 2019, Staff reported to the Council on the Planning Commission hearing on the Amendment, Commission concerns expressed, and requested direction regarding next steps for the Amendments (Attachment 11). The Council directed staff to remove or revise references to thrift store regulations in the Amendment and move forward with the amendments regulating check cashers, pawnbrokers, and smoke or tobacco shops. Council also directed staff to review thrift store regulations including secondhand dealer definition, distance requirements to sensitive uses, means of approval (Conditional use permit versus Minor Conditional Use permit) and methods of other cities to regulate thrift stores.

On May 8, 2019 the Planning Commission reviewed amendments regulating check cashers, pawnbrokers, and smoke or tobacco shops as no further revisions were requested by Council for these uses (Attachment 9). The Planning Commission requested additional information to support proposed regulations including police call information related to operation of existing businesses. The Planning Commission also recommended that amendments include prohibitions of smoke and tobacco shops in mixed-use zones, prohibitions of smoke shops in neighborhood commercial zones within 300 feet of existing development, and extending proposed smoke shop operating hours from 7 p.m. to 10 p.m. Staff will present a thrift store Zoning Amendment at a future public hearing of the Planning Commission when research and revisions for thrift store regulations, as requested by the Council, are complete.

DISCUSSION

Code Compliance and Police Service Call Analysis

Staff reviewed code compliance and police records related to existing pawnbrokers, check cashers, and smoke or tobacco shops to identify any negative impacts of existing businesses to the public health, safety and welfare in the City of San Clemente. Currently, there are several check cashers and smoke shops active in the City, with the exception

of pawnbrokers; however, there have been pawnbroker businesses in the City previously. Between 1998 and 2016, the City received 5 code compliance complaints regarding smoke shops and 1 complaint regarding check cashers. The smoke shops complaints primarily concerned unpermitted signs, 1 complaint concerned unpermitted outdoor cooking, and 1 complaint concerned unpermitted sale of pornography. The complaint for the check casher business concerned unpermitted signs. All of the referenced code compliance cases have been resolved.

At the request of the Planning Commission on May 8, 2019, staff obtained police service call information from the Orange County Sheriff's Department Crime Analysis Detail related to the existing check cashers and smoke or tobacco shops within the last five years (Attachment 7). A five-year timeframe is standard in local crime trend analysis according to the Sheriff's Department. There were a total of 80 calls for service for smoke/vape shops and no calls for the check cashing business. Loitering comprises of 62% of the service calls. Other incidents included robbery and petty theft. There were no service calls generated for 3 of the 8 smoke shops. The businesses were the reporting party or victim in most of the calls for service. The Sheriff's department determined that the loitering incidents occur during daylight business hours (8 a.m. – 5 p.m.). The average calls for service for these businesses were determined not to be above average of the calls received by other frequented retail establishments.

Proposed Zoning Amendment

The Zoning Ordinance currently requires a Conditional Use Permit (CUP) to allow pawnbrokers in most commercial and mixed use zones. The Zoning Ordinance does not have specific land use categories for check cashers, and smoke shops, so these uses may be permitted as general retail uses, and are currently allowed by right. The proposed draft ordinance (Attachment 2) regulates check cashers, pawnbrokers, and smoke or tobacco shops by three sets of code changes, discussed below.

1. Definitions - The ordinance defines uses to be regulated.
2. Special Use Regulations - The ordinance establishes minimum zoning standards for the land uses.
3. Zones - The ordinance restricts the uses to select commercial and mixed-use zones with a Conditional Use Permit.

Definitions

Section 17.88.030 (Definitions) is amended to define the uses "check cashers," "pawnbrokers" (formerly pawn shops), and "smoke or tobacco shops" as follows:

- "Check casher" means a business engaged in cashing checks, money orders, or other commercial paper for compensation and other activity as defined in California Civil Code section 1789.31.

- “Pawnbroker” means a business engaged in receiving goods in pledge as security for a loan and other activity as defined in California Financial Code Section 21000.
- “Smoke or tobacco shop” means any premises dedicated to the display, sale, distribution, delivery, or offering of tobacco, tobacco products, or tobacco paraphernalia, except grocery stores, supermarkets, convenience stores, retail kiosks, or similar uses that only sell conventional cigars, cigarettes, e-cigarettes or tobacco as an accessory tobacco sale use, as defined in this Section.

In addition to these definition changes, the ordinance adds definitions related to the regulation of smoke or tobacco shops, including “Accessory tobacco sale use,” “E-cigarette,” “Tobacco paraphernalia,” “Tobacco product,” and “Tobacco.” The “E-cigarette” definition qualifies vaping as a tobacco product and vaping is therefore subject to the same standards as a traditional tobacco product under these regulations.

Special Use Regulations

The Zoning Amendment includes heightened standards for check cashers, pawnbrokers, and smoke or tobacco shops. The Amendment updates chapter 17.28 (Special Uses) to introduce standards such as required separation from sensitive uses (schools, playgrounds, hospitals, etc.) and concentration limits on similar uses in order to minimize potential adverse impacts to sensitive uses. A 100-foot separation requirement from sensitive uses is proposed for pawnbrokers and check cashers. The 100-foot separation distance is the typical depth of commercial lots and width of primary streets. A 300-foot separation from sensitive uses is proposed for smoke shops, due to a heightened concern about attracting children. A 300-foot separation distance is proposed between pawnbrokers, check cashers, smoke and tobacco shop businesses. Table 1 (Attachment 3) highlights the special use regulations in further detail, and Attachment 4 provides a mapping analysis of the separation distances.

Limiting proximity of smoke shops to other similar retailers and to sensitive uses are place-based strategies recommended by health advocates to limit youth exposure to tobacco products and is further described in a ChangeLab Solutions report (Attachment 8). A report by the ChangeLab Solutions entitled “Comprehensive Tobacco Retailer Licensing Ordinance,” finds that greater availability of tobacco products is associated with both youth and adult smoking. Additionally, children are more likely to experiment with, and use, tobacco products when tobacco retailers are located near homes. The report cites a positive correlation between youth smoking and the number and density of tobacco retailers near schools. Tobacco retailers near schools with high smoking rates have also been shown to have lower cigarette prices and more in-store promotions. Communities with strong enforcement provisions in their tobacco retailer licensing ordinances are found to have lower rates of illegal tobacco sales to youth.

Staff reviewed the pawnbroker and check casher regulations for Orange County cities and found no distance requirements from similar businesses or from sensitive uses. The City of San Clemente has adopted distance requirement for other businesses, such as

Short Term Lodging Units (STLUs), to limit concentration. The proposed 300-foot distance requirement for pawnbroker and check casher businesses from other similar businesses would serve to limit the concentration of these businesses. A review by staff of available research for these businesses does not suggest a relationship to problems at schools, parks, or other sensitive uses. Staff believes the 100-foot separation requirement for pawnbrokers and check cashers from sensitive uses can be supported due to the police service calls for these businesses related to incidences of loitering.

Other special use regulations recommended include requirements for windows and lighting to improve security at these businesses.

Zones

Under the existing Zoning Code, pawnbrokers are allowed in most commercial and mixed-use zones with a CUP. The proposed ordinance updates standards for commercial and mixed-use zones in two ways. First, similar to pawnbrokers, a CUP would be required to allow check cashers, and smoke shops. Second, use tables for the commercial and mixed-use zones are updated to impose separation requirements between sensitive uses and check cashers, pawnbrokers, and smoke shops.

- Commercial Zones: NC 1.3, NC 2*, NC 3*, CC 1, CC2, CC3, and CC 4.
- Mixed-Use Zones: MU 1, MU 2, MU 3.0, and MU 3.1. Smoke or Tobacco shops would not be permitted in Mixed-Use Zones.

*Smoke shops are prohibited in these zones due to separation requirements.

Uses that require a CUP are subject to public review through hearings before the Planning Commission. To approve a CUP, the Planning Commission must find that the proposed use “will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity” (SCMC § 17.16.060(F)(1)(c)) and “will not negatively impact surrounding land uses” (SCMC § 17.16.060(F)(1)(d)). The Commission also has the ability to impose conditions of approval that will minimize conflicts between the conditionally permitted use and other uses in the area.

GENERAL PLAN CONSISTENCY

The proposed amendment is consistent with the General Plan in that it promotes the public health, safety and welfare by imposing separation requirements between these uses and other uses that may not be compatible, and requiring a public hearing before such uses can commence operation. The General Plan policies promote the establishment and operation of land uses that maintain or enhance quality of life; are compatible with surrounding uses; and protect and maintain public health, safety, and welfare. The table below summarizes how the proposed amendment is consistent with the General Plan.

Table 1 - General Plan Consistency

Policies and Objectives	Consistency Finding
<p><i>Primary Goal 1 of the Land Use Plan:</i> “retain and enhance established residential neighborhoods, commercial and industrial districts, recreational resources, community-activity areas and amenities, and open spaces that improve the community’s quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health.”</p>	<p>Consistent. The proposed amendment adds operational standards to ensure check cashers, pawnbrokers, and smoke shops do not adversely impact the surrounding uses and maintain the community’s quality of life. Accordingly, the amendment supports the City’s ability and effort to plan, build, retain, and attract projects that maintain and enhance the City’s lands and built environment.</p>
<p><i>Implementation Measures:</i> 1. Update the Zoning Ordinance, Zoning Map, Local Coastal Program and specific plans to ensure consistency with the Centennial General Plan.</p>	<p>Consistent. The proposed amendment updates the Zoning Ordinance to ensure these land uses are compatible with neighboring properties.</p>
<p><i>UD-3.02. Regulation of Uses and Nuisances.</i> We regulate the location, concentration, design and operations of commercial and industrial uses and parking structure that can adversely affect surrounding sensitive land uses. Impacts may include, but are not limited to, noise, vibration, odors, exterior light, visibility of activity, vehicular traffic and safety hazards.</p>	<p>Consistent. The proposed amendment provides additional regulation of uses that have potential to negatively impact surrounding land uses, specifically through the Conditional Use Permit process which ensures public review of the proposed uses to help ensure compatibility with the existing neighborhood.</p>
<p><i>G-1.02. Consistency.</i> We achieve and maintain consistency between policies in short and long-term planning documents, the municipal code and implementation projects and programs.</p>	<p>Consistent. The proposed amendment ensures consistency between the Zoning Ordinance and General Plan by defining a review process for uses that may negatively impact an area.</p>

CALIFORNIA COASTAL COMMISSION REVIEW

The proposed amendments are not subject to Coastal Commission approval. The proposed amendments are consistent with the Coastal Land Use Plan recently certified by the Coastal Commission. The zoning amendments affect properties within the Coastal Zone but do not prohibit land uses that are coastal recreation serving in nature. The proposed amendments would regulate land uses to avoid negative impacts and protect and preserve public health, safety, and welfare.

ENVIRONMENTAL REVIEW/COMPLIANCE (CEQA)

The Planning Division completed an initial environmental assessment of the project per the California Environmental Quality Act (CEQA). Staff recommends the Planning Commission recommend to the City Council that the project is exempt from further review of the California Environmental Quality Act (CEQA) because it is an administrative activity which will not result in a direct or reasonably foreseeable indirect physical change to the environment and is not a "project" as defined by section 15378 pursuant to State CEQA Guidelines 15060(c)(2 and 3).

RECOMMENDATION

Staff recommends the Planning Commission:

1. Recommend the City Council find the project is exempt from the requirements of the CEQA pursuant to CEQA Guidelines Sections 15060(c)(2 and 3); and
2. Adopt Resolution PC 19-014, recommending the City Council adopt an ordinance regulating Check Cashers, Pawnbrokers, and Smoke or Tobacco Shops.

Attachments:

1. Resolution No. PC 19-014
2. Draft Ordinance
3. Strikethrough Underline Informational Copy
4. Location Map Sensitive Areas and Proposed Distance Requirements
5. Location Map of Prohibited Portions of Allowed Areas
6. Table 1 – Use Standards
7. Orange County Sheriffs Department Crime Analysis Data for Smoke Shops (5 yrs)
8. ChangeLab Solutions Report (2019) "Tobacco Retailer Density: Place-based Strategies to Advance Health and Equity."
9. Planning Commission Meeting Minutes of May 8, 2019
10. Planning Commission Meeting Minutes of October 17, 2018
11. City Council meeting Minutes of February 19, 2019

Additional Information:

1. ChangeLab Solutions (2019) "Comprehensive Tobacco Retailer Licensing Ordinance: A Model California Ordinance Regulating the Tobacco Retail Environment." <https://www.changelabsolutions.org/product/california-comprehensive-tobacco-retailer-licensing>

RESOLUTION NO. PC 19-014

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE RECOMMENDING THE CITY COUNCIL APPROVE AN ORDINANCE TO ENACT ZONING AMENDMENT 17-043, AMENDING MUNICIPAL CODE TITLE 17 (ZONING), CHAPTERS 17.28 (SPECIAL USES), 17.36 (COMMERCIAL ZONES AND STANDARDS), 17.40 (MIXED-USE ZONES AND STANDARDS), AND 17.88 (DEFINITIONS), TO REGULATE CHECK CASHERS, PAWNBROKERS, AND SMOKE OR TOBACCO SHOPS BY DEFINING USES, RESTRICTING USES TO SELECT ZONES, REQUIRING A CONDITIONAL USE PERMIT TO ESTABLISH USES, AND IMPOSING SPECIAL USE STANDARDS

WHEREAS, check cashers, pawnbrokers, and smoke or tobacco shops are uses allowed in the City; and

WHEREAS, the potentially negative impacts of check cashers, pawnbrokers, and smoke or tobacco shops are not isolated to the City as other California cities have acted to regulate; and

WHEREAS, California cities which allow establishment of check cashers, pawnbrokers, and smoke or tobacco shops have recognized an increase in crime, such as the sale of illegal drugs in the areas immediately surrounding these uses, and have recognized that the market values and aesthetic and visual qualities of the properties around or adjacent to these uses might be impaired; and

WHEREAS, the City has received police service calls concerning the operation of these businesses in San Clemente, including loitering, robbery, and petty theft. These types of violations impact some business districts in the City, and may adversely affect the City's ability to attract and retain businesses and shoppers to the City, and may adversely affect the City's economic vitality; and

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness.ⁱ

WHEREAS, despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;ⁱⁱ
- In California, from 2013 to 2015, approximately 15% of 9th and 11th grade students report using electronic smoking devices;ⁱⁱ

- Unless smoking rates decline, an estimated 5% of all California youth who are alive today will die prematurely from smoking-related diseases; ^{iii iv}
- In 2017, 22.8% of high school students in California had tried cigarette smoking; ^{v vi}

WHEREAS, the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day; ^{vii}

WHEREAS, the density of tobacco retailers near schools has been associated with increased youth smoking rates; ^{viii}

WHEREAS, adults who smoke have a harder time quitting when residential proximity to tobacco retailers is smaller^{ix} and density is higher; ^x

WHEREAS, the Municipal Code requires a Conditional Use Permit for the use and restricts pawnbrokers (referred to here as “pawn shops”) to select commercial zones (SCMC § 17.36.020, table 17.36.020) and mixed-use zones (SCMC § 17.40.030, table 17.40.030); and

WHEREAS, notwithstanding the above provisions, the Municipal Code does not define or provide land use standards specific to pawnbrokers (or “pawn shops”); and

WHEREAS, the Municipal Code does not address check cashers, and smoke or tobacco shops, which frequently have some of the same deleterious effects as pawnbrokers; and

WHEREAS, on October 4, 2016, the City Council Initiated this zoning amendment to address issues related to thrift stores, smoke and vape shops, secondhand dealers, check-cashing stores and pawnbrokers, consistent with the General Plan. The intent of the amendments is to require scrutiny through the public review process and impose specific standards for check cashers, pawnbrokers, secondhand dealers, and smoke or tobacco shops to minimize the potential negative impacts of these uses; and

WHEREAS, the City, by virtue of the police powers delegated to it by the California Constitution, is authorized to enact laws to promote the health, safety, and general welfare of its residents; and

WHEREAS, a primary goal of the San Clemente General Plan is to “*retain and enhance established...commercial and industrial districts...that improve the community’s quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health*” (p. LU-3); and

WHEREAS, State CEQA Guidelines sections 15378(b)(2) and 15378(b)(5) provide that ongoing administrative activities and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment do not constitute a “project” as defined by the State CEQA Guidelines (Cal. Code Regs., title 14, § 15000 et seq.) and therefore are exempt from CEQA and no further

environmental review is required; and

WHEREAS, on August 7, 2019, the Planning Commission held a duly noticed public hearing on the proposed Zoning Amendment, considered testimony and other evidence, and recommended the City Council approve and adopt this Ordinance.

NOW, THEREFORE, the Planning Commission of the City of San Clemente does resolve as follows:

Section 1. Incorporation of Recitals.

The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. CEQA Findings.

Based upon all the evidence presented in the administrative record, including but not limited to the staff report for the proposed Zoning Amendment, the Planning Commission hereby finds and determines that this Zoning Amendment is not a “project” for purposes of CEQA and is exempt from further CEQA review pursuant to State CEQA Guidelines sections 15378(b)(2) and 15378(b)(5).

Section 3. Zoning Amendment (ZA) Findings.

With regard to Zoning Amendment 17-043, the Planning Commission finds the following:

- A. The Zoning Amendment is consistent with the General Plan’s goals and policies, including the following:
 - A primary goal of the General Plan Land Use Element is to “*retain and enhance established...commercial and industrial districts...that improve the community’s quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health*” (p. LU-3). The introduction of specific standards and a public review process will would ensure the maintenance of the public health, safety and welfare and reduce potential negative impacts related to operations of check cashers, pawnbrokers, and smoke or tobacco shops, allowing the City to better retain and enhance the community’s quality of life, appeal of attractions, small-town character, and long-term environmental and fiscal health.
 - Land Use Element Policy LU-2.03 “*requires[s] that commercial projects abutting residential neighborhoods be designed and operated to protect residents from the effects of noise, light, odors, vibration traffic, parking and*

other operational impacts.” This Zoning Amendment requires a Conditional Use Permit for check cashers, and smoke or tobacco shops (existing Municipal Code section 17.36.020 requires a Conditional Use Permit for pawnbrokers (referred to as “pawn shops”). To approve a Conditional Use Permit, the Planning Commission must make findings, which include that “[t]he proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity” (SCMC § 17.16.060(F)(1)(c)) and “[t]he proposed use will not negatively impact surrounding land uses” (SCMC § 17.16.060(F)(1)(d)). These findings enable the Planning Commission to consider the neighborhood compatibility concerns contemplated by Policy LU-2.03. Further, appropriate conditions of approval may be imposed in conjunction with the approval of such uses to further mitigate potential impacts.

- B. The Zoning Amendment will actually promote the public health, safety, and welfare, because it allows the City to better address the potential negative impacts of check cashers, pawnbrokers, and smoke or tobacco shops as part of the permit process.

Section 4. Planning Commission Recommendation.

Based on the entire record before the Planning Commission, all written and oral evidence presented to the Planning Commission, and the findings made and evidence discussed in the staff report and this Resolution, the Planning Commission hereby recommends that the City Council approve and adopt an Ordinance entitled: AN ORDINANCE OF THE CITY OF SAN CLEMENTE APPROVING ZONING AMENDMENT 17-043, AMENDING MUNICIPAL CODE TITLE 17 (ZONING) CHAPTERS 17.28 (SPECIAL USES), 17.36 (COMMERCIAL ZONES AND STANDARDS), 17.40 (MIXED-USE ZONES AND STANDARDS), AND 17.88 (DEFINITIONS), TO REGULATE CHECK CASHERS, PAWNBROKERS, AND SMOKE OR TOBACCO SHOPS BY DEFINING USES, RESTRICTING USES TO SELECT ZONES, REQUIRING A CONDITIONAL USE PERMIT TO ESTABLISH USES, AND REQUIRING SPECIAL USE STANDARDS”, set forth as Attachment 2 to the accompanying staff report, and incorporated here by reference.

PASSED AND ADOPTED at a regular meeting of the City of San Clemente Planning Commission on August 7, 2019.

Chair

CERTIFICATION:

I HEREBY CERTIFY this Resolution was adopted at a regular meeting of the City of San Clemente Planning Commission on August 7, 2019, carried by the following roll call vote:

AYES: COMMISSIONERS:
NOES: COMMISSIONERS:
ABSTAIN: COMMISSIONERS:
ABSENT: COMMISSIONERS:

Secretary of the Planning Commission

References

- ⁱ U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.
- ⁱⁱ California Department of Public Health California Tobacco Control Program. *California Tobacco Facts and Figures 2016*. Sacramento, CA: California Department of Public Health. 2016. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>.
- ⁱⁱⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in California. <https://www.tobaccofreekids.org/problem/toll-us/california>. Accessed April 18, 2018.
- ^{iv} U.S. Census Bureau. *Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States, States, Counties and Puerto Rico Commonwealth and Municipios: April 1, 2010 to July 1, 2017*. U.S. Census Bureau, Population Division 2018. Available at: https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2017_PEPAGESEX&prodType=table.
- ^v Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance - United States, 2017. *MMWR Surveill Summ*. 2018;67(8):1-114. doi: 10.15585/mmwr.ss6708a1.
- ^{vi} Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance — United States, 2017. Supplementary Tables 52-93: Tobacco Use. 2018; https://www.cdc.gov/healthyyouth/data/yrbs/2017_tables/tobacco_use.htm.
- ^{vii} Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health*. 2005;59(7):568-573. doi: 10.1136/jech.2004.029041.
- ^{viii} Henriksen L, Feighery EC, Schleicher NC, Cowling DW, Kline RS, Fortmann SP. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Prev Med*. 2008;47(2):210-214. doi: 10.1016/j.ypmed.2008.04.008.
- ^{ix} Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health*. 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.
- ^x Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty. *Addiction*. 2015;110(1):152-161. doi: 10.1111/add.12718.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE APPROVING ZONING AMENDMENT 17-043, AMENDING MUNICIPAL CODE TITLE 17 (ZONING), CHAPTERS 17.28 (SPECIAL USES), 17.36 (COMMERCIAL ZONES AND STANDARDS), 17.40 (MIXED-USE ZONES AND STANDARDS), AND 17.88 (DEFINITIONS), TO REGULATE CHECK CASHERS, PAWNBROKERS, AND SMOKE OR TOBACCO SHOPS BY DEFINING USES, RESTRICTING USES TO SELECT ZONES, REQUIRING A CONDITIONAL USE PERMIT TO ESTABLISH USES, AND IMPOSING SPECIAL USE STANDARDS

WHEREAS, check cashers, pawnbrokers, and smoke or tobacco shops are uses allowed in the City; and

WHEREAS, the potentially negative impacts of check cashers, pawnbrokers, and smoke or tobacco shops are not only isolated to the City as other California cities have acted to regulate; and

WHEREAS, California cities which allow establishment of check cashers, pawnbrokers, and smoke or tobacco shops have recognized an increase in crime, such as the sale of illegal drugs in the areas immediately surrounding these uses, and have recognized that the market values and aesthetic and visual qualities of the properties around or adjacent to these uses might be impaired; and

WHEREAS, the City has received police service calls concerning the operation of these businesses in San Clemente, including loitering, robbery, and petty theft. These types of violations impact some business districts in the City, and may adversely affect the City's ability to attract and retain businesses and shoppers to the City, and may adversely affect the City's economic vitality; and

WHEREAS, 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness.ⁱ

WHEREAS, despite the state's efforts to limit youth access to tobacco, youth are still able to access tobacco products, as evidenced by the following:

- In California, over 67% of current and former adult smokers started by the age of 18 and almost 100% start by age 26;ⁱⁱ
- In California, from 2013 to 2015, approximately 15% of 9th and 11th grade students report using electronic smoking devices; ⁱⁱ
- Unless smoking rates decline, an estimated 5% of all California youth who are alive today will die prematurely from smoking-related diseases; ^{iii iv}

- In 2017, 22.8% of high school students in California had tried cigarette smoking;^{v vi}

WHEREAS, the density and proximity of tobacco retailers influence smoking behaviors, including number of cigarettes smoked per day; ^{vii}

WHEREAS, the density of tobacco retailers near schools has been associated with increased youth smoking rates; ^{viii}

WHEREAS, adults who smoke have a harder time quitting when residential proximity to tobacco retailers is smaller^{93ix} and density is higher; ^x

WHEREAS, the Municipal Code requires a Conditional Use Permit for and restricts pawnbrokers (referred to here as “pawn shops”) to select commercial zones (SCMC § 17.36.020, table 17.36.020) and mixed-use zones (SCMC § 17.40.030, table 17.40.030); and

WHEREAS, notwithstanding the above provisions, the Municipal Code does not define or provide land use standards specific to pawnbrokers (or “pawn shops”); and

WHEREAS, the Municipal Code does not address check cashers, and smoke or tobacco shops, which frequently have some of the same deleterious effects as pawnbrokers; and

WHEREAS, on October 4, 2016, the City Council Initiated this zoning amendment to address issues related to thrift stores, smoke and vape shops, secondhand dealers, check-cashing stores and pawn shops, consistent with the General Plan. The intent of the amendments is to require scrutiny through the public review process and impose specific standards for check cashers, pawnbrokers, secondhand dealers, and smoke or tobacco shops to minimize the potential negative impacts of these uses; and

WHEREAS, the City, by virtue of the police powers delegated to it by the California Constitution, is authorized to enact laws to promote the health, safety, and general welfare of its residents; and

WHEREAS, a primary goal of the San Clemente General Plan is to “*retain and enhance established...commercial and industrial districts...that improve the community’s quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health*” (p. LU-3); and

WHEREAS, State CEQA Guidelines sections 15378(b)(2) and 15378(b)(5) provide that ongoing administrative activities and organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment do not constitute a “project” as defined by the State CEQA Guidelines (Cal. Code Regs., title 14, § 15000 et seq.) and therefore are exempt from CEQA and no further environmental review is required; and

WHEREAS, on August 7, 2019, the Planning Commission held a duly noticed public hearing on the proposed Zoning amendments, considered testimony and other evidence, and recommended the City Council approve and adopt this Ordinance; and

WHEREAS, on _____, _____, the City Council held a duly noticed public hearing on this Ordinance, considered the agenda report, including the policy considerations discussed therein, and the written and oral testimony received. The City Council has also reviewed and considered the Planning Commission's recommendation, and the agenda report and other evidence that was considered by the Commission, in connection with the proposed amendments that affect the City's Zoning code.

NOW, THEREFORE, the City Council of the City of San Clemente, California, hereby ordains as follows:

Section 1. Incorporation of Recitals.

The recitals above are each incorporated by reference and adopted as findings by the City Council.

Section 2. CEQA Findings.

Based upon all the evidence presented in the administrative record, including but not limited to the staff report for the proposed Zoning Amendment, the City Council hereby finds and determines that this Zoning Amendment is not a "project" for purposes of CEQA and is exempt from further CEQA review pursuant to State CEQA Guidelines sections 15378(b)(2) and 15378(b)(5).

Section 3. Zoning Amendment (ZA) Findings.

With regards to Zoning Amendment 17-043, the City Council finds the following:

- A. The Zoning Amendment is consistent with the General Plan, because it fulfills the General Plan's goals and policies, including the following:
 1. A "primary goal" of the General Plan Land Use Element is to "*retain and enhance established...commercial and industrial districts...that improve the community's quality of life, enhance the appeal of our many attractions, maintain our small-town character, and ensure long-term environmental and fiscal health*" (p. LU-3). The introduction of specific standards and a public review process will would ensure the maintenance of the public health, safety and welfare and reduce potential negative impacts related to operations of check cashers, pawnbrokers, and smoke or tobacco shops, allowing the City to better retain and enhance the community's quality of life, appeal of attractions, small-town character, and long-term environmental and fiscal health.

2. Land Use Element Policy LU-2.03 *“requires[s] that commercial projects abutting residential neighborhoods be designed and operated to protect residents from the effects of noise, light, odors, vibration traffic, parking and other operational impacts.”* This Zoning Amendment requires a Conditional Use Permit for check cashers, and smoke or tobacco shops (existing Municipal Code section 17.36.020 requires a Conditional Use Permit for pawnbrokers (referred to as “pawn shops”). To approve a Conditional Use Permit, the Planning Commission must make findings, which include that *“[t]he proposed use will not be detrimental to the public health, safety or welfare, or materially injurious to properties and improvements in the vicinity”* (SCMC § 17.16.060(F)(1)(c)) and *“[t]he proposed use will not negatively impact surrounding land uses”* (SCMC § 17.16.060(F)(1)(d)). These findings enable the Planning Commission to consider the neighborhood compatibility concerns contemplated by Policy LU-2.03. Further, appropriate conditions of approval may be imposed in conjunction with the approval of such uses to further mitigate potential impacts.
- B. The Zoning Amendment will actually promote the public health, safety, and welfare, because it allows the City to better address the potential negative impacts of check cashers, pawnbrokers, and smoke or tobacco shops as part of the permit process.

Section 4. Municipal Code Title 17 (Zoning) Amendments.

Municipal Code Title 17 (Zoning), Chapter 17.28 (Special Uses) is amended to add Sections 17.28.095 (Check Cashers), 17.28.225 (Pawnbrokers), and 17.28.293 (Smoke or Tobacco Shops) as follows:

17.28.095 - Check Cashers.

- A. Purpose and Intent. The purpose of this Section is to provide regulations which mitigate the potential negative effects of check cashers on, and enhance compatibility with, other nearby uses.
- B. Applicability. This Section applies to check cashers.
- C. Review Requirements. Please refer to the use tables in Chapters 17.32, Residential Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
- D. Minimum Standards.
 1. State Licensing. All check cashers shall operate with appropriate State licensing and according to all State and local laws and regulations.

2. Location. Please refer to the permitted and conditional use tables in Chapters 17.36, Commercial Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
3. Hours of Operation. Hours of operation shall be determined through the Conditional Use Permit process, with 7:00 a.m. being the earliest a check casher is allowed to open and 7:00 p.m. the latest a check casher is allowed to close.
4. Adjacent Uses. No check casher shall be located within 100 feet of a residentially zoned property, school, hospital, playground, or public park.
5. Concentration of Uses. No check casher shall be located within 300 feet of another check casher.
6. Windows and Lighting. There shall be unobscured windows and adequate interior lighting levels during business hours to maintain clear visibility of check casher operations from the exterior of the tenant space.
7. Security Plan. In conjunction with the submittal of an application for a Conditional Use Permit, the applicant shall submit a security plan to prevent vandalism, breaking and entering, and other crimes at the establishment and to protect the safety of customers, employees, and other persons at the establishment. The security plan shall be subject to staff review and approval by the Planning Commission.

17.28.225 - Pawnbroker.

- A. Purpose and Intent. The purpose of this Section is to provide regulations, which mitigate the potential negative effects of pawnbrokers on and enhance compatibility with other uses.
- B. Applicability. This Section applies to pawnbrokers.
- C. Review Requirements. Please refer to the use tables in Chapters 17.32, Residential Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
- D. Minimum Standards.
 1. State Licensing. All pawnbrokers shall operate with appropriate State licensing and according to all State and local laws and regulations.
 2. Location. Please refer to the permitted and conditional use tables in Chapters 17.36, Commercial Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.

3. Hours of Operation. Hours of operation shall be determined through the Conditional Use Permit process, with 7:00 a.m. being the earliest a pawnbroker is allowed to open and 7:00 p.m. the latest a pawnbroker is allowed to close.
4. Adjacent Uses. No pawnbroker shall be located within 100 feet of a residentially zoned property, school, hospital, playground, or public park.
5. Concentration of Uses. No pawnbroker shall be located within 300 feet of another pawnbroker.
6. Windows and Lighting. There shall be unobscured windows and adequate interior lighting levels during business hours to maintain clear visibility of pawnbroker operations from the exterior of the tenant space.
7. Security Plan. In conjunction with the submittal of an application for a Conditional Use Permit, the applicant shall submit a security plan to prevent vandalism, breaking and entering, and other crimes at the establishment and to protect the safety of customers, employees, and other persons at the establishment. The security plan shall be subject to staff review and approval by the Planning Commission.

17.28.294 - Smoke or Tobacco Shops.

- A. Purpose and Intent. The purpose of this Section is to provide regulations, which mitigate the potential negative effects of smoke or tobacco shops on and enhance compatibility with other uses.
- B. Applicability. This Section applies to all smoke or tobacco shops.
- C. Review Requirements. Please refer to the use tables in Chapters 17.32, Residential Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
- D. Minimum Standards.
 1. Location. Please refer to the permitted and conditional use tables in Chapters 17.36, Commercial Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
 2. Hours of Operation. Hours of operation shall be determined through the Conditional Use Permit process, with 7:00 a.m. being the earliest a smoke or tobacco shop is allowed to open and 10:00 p.m. the latest a smoke or tobacco shop is allowed to close.
 3. Adjacent Uses. No smoke or tobacco shop shall be located within 300 feet of a residentially zoned property, school, hospital, playground, or public park, or any place where children are expected to be present. No smoke or

tobacco shop shall be located in a Neighborhood Commercial Zone within 300 feet of existing development with residential uses.

4. Concentration of Uses. No smoke or tobacco shop shall be located within 300 feet of another smoke or tobacco shop.
5. Windows and Lighting. There shall be unobscured windows and adequate interior lighting levels during business hours to maintain clear visibility of tobacco shop operations from the exterior of the tenant space.
6. Security Plan. In conjunction with the submittal of an application for a Conditional Use Permit, the applicant shall submit a security plan to prevent vandalism, breaking and entering, and other crimes at the establishment and to protect the safety of customers, employees, and other persons at the establishment. The security plan shall be subject to staff review and approval by the Planning Commission.
7. No Smoking on Premises. No smoking shall be permitted on the premises at any time.
8. Minor Supervision. It is unlawful for a smoke or tobacco shop to knowingly allow or permit a minor, not accompanied by his or her parent or legal guardian, to enter or remain within any smoke or tobacco shop.
9. No Sales by Minors. No sales may be solicited or conducted on the premises by minors.
10. Signage. Smoke or tobacco shops shall post clear signage stating that minors may not enter the premises unless accompanied by a parent or legal guardian. At least one such sign shall be placed in a conspicuous location near each public entrance to the smoke or tobacco shop. It shall be unlawful for a smoke shop and tobacco store to fail to display and maintain, or fail to cause to be displayed or maintained, such signage.

Section 5. Municipal Code Title 17 (Zoning), Chapter 17.36 (Commercial Zones and Standards), Section 17.36.020 (Commercial Use Regulations), Table 17.36.020 (Commercial Zone Uses), part 1 (Commercial) is amended to: (1) add rows for check cashing businesses, and smoke or tobacco shops,(2) revise the “pawn shops” row to reference “pawnbrokers” , and (3) amend table footnote 1, as follows:

17.36.020 - Commercial Use Regulations.

**Table 17.36.020
Commercial Zone Uses**

Use	Zones							
	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	NOTE
1. Commercial								
Pawnbrokers	C	C	C	C				1
...								
Smoke or Tobacco Shops								
...								

Footnote 1:

Refer to Chapter 17.28, Special Uses, of this title for special provisions for the referenced land use.

Section 7. Municipal Code Title 17 (Zoning), Chapter 17.88 (Definitions), Section 17.88.030 (Definitions) is amended to add the definitions of “check chasing business,” “e-cigarette,” “pawn shop,” “smoke or tobacco shop,” “tobacco paraphernalia,” “tobacco product,” “tobacco shop,” and “tobacco” as follows:

17.88.030 - Definitions.

“**Accessory tobacco sale use**” means an accessory use at a grocery store, supermarket, convenience store, retail kiosk, or similar primary use, where no more than two percent of a business’ gross floor area is used for the display or retail sales of conventional cigars, cigarettes, e-cigarettes or tobacco.

“**Check casher**” means a business engaged in cashing checks, money orders, or other commercial paper for compensation and other activities as defined in California Civil Code Section 1789.31.

“**E-cigarette**” means any electronically actuated device or inhaler meant to simulate cigarette smoking that uses a heating element to vaporize a liquid solution, popularly referred to as “juice,” and that causes the user to exhale any smoke, vapor, or substance other than that produced by unenhanced human exhalation. The juice used in e-cigarettes typically contains nicotine, and for this reason e-cigarettes and their juice can be classified as both tobacco products and tobacco paraphernalia.

“**Pawnbroker**” means a business engaged in receiving goods in pledge as security for a loan and other activity as defined in California Financial Code Section 21000.

“**Smoke or tobacco shop**” means any premises dedicated to the display, sale, distribution, delivery, or offering of tobacco, tobacco products, or tobacco paraphernalia,

except grocery stores, supermarkets, convenience stores, retail kiosks, or similar uses that only sell conventional cigars, cigarettes, e-cigarettes or tobacco as an accessory tobacco sale use, as defined in this Section.

“Tobacco paraphernalia” means any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in California Health and Safety Code Section 11054 et seq. Items or devices classified as tobacco paraphernalia include, but are not limited to, the following: pipes, punctured metal bowls, bongs, water bongs, electric pipes, e-cigarettes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches are excluded from the definition of tobacco paraphernalia.

“Tobacco product” means any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. The term “tobacco product” excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

“Tobacco shop.” See “smoke or tobacco shop.”

“Tobacco” means any preparation of the nicotine-rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body.

Section 8. Severability.

If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 9. Effective Date.

This Ordinance takes effect 30 days after adoption of this Ordinance by the City Council.

Section 10. Reference to Existing Provisions.

All existing provisions of the Municipal Code that are repeated herein are repeated only to aid decision-makers and the public in understanding the effect of the proposed changes. Restatement of existing provisions does not constitute a new enactment.

Section 11. Custodian of Records.

The documents and materials associated with this ordinance that constitute the record of proceedings on which the City Council’s findings and determinations are based are located at San Clemente City Hall, 910 Calle Negocio, San Clemente, CA 92672.

Section 12. Certification and Publication.

The City Clerk shall certify to the adoption of this ordinance and shall cause it, or a summary of it, to be published within 15 days of adoption, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code section 36933.

APPROVED AND ADOPTED this ____ day of _____, 2018

ATTEST:

City Clerk of the City of
San Clemente, California
STATE OF CALIFORNIA)
COUNTY OF ORANGE) **ss.**
CITY OF SAN CLEMENTE)

Mayor of the City of San
Clemente, California

I, JOANNE BAADE, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

APPROVED AS TO FORM:

CITY ATTORNEY

References

- ⁱ U.S. Department of Health and Human Services. *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health. 2014. Available at: <https://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.
- ⁱⁱ California Department of Public Health California Tobacco Control Program. *California Tobacco Facts and Figures 2016*. Sacramento, CA: California Department of Public Health. 2016. Available at: <https://www.cdph.ca.gov/Programs/CCDPHP/DCDIC/CTCB/CDPH%20Document%20Library/ResearchandEvaluation/FactsandFigures/2016FactsFiguresWeb.pdf>.
- ⁱⁱⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in California. <https://www.tobaccofreekids.org/problem/toll-us/california>. Accessed April 18, 2018.
- ^{iv} U.S. Census Bureau. *Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States, States, Counties and Puerto Rico Commonwealth and Municipalities: April 1, 2010 to July 1, 2017*. U.S. Census Bureau, Population Division 2018. Available at: https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=PEP_2017_PEPAGESEX&prodType=table.
- ^v Kann L, McManus T, Harris WA, et al. Youth Risk Behavior Surveillance - United States, 2017. *MMWR Surveill Summ*. 2018;67(8):1-114. doi: 10.15585/mmwr.ss6708a1.
- ^{vi} Centers for Disease Control and Prevention. Youth Risk Behavior Surveillance — United States, 2017. Supplementary Tables 52-93: Tobacco Use. 2018; https://www.cdc.gov/healthyyouth/data/yrbs/2017_tables/tobacco_use.htm.
- ^{vii} Chuang YC, Cubbin C, Ahn D, Winkleby MA. Effects of neighbourhood socioeconomic status and convenience store concentration on individual level smoking. *J Epidemiol Community Health*. 2005;59(7):568-573. doi: 10.1136/jech.2004.029041.
- ^{viii} Henriksen L, Feighery EC, Schleicher NC, Cowling DW, Kline RS, Fortmann SP. Is adolescent smoking related to the density and proximity of tobacco outlets and retail cigarette advertising near schools? *Prev Med*. 2008;47(2):210-214. doi: 10.1016/j.ypmed.2008.04.008.
- ^{ix} Reitzel LR, Cromley EK, Li Y, et al. The effect of tobacco outlet density and proximity on smoking cessation. *Am J Public Health*. 2011;101(2):315-320. doi: 10.2105/AJPH.2010.191676.
- ^x Cantrell J, Anesetti-Rothermel A, Pearson JL, Xiao H, Vallone D, Kirchner TR. The impact of the tobacco retail outlet environment on adult cessation and differences by neighborhood poverty. *Addiction*. 2015;110(1):152-161. doi: 10.1111/add.12718.

Additions to the Code shown in underline and deletions shown in ~~strikethrough~~

Section 4. Municipal Code Title 17 (Zoning), Chapter 17.28 (Special Uses) is amended to add Sections 17.28.095 (Check Cashers), 17.28.225 (Pawnbrokers), and 17.28.293 (Smoke or Tobacco Shops) as follows:

17.28.095 - Check Cashers.

- A. Purpose and Intent. The purpose of this Section is to provide regulations which mitigate the potential negative effects of check cashers on, and enhance compatibility with, other nearby uses.
- B. Applicability. This Section applies to check cashers.
- C. Review Requirements. Please refer to the use tables in Chapters 17.32, Residential Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
- D. Minimum Standards.
 - 1. State Licensing. All check cashers shall operate with appropriate State licensing and according to all State and local laws and regulations.
 - 2. Location. Please refer to the permitted and conditional use tables in Chapters 17.36, Commercial Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
 - 3. Hours of Operation. Hours of operation shall be determined through the Conditional Use Permit process, with 7:00 a.m. being the earliest a check casher is allowed to open and 7:00 p.m. the latest a check casher is allowed to close.
 - 4. Adjacent Uses. No check casher shall be located within 100 feet of a residentially zoned property, school, hospital, playground, or public park.
 - 5. Concentration of Uses. No check casher shall be located within 300 feet of another check casher.
 - 6. Windows and Lighting. There shall be unobscured windows and adequate interior lighting levels during business hours to maintain clear visibility of check casher operations from the exterior of the tenant space.
 - 7. Security Plan. In conjunction with the submittal of an application for a Conditional Use Permit, the applicant shall submit a security plan to prevent vandalism, breaking and entering, and other crimes at the establishment and to protect the safety of customers, employees, and other persons at the establishment. The security plan shall be subject to review and approval by the planning Commission.

17.28.225 - Pawnbroker.

- A. Purpose and Intent. The purpose of this Section is to provide regulations, which mitigate the potential negative effects of pawnbrokers on and enhance compatibility with other uses.
- B. Applicability. This Section applies to pawnbrokers.
- C. Review Requirements. Please refer to the use tables in Chapters 17.32, Residential Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
- D. Minimum Standards.
1. State Licensing. All pawnbrokers shall operate with appropriate State licensing and according to all State and local laws and regulations.
 2. Location. Please refer to the permitted and conditional use tables in Chapters 17.36, Commercial Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
 3. Hours of Operation. Hours of operation shall be determined through the Conditional Use Permit process, with 7:00 a.m. being the earliest a pawnbroker is allowed to open and 7:00 p.m. the latest a pawnbroker is allowed to close.
 4. Adjacent Uses. No pawnbroker shall be located within 100 feet of a residentially zoned property, school, hospital, playground, or public park.
 5. Concentration of Uses. No pawnbroker shall be located within 300 feet of another pawnbroker.
 6. Windows and Lighting. There shall be unobscured windows and adequate interior lighting levels during business hours to maintain clear visibility of pawnbroker operations from the exterior of the tenant space.
 7. Security Plan. In conjunction with the submittal of an application for a Conditional Use Permit, the applicant shall submit a security plan to prevent vandalism, breaking and entering, and other crimes at the establishment and to protect the safety of customers, employees, and other persons at the establishment. The security plan shall be subject to staff review and approval by the Planning Commission.

17.28.294 - Smoke or Tobacco Shops.

- A. Purpose and Intent. The purpose of this Section is to provide regulations, which mitigate the potential negative effects of smoke or tobacco shops on and enhance compatibility with other uses.

- B. Applicability. This Section applies to all smoke or tobacco shops.
- C. Review Requirements. Please refer to the use tables in Chapters 17.32, Residential Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
- D. Minimum Standards.
1. Location. Please refer to the permitted and conditional use tables in Chapters 17.36, Commercial Zones and Standards, through 17.40, Mixed-Use Zones and Standards, of this Title.
 2. Hours of Operation. Hours of operation shall be determined through the Conditional Use Permit process, with 7:00 a.m. being the earliest a smoke or tobacco shop is allowed to open and 10:00 p.m. the latest a smoke or tobacco shop is allowed to close.
 3. Adjacent Uses. No smoke or tobacco shop shall be located within 300 feet of a residentially zoned property, school, hospital, playground, or public park, or any place where children are expected to be present. No smoke or tobacco shop shall be located in a Neighborhood Commercial Zone within 300 feet of a developed lot with residential uses.
 4. Concentration of Uses. No smoke or tobacco shop shall be located within 300 feet of another smoke or tobacco shop.
 5. Windows and Lighting. There shall be unobscured windows and adequate interior lighting levels during business hours to maintain clear visibility of tobacco shop operations from the exterior of the tenant space.
 6. Security Plan. In conjunction with the submittal of an application for a Conditional Use Permit, the applicant shall submit a security plan to prevent vandalism, breaking and entering, and other crimes at the establishment and to protect the safety of customers, employees, and other persons at the establishment. The security plan shall be subject to staff review and approval by the Planning Commission.
 7. No Smoking on Premises. No smoking shall be permitted on the premises at any time.
 8. Minor Supervision. It is unlawful for a smoke or tobacco shop to knowingly allow or permit a minor, not accompanied by his or her parent or legal guardian, to enter or remain within any smoke or tobacco shop.
 9. No Sales by Minors. No sales may be solicited or conducted on the premises by minors.

10. Signage. Smoke or tobacco shops shall post clear signage stating that minors may not enter the premises unless accompanied by a parent or legal guardian. At least one such sign shall be placed in a conspicuous location near each public entrance to the smoke or tobacco shop. It shall be unlawful for a smoke shop and tobacco store to fail to display and maintain, or fail to cause to be displayed or maintained, such signage.

Section 5. Municipal Code Title 17 (Zoning), Chapter 17.36 (Commercial Zones and Standards), Section 17.36.020 (Commercial Use Regulations), Table 17.36.020 (Commercial Zone Uses), part 1 (Commercial) is amended to: (1) add rows for check cashing businesses, and smoke or tobacco shops,(2) revise the “pawn shops” row to reference “pawnbrokers” , and (3) amend table footnote 1, as follows:

17.36.020 - Commercial Use Regulations.

**Table 17.36.020
Commercial Zone Uses**

Use	Zones										NOTE
	NC 1.1	NC 1.2	NC 1.3	NC 2	NC 3	CC 1	CC 2	CC 3	CC 4	RMF 1	
...											
<u>Check Cashers</u>			<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>		1
...											
<u>Pawnbrokers</u>			<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>		1
...											
<u>Smoke or Tobacco Shops</u>			<u>C</u>			<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>		1
...											

Footnote 1:

Refer to ~~Section~~Chapter 17.28.120, ~~Convenience Stores/Retail Establishments Selling Convenience Items~~Special Uses, of this title, for special provisions for ~~convenience stores~~the referenced land use.

Section 6. Municipal Code Title 17 (Zoning), Chapter 17.40 (Mixed-Use Zones and Standards), Section 17.40.030 (Mixed-Use Regulations), Table 17.40.030 (Mixed-Use Zone Uses), Part 1 (Commercial) is amended to (1) add rows for check cashing

businesses, and smoke or tobacco shops,(2) revise the “pawn shops” row to reference “pawnbrokers, and (3) amend table footnote 1, as follows:

17.40.030 - Commercial Use Regulations.

**Table 17.40.030
Mixed-Use Zone Uses**

Use	Zones							
	MU 1	MU 2	MU 3.0	MU 3.1	MU 3.2	MU 3.3	MU 5	NOTE
...								
<u>Check Cashers</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>				<u>1</u>
...								
<u>Pawnbrokers</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>				<u>1</u>
...								
<u>Smoke or Tobacco Shops</u>								
...								

Footnote 1:

Refer to ~~Section~~Chapter 17.28.120, Special Uses~~Convenience Stores/Retail Establishments Selling Convenience Items,~~ of this title, for special provisions for the referenced land use.

Section 7. Municipal Code Title 17 (Zoning), Chapter 17.88 (Definitions), Section 17.88.030 (Definitions) is amended to add the definitions of “check chasing business,” “e-cigarette,” “pawn shop,” “smoke or tobacco shop,” “tobacco paraphernalia,” “tobacco product,” “tobacco shop,” and “tobacco” as follows:

17.88.030 - Definitions.

“Accessory tobacco sale use” means an accessory use at a grocery store, supermarket, convenience store, retail kiosk, or similar primary use, where no more than two percent of a business’ gross floor area is used for the display or retail sales of conventional cigars, cigarettes, e-cigarettes, or tobacco.

“**Check casher**” means a business engaged in cashing checks, money orders, or other commercial paper for compensation and other activities as defined in California Civil Code Section 1789.31.

“**E-cigarette**” means any electronically actuated device or inhaler meant to simulate cigarette smoking that uses a heating element to vaporize a liquid solution, popularly referred to as “juice,” and that causes the user to exhale any smoke, vapor, or substance other than that produced by unenhanced human exhalation. The juice used in e-cigarettes typically contains nicotine, and for this reason e-cigarettes and their juice can be classified as both tobacco products and tobacco paraphernalia.

“**Pawnbroker**” means a business engaged in receiving goods in pledge as security for a loan and other activity as defined in California Financial Code Section 21000.

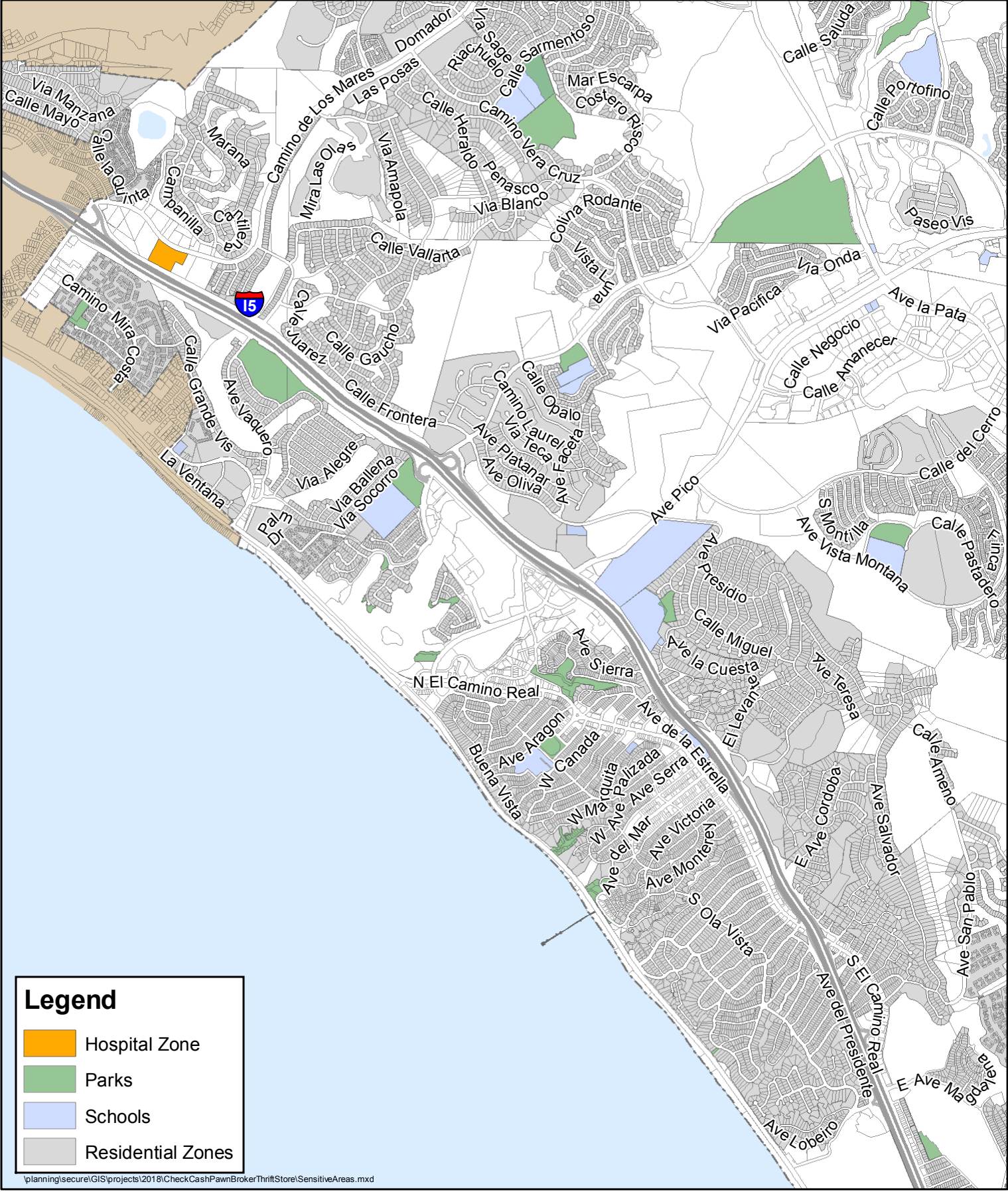
“**Smoke or tobacco shop**” means any premises dedicated to the display, sale, distribution, delivery, or offering of tobacco, tobacco products, or tobacco paraphernalia, except grocery stores, supermarkets, convenience stores, retail kiosks, or similar uses that only sell conventional cigars, cigarettes, e-cigarettes, or tobacco as an accessory tobacco sale use, as defined in this Section.

“**Tobacco paraphernalia**” means any paraphernalia, equipment, device, or instrument that is primarily designed or manufactured for the smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body of tobacco, tobacco products, or other controlled substances as defined in California Health and Safety Code Section 11054 et seq. Items or devices classified as tobacco paraphernalia include, but are not limited to, the following: pipes, punctured metal bowls, bong, water bong, electric pipes, e-cigarettes, e-cigarette juice, buzz bombs, vaporizers, hookahs, and devices for holding burning material. Lighters and matches are excluded from the definition of tobacco paraphernalia.

“**Tobacco product**” means any product in leaf, flake, plug, liquid, or any other form, containing nicotine derived from the tobacco plant, or otherwise derived, which is intended to enable human consumption of the tobacco or nicotine in the product, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. The term “tobacco product” excludes any product that has been specifically approved by the United States Food and Drug Administration (FDA) for sale as a tobacco/smoking cessation product or for other medical purposes, where such product is marketed and sold solely for such an approved purpose.

“**Tobacco shop.**” See “smoke or tobacco shop.”

“**Tobacco**” means any preparation of the nicotine-rich leaves of the tobacco plant, which are cured by a process of drying and fermentation for use in smoking, chewing, absorbing, dissolving, inhaling, snorting, sniffing, or ingesting by any other means into the body.



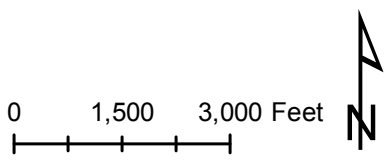
Legend

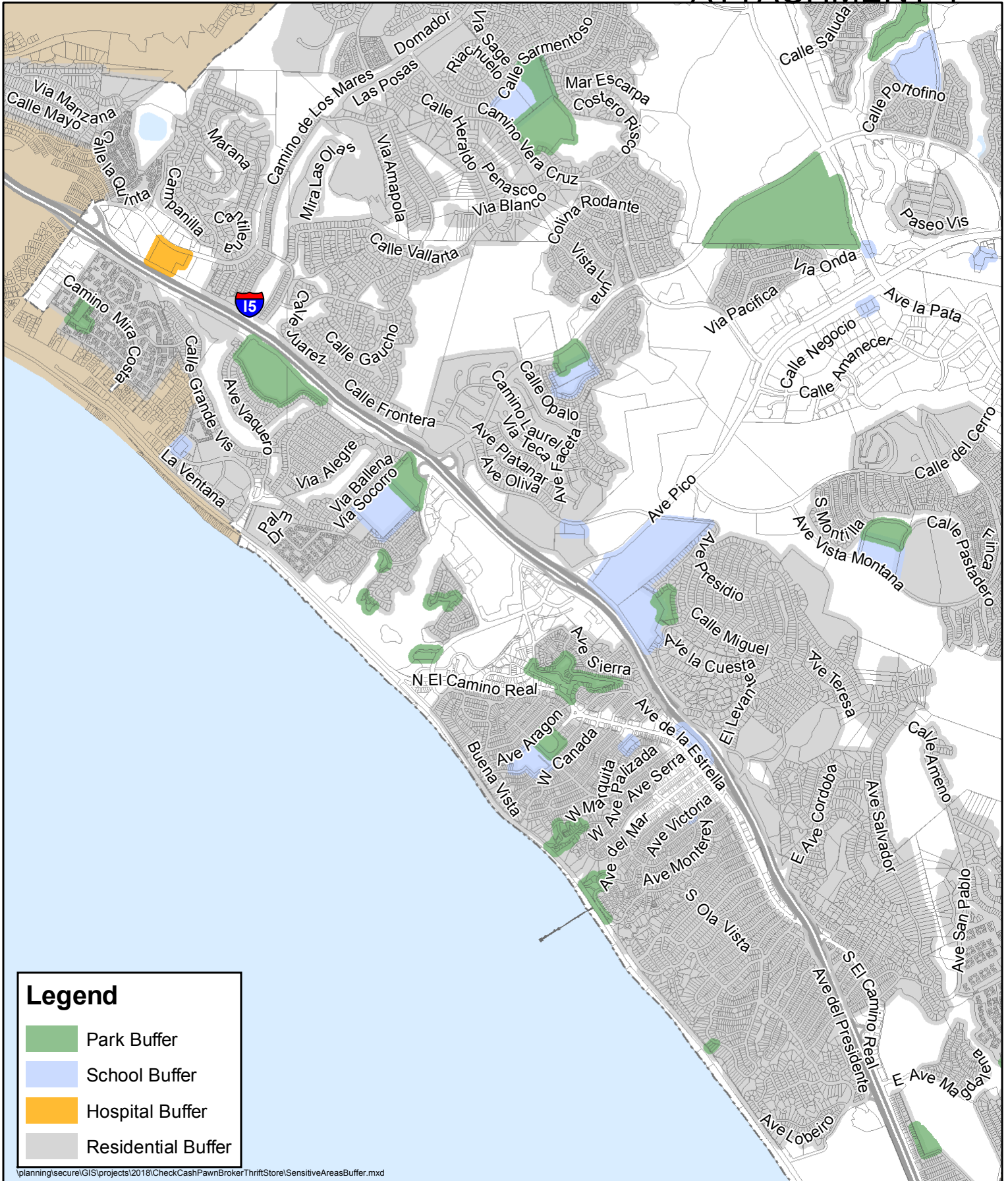
- Hospital Zone
- Parks
- Schools
- Residential Zones

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Zoning Amendment 17-043 Sensitive Areas





Legend

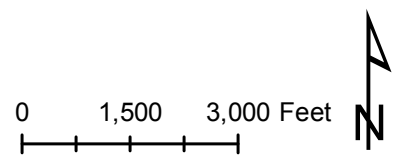
- Park Buffer
- School Buffer
- Hospital Buffer
- Residential Buffer

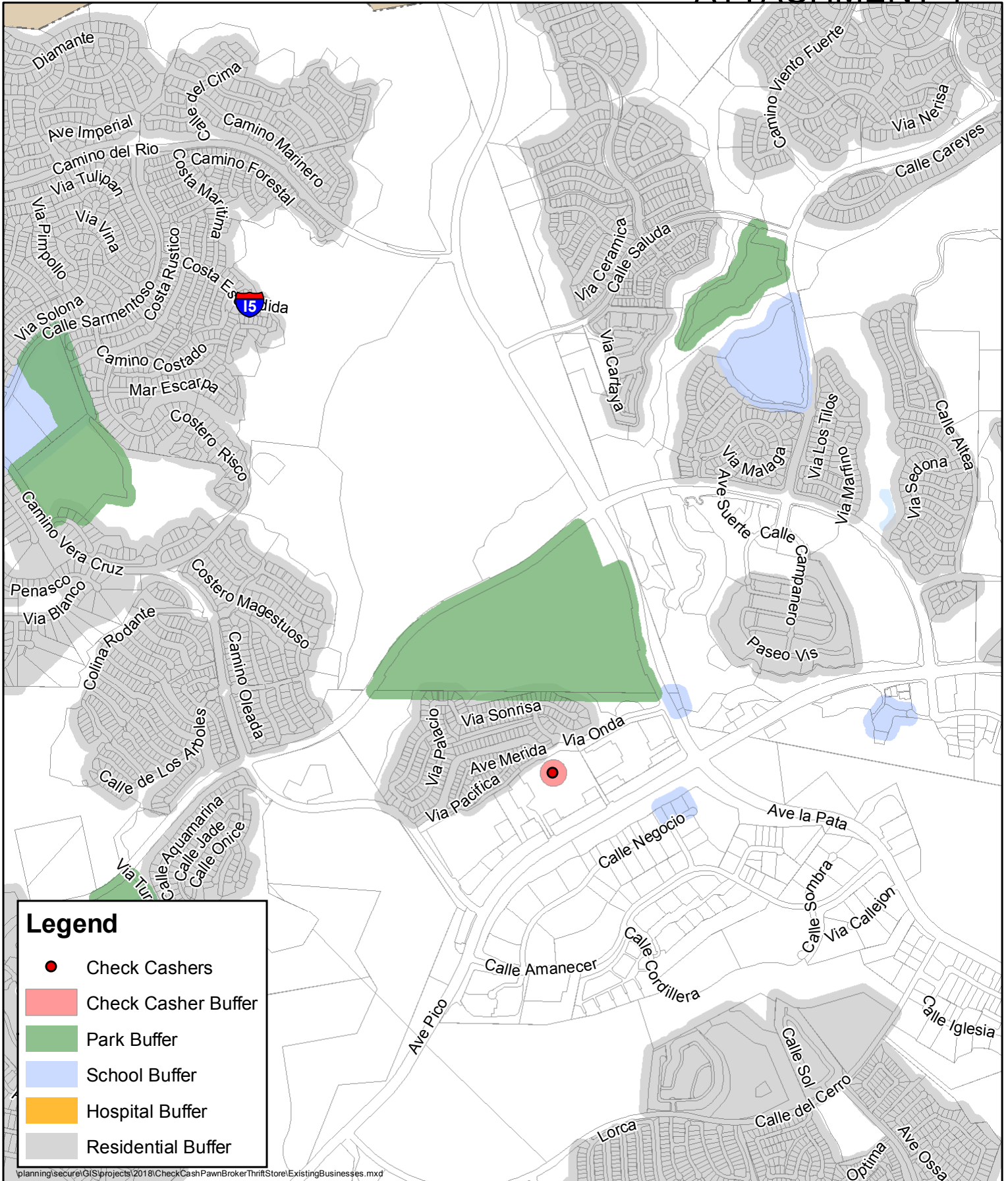
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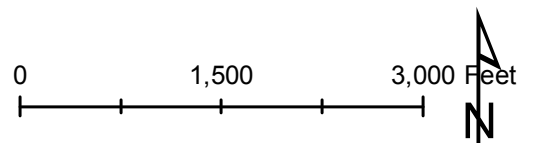
Zoning Amendment 17-043

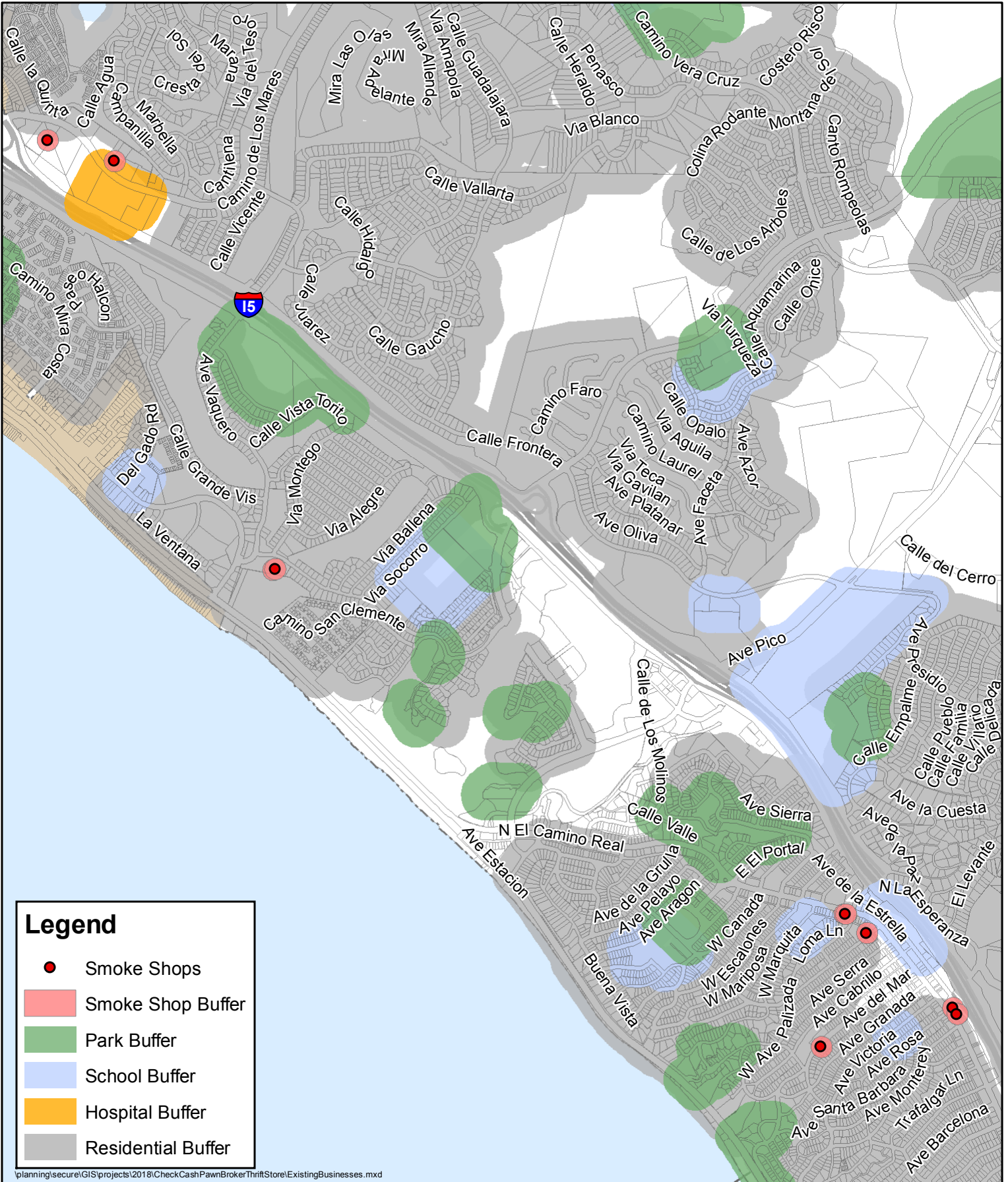
100 foot buffer from sensitive uses





Zoning Amendment 17-043
Existing Check Cashers
 100 foot buffer from sensitive uses
 300 foot buffer between businesses





Legend

- Smoke Shops
- Smoke Shop Buffer
- Park Buffer
- School Buffer
- Hospital Buffer
- Residential Buffer

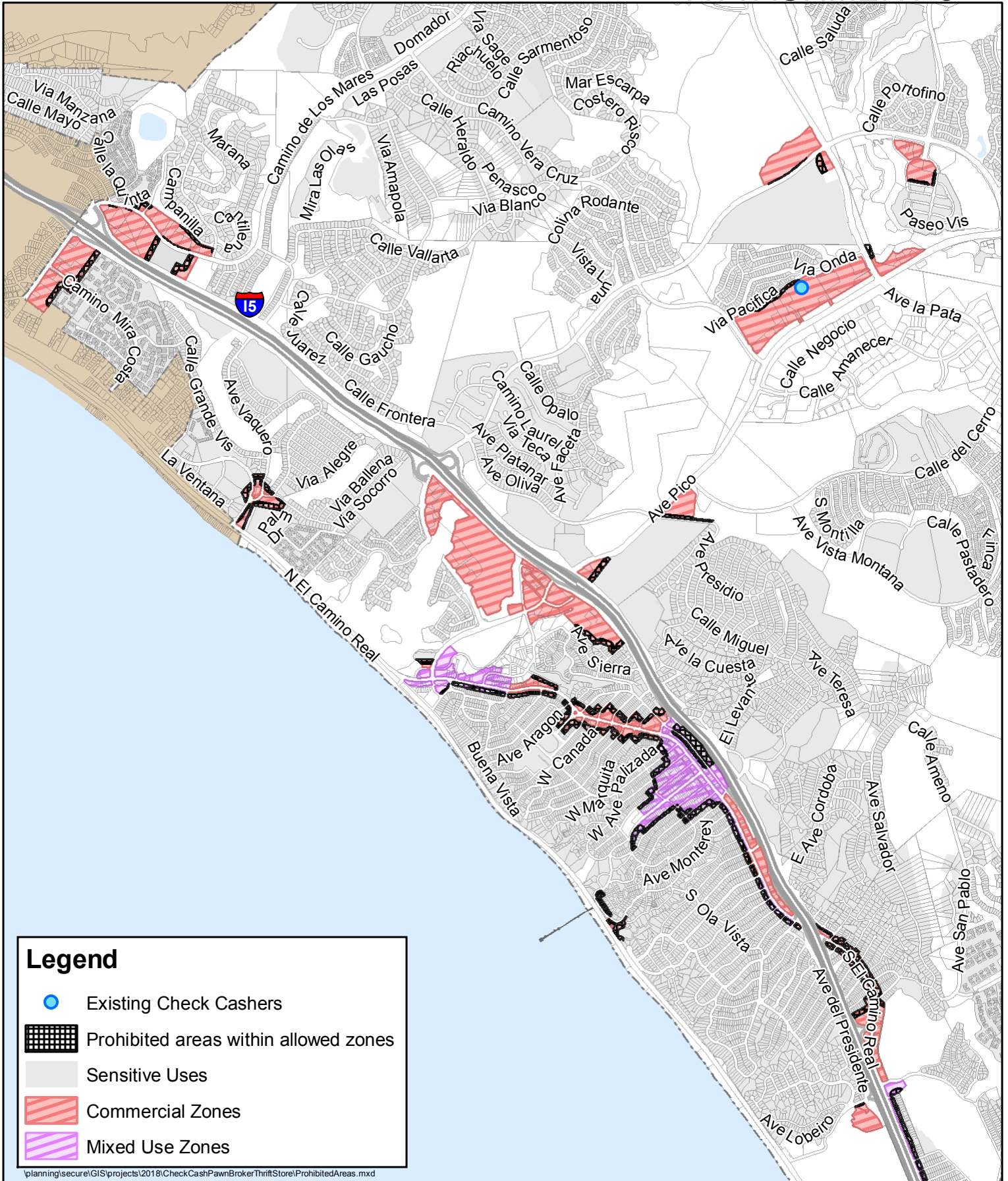
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Zoning Amendment 17-043
Existing Smoke Shops
 300 foot buffer from sensitive uses
 300 foot buffer between businesses

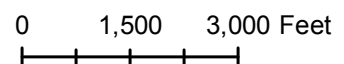
0 1,500 3,000 Feet

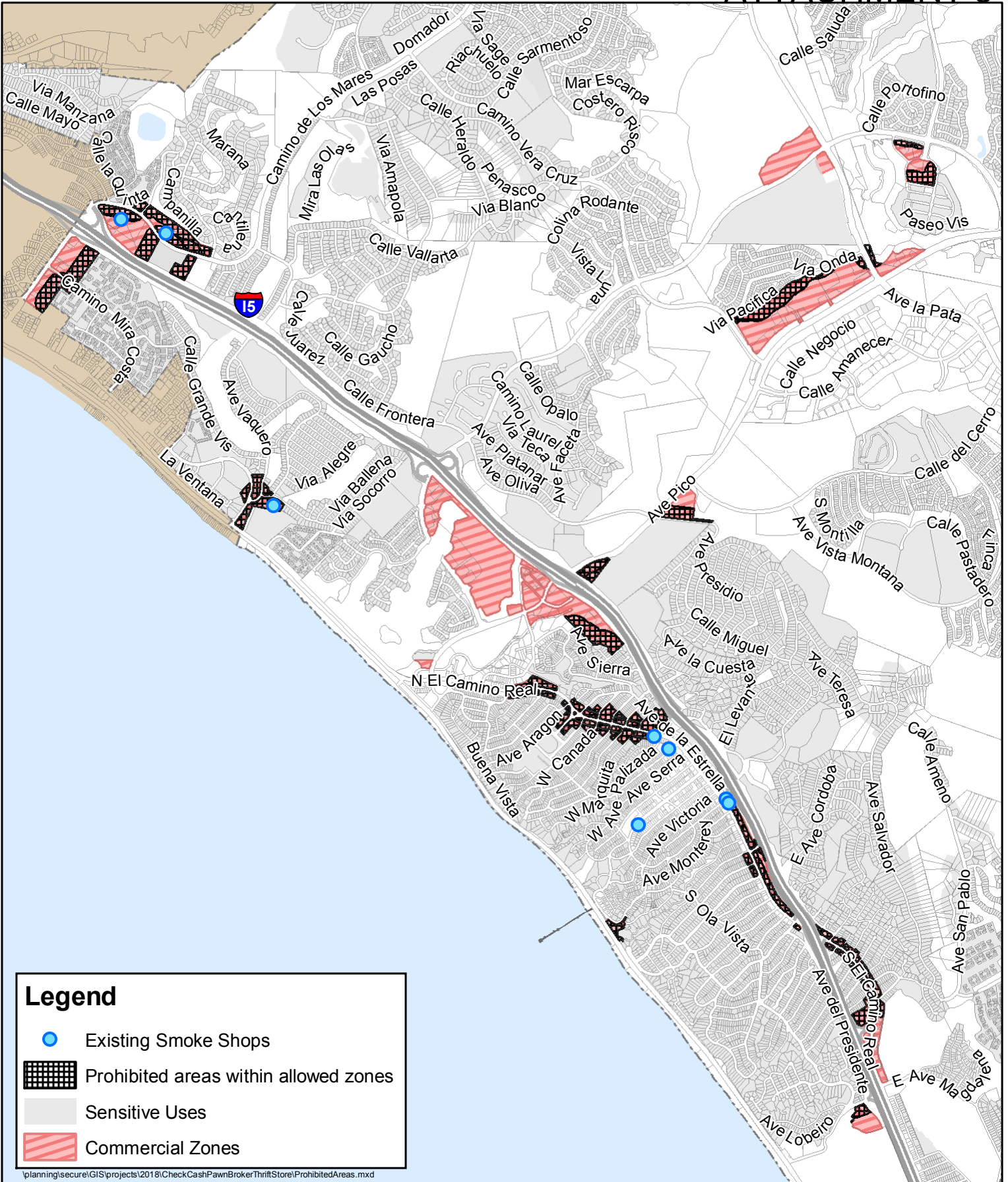




Zoning Amendment 17-043

Proposed Prohibited Areas - 100ft from Sensitive Uses
Check Cashers and Pawn Brokers





Zoning Amendment 17-043

Proposed Prohibited Areas - 300ft from Sensitive Uses
Smoke Shops

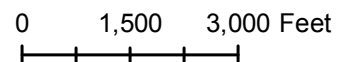


Table 1 - Use Standards

ATTACHMENT 6

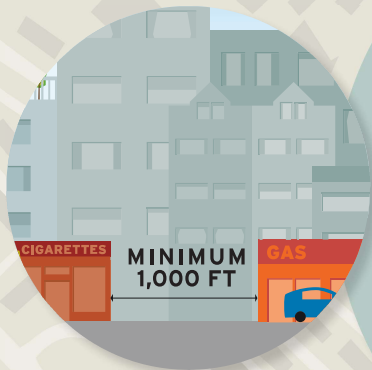
Use	Minimum Standards							
	State Licensing	Location	Hours of Operation	Adjacent Uses (distance from residential, schools, hospital, playground, or public park)	Concentration of Uses (distance between same uses)	Windows and Lighting	Security Plan	Additional Standards
Check Cashers	Required	See land use tables (chapters 17.32 to 17.40)	7:00am to 7:00pm	100 ft.	300 ft.	Windows and internal lighting must allow clear visibility into the building	Applicant must submit a security plan	
Pawnbrokers	Required	See land use tables (chapters 17.32 to 17.40)	7:00am to 7:00pm	100 ft.	300 ft.	Windows and internal lighting must allow clear visibility into the building	Applicant must submit a security plan	
Smoke or Tobacco Shops	Not Applicable	See land use tables (chapters 17.32 to 17.40)	7:00am to 10:00pm	300 ft. (and for any place where children are expected to be present). Smoke or tobacco shops in a Neighborhood Commercial Zone must be 300 feet away from a developed lot with residential uses.	300 ft.	Windows and internal lighting must allow clear visibility into the building	Applicant must submit a security plan	<ul style="list-style-type: none"> •No smoking on the premises •Minors must be supervised •No sales by minors •Clear signage stating that minors must be supervised

ATTACHMENT 7

Count of ACTUAL COMPLAINT	Smoke Shop		Smoke Shop									Grand Total	
	Column Labels	Assistance League of Capo Valley	Check Your Head	Consignment & Design Concepts	Coral Thrift Shop	Down & Out Vintage	FAM	Novella Royal	San Clemente Vape & Cigars	Sweet Repeat	The Pac Rat		La Tienda Thrift Store of OC
ALARM 10-22		1						7	1				10
ASSIST OUTSIDE AGENCY								1					1
BIKE STOLEN FROM FRONT OF BUSINESS		1									1	1	3
BROKE INTO TRASH CAN							1						1
BURGLARY	1						2				1		4
CITATION		1											1
CITIZEN DUMPED TRASH IN BUSINESS DUMPSTER							1						1
CIVIL ISSUE				1									1
COUNTERFEIT BILL	1											3	4
CUSTOMER NOT ALLOWED BACK TO STORE		1										1	2
DOG LOCKED IN CAR					1								1
DOMESTIC ARGUMENT												2	2
DUI ACCIDENT				1									1
ELDERLY HELP		1											1
EVICTON HELP					1								1
FLAGGED DOWN FOR YELP REVIEW COMPLAINTS	1												1
FOLLOW UP		2								1	1	2	6
FOUND KEYS					1								1
FRAUDULANT CC										1			1
HANDICAP PARKING W/O PLACARD											2		2
HIT AND RUN	1				1					1		1	4
IN FRONT OF STORE 914A				1									1
IRATE CUSTOMER		3		1								2	6
IRATE TRANSIENT		5											5
LEFT VEH FOR INS TO PICK UP		1											1
LOITERING	3	4	1			1				1		9	19
LOITERING - ALCOHOL	1	6	1			1		1				2	12
LOITERING - ALCOHOL - NARCOTICS												1	1
LOITERING - NARCOTICS		5	3	1						1		5	15
LOITERING - TRANSIENT	4	25	13	3		3		3			3	11	65
LOITERING - TRANSIENT - ALCOHOL		9										4	13
LOITERING - TRANSIENT - NARCOTICS		1											1
NEIGHBOR DISPUTE OVER BANNER											1		1
NOTHING SUSPICIOUS											1		1
OCCURRED ELSEWHERE												1	1
ONLINE ORDER FRAUD								1					1
PARKED OVER TIME LIMIT	1										2		3
PEOPLE SMOKING ON SIDE OF BUILDING						1							1
PETTY THEFT - CAME BACK TO PAY												1	1
ROBBERY		2											2
SKATEBOARDING AFTER DARK	1			1									2
SOVEREIGN CITIZEN								1					1
STOLE MERCHANDISE FROM BUSINESS		1				2		1		1		1	6
STOLEN VEHICLE												1	1
STORE VOLUNTEERS STOLE MONEY	1												1
SUBJECT HARRASSING CUSTOMERS		3		1								2	6
SUSPICIOUS CUSTOMER										1		1	2
TRAFFIC	3	1				1		4				3	12
TRANSIENT											1		1
TRANSIENT CUSTOMER REFUSING TO LEAVE		1											1
TRANSIENT HARASSING CUSTOMERS		1										2	3
TRANSIENT STOLE MERCHANDISE	1											2	3
TRANSIENT TRIED ATTACKING INFORMANT		1											1
TRANSIENTS HARASSING CUSTOMERS		1											1
TRANSPORT PERSON						1							1
UNFOUNDED	1					1	1						3
UNK										1			1
VEH BLOCKING ALLEY	1												1
VEH VANDALISM								1					1
WALLET THEFT												1	1
WARRANT												1	1
WELFARE		2								1			3
WINDOW SMASH										1	1		2
Grand Total	21	79	24	8	7	9	20	1	11	14	60	254	

Tobacco Retailer Density

Place-Based Strategies to Advance Health and Equity



Contents

4	Tobacco Use & Health Inequities
6	Place-Based Strategies for Restricting Tobacco Retailer Density, Location, & Type
13	Effective Approaches to Adopting Place-Based Strategies
16	Tobacco Retailer Licensing Versus Land-Use Regulations
17	Additional Policy Implementation & Enforcement Considerations
19	Conclusion
19	Resources from ChangeLab Solutions
20	Notes

The *social determinants of health* – the conditions where we live, learn, work, and play – shape our well-being. They, in turn, are determined by the distribution of wealth, power, and resources.

Health inequities – avoidable differences in health status between groups of people – persist when that distribution is unfair. Reducing and ultimately eliminating the unfair distribution of wealth, power, and resources can help to reduce health disparities and advance *health equity*.

This resource focuses on neighborhood characteristics and the physical, built environment. The location, density, and type of tobacco retailers in a community affect tobacco use rates and contribute to health inequities. Understanding this impact has led to a variety of strategies and approaches to improve the built environment with respect to where and how tobacco products are marketed and sold.



Tobacco Use & Health Inequities

Tobacco Use

When tobacco retailers are located near homes and schools, people's health suffers. Youth are more likely to experiment with smoking.^{1,2} People who smoke consume more cigarettes per day,³ and they have a harder time quitting.⁴

Tobacco use rates are affected by where tobacco retailers are located and how concentrated, or dense, they are in a given area. Increased availability of tobacco products is associated with increases in both youth and adult smoking rates,^{5,6} even when other neighborhood factors like racial composition and socioeconomic status are taken into consideration.⁷ In particular, studies have consistently shown that children are more likely to smoke when they live or go to school in neighborhoods with a high density of tobacco retailers.^{8,9,10,11} Evidence has also begun to emerge that adult smokers who are trying to quit and live within a short walking distance of a tobacco retailer are less successful at sustaining cessation than those whose closest store is farther away.¹²

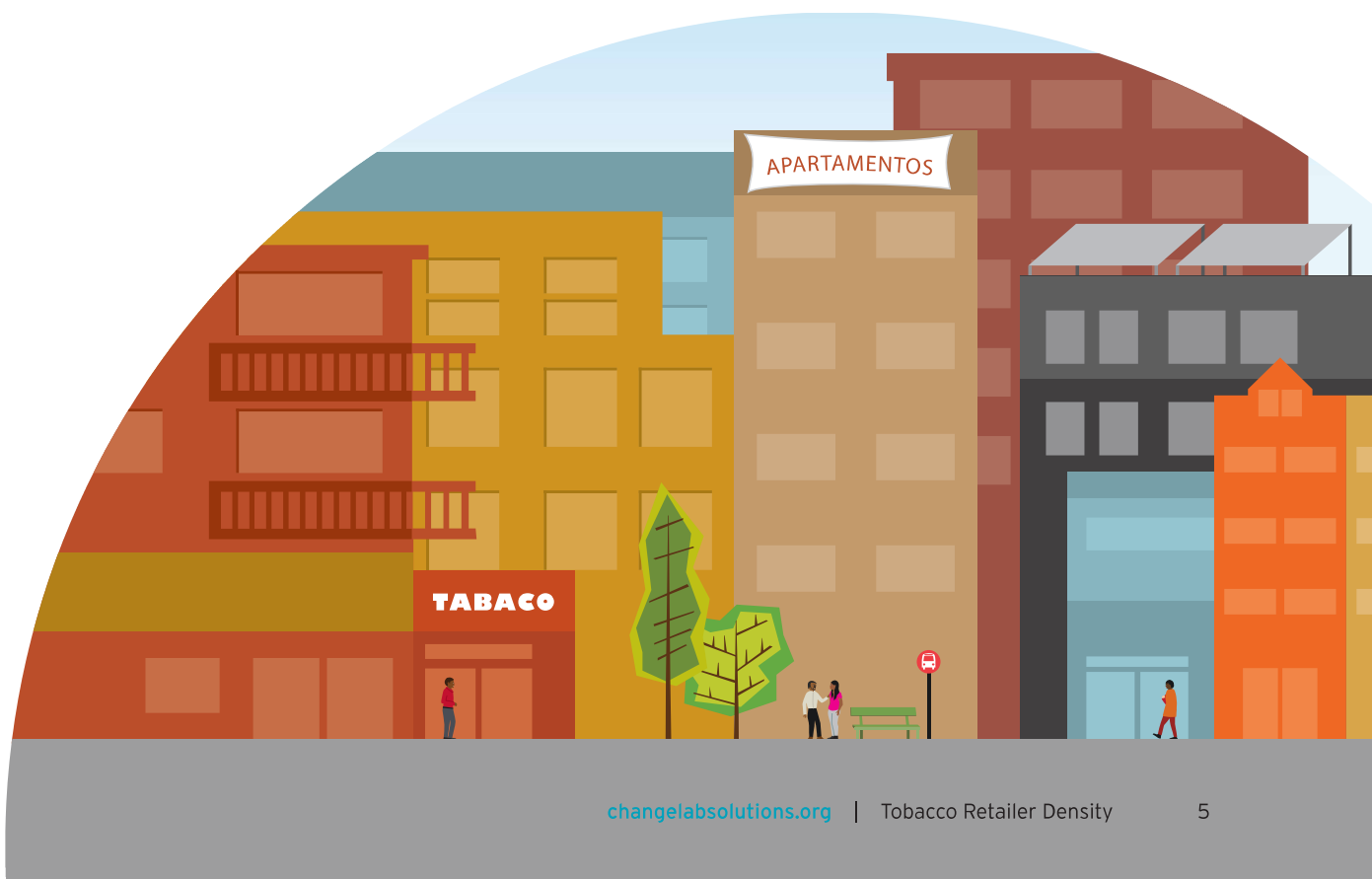
Tobacco retailers also expose individuals to tobacco advertising and marketing. With billboard, transit, and some other outdoor advertising of cigarettes prohibited by the 1998 Master Settlement Agreement,¹³ tobacco advertising has largely shifted to the retail environment – both the exterior and interior of stores.¹⁴ Tobacco advertising at the point of sale provides an environmental cue that prompts individuals to buy the product, even when they weren't originally planning to.¹⁵ One study found that 22% of daily smokers made unplanned cigarette purchases and that point-of-sale displays influenced nearly 4 times as many unplanned purchases as planned purchases.¹⁶ The combination of easy availability of tobacco products and exposure to tobacco advertising and marketing normalize and promote tobacco use.¹⁷ Restrictions that decrease tobacco retailer density make tobacco products less available and decrease exposure to tobacco advertising, both of which are likely to improve public health.

Children are more likely to smoke when they live or go to school in neighborhoods with a high density of tobacco retailers.

Health Inequities

Tobacco retailers cluster in neighborhoods with a high percentage of low-income residents or residents of color.¹⁸ Tobacco retailers are notably more prevalent in neighborhoods with a high proportion of African American residents and in urban neighborhoods with a high proportion of Hispanic residents.¹⁹ These communities are targeted by tobacco companies, and they suffer disproportionately from the health harms caused by tobacco use.²⁰ Recent evidence also suggests that disparities in tobacco retailer density differ in rural and urban settings, with higher tobacco retailer density in urban locations²¹ and strikingly lower retailer density for Hispanics in some rural communities.²² Discriminatory distribution of tobacco retailers perpetuates existing tobacco use disparities, which in California include a smoking rate among African Americans of 17.8% and among American Indian or Alaska Natives of 29.5%, compared with 13.4% of whites.²³

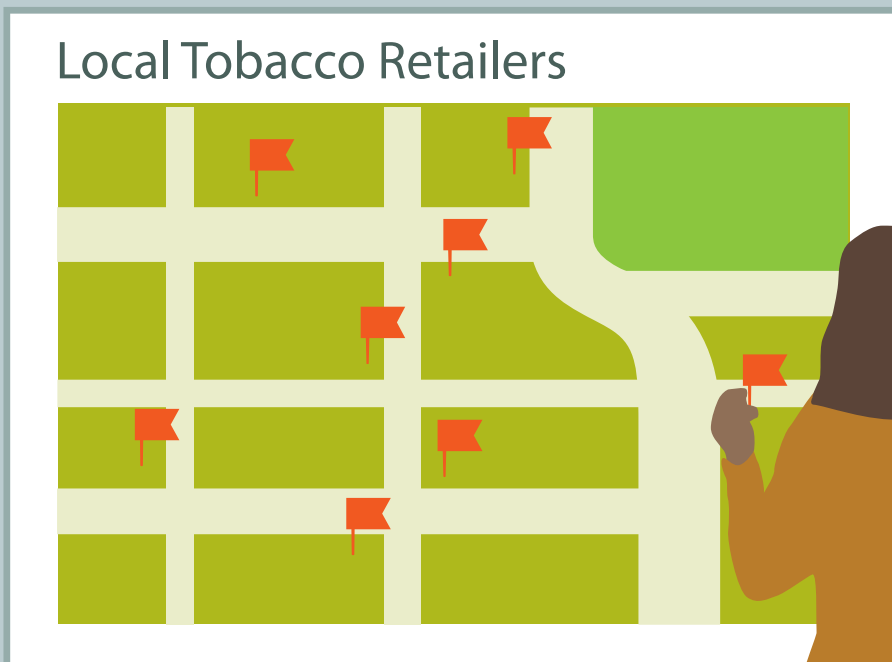
Studies have also measured the potential impact of tobacco retailer location and density on actual health outcomes. Early research suggests higher hospitalization rates for chronic obstructive pulmonary disease (for which smoking is a primary risk factor) in areas with more tobacco outlets.²⁴ More recent evidence shows that higher tobacco store density is associated with shorter life expectancy and more deaths, even when other factors such as age, income, and race are taken into consideration.²⁵



Place-Based Strategies for Restricting Tobacco Retailer Density, Location, & Type

Place-based planning for health has been in place for centuries, from reducing the spread of communicable diseases by mapping sewage facilities for sanitation purposes to more recent land-use controls that reduce the availability of alcohol.²⁶ The latter includes strategies to limit the spread of alcohol outlets, which have been proven effective in reducing alcohol consumption²⁷ and have been upheld when challenged in court.²⁸ The success of this approach has led to increased interest in applying the same retailer reduction strategies to tobacco control.

A variety of strategies to limit tobacco retailers are available. Some of the most common ones are highlighted in this section. There is no one-size-fits-all solution.²⁹ The right solution(s) for a community will depend on the existing landscape of tobacco retailer locations, population demographics, the community's layout and land uses, and a variety of other policy adoption, implementation, and enforcement factors.



Cap the Number of Retailers: Different Approaches

Perhaps the most straightforward approach to capping the number of retailers is to set a static maximum number of stores allowed by implementing a **hard cap on the number of retailers** allowed to operate. That is, unless legislatively changed, the number would not fluctuate as it might with other strategies that predicate the cap on a variable that can change (eg, population size). **Contra Costa County** in California used this approach in 2017, capping the number of tobacco retailers at 90 for unincorporated areas,³⁰ which is the number of licenses that existed at the time the policy was adopted.³¹

The hard cap strategy could also apply to only a subset of tobacco retailers that may be of particular concern to a community. For example, in the Minneapolis–St. Paul, Minnesota, suburb of **Little Canada**, no limit is placed on general tobacco retailer stores, but the number of significant tobacco retailers (ie, retailers whose tobacco sales account for more than 90% of their gross revenue) is capped at 2.³²

Cities and counties can also limit retailers by setting a **cap on the number of retailers by population size**; for example, California state law limits the number of off-site alcohol outlets to 1 per 2,500 county inhabitants.³³ A number of other states also use this strategy for alcohol retailers,³⁴ and this strategy alone can limit or reduce retailer density if the cap is set at or below a community's existing per capita threshold. For example, if current density is 1 tobacco retailer per 1,500 residents, setting that as the threshold would cap density at the status quo. To reduce density, a city or county could set the cap at 1 per 3,000 residents.

As part of a tobacco retailer licensing (TRL) ordinance adopted in 2016, **unincorporated Sonoma County**, California, defines its allowed retailer density by population size, restricting the number of tobacco retailers in its unincorporated areas to 1 per 2,000 residents countywide,³⁵ or about 75 retailers total.³⁶ About 175 miles northeast of Sonoma County and 65 miles directly north of Sacramento is the Butte County seat of **Oroville**. Since 2013, Oroville has had a zoning restriction for a subset of tobacco retailers whose primary business is tobacco sales, limiting these significant tobacco retailers to 1 per 4,000 residents.³⁷ Oroville's zoning restriction recognizes that no new significant tobacco retailers are permitted until either the population grows or the number of significant tobacco retailers drops below the population-size threshold set by the city.³⁸

Finally, cities and counties can implement a **cap on the number of retailers by geographic area**. In 2014, **San Francisco** adopted a density restriction, effective in 2015, that set a cap of 45 tobacco retailers per electoral district.³⁹ Among San Francisco's 11 supervisorial districts

A variety of strategies to limit tobacco retailers are available. There is no one-size-fits-all solution.

at the time the ordinance was adopted, the number of tobacco retail licenses ranged from a low of 37 in a district with a median household income of over \$94,000 to 180 in a district whose median household income was just shy of \$37,500.⁴⁰ Thus, a 6-year advocacy effort sought “to reduce the overconcentration of tobacco retail outlets in low income neighborhoods and neighborhoods of color” by halving the total number of outlets from just over 1,000 at the time of policy adoption to 495 in 10–15 years.⁴¹ Given the pre-existing disparity in the number of licensed retailers by district, the law has reduced retailer density (and is expected to continue to reduce it) in the districts most disproportionately affected by easy and overabundant tobacco access.⁴²

With the highest adult smoking rate among the country’s 10 largest cities (23%) and almost twice the number of tobacco retailers per capita compared with other major cities, including San Francisco,⁴³ **Philadelphia** set a cap on the number of tobacco retailers in 2016: 1 per 1,000 people per planning district.⁴⁴ The law uses a commuter-adjusted daytime population, which means the reduction in retailers should occur primarily in residential areas rather than in the city center, where more people work during the day.⁴⁵ Before the law went into effect in 2017, the city had about 3,500 active tobacco retailer licenses and almost half of those retailers were located in low-income communities.⁴⁶ Evaluation of Philadelphia’s law is planned,⁴⁷ but nothing has been published as of the release date of this fact sheet.

All of the strategies discussed so far can be implemented as a reduction in the number of retailers by attrition (eg, no new stores until a specific number is reached through natural turnover). For example, in California, **unincorporated Sonoma County**’s cap of 1 tobacco retailer per 2,000 countywide inhabitants⁴⁸ – about 75 retailers total – did not apply to the roughly 130 existing tobacco retailers who met certain requirements.⁴⁹ Instead, no new retailers are permitted until the density drops below the set per capita threshold. Similarly, **San Francisco**’s tobacco retailer cap of 45 per supervisorial district exempted existing licensed retailers,⁵⁰ relying on attrition – non-renewals of licenses – to eventually reach their reduced density goal.

Pre-existing inequities in the location and distribution of tobacco retailers might not be alleviated through one strategy alone. To ensure special consideration of such inequities, each strategy should be combined with others – for example, adding a geographical element to a population cap, as San Francisco and Philadelphia did. Still, each strategy alone can limit or reduce overall tobacco retailer density.⁵¹

A San Francisco law has reduced retailer density in the districts most disproportionately affected by easy and overabundant tobacco access.

Limit Proximity to Other Retailers

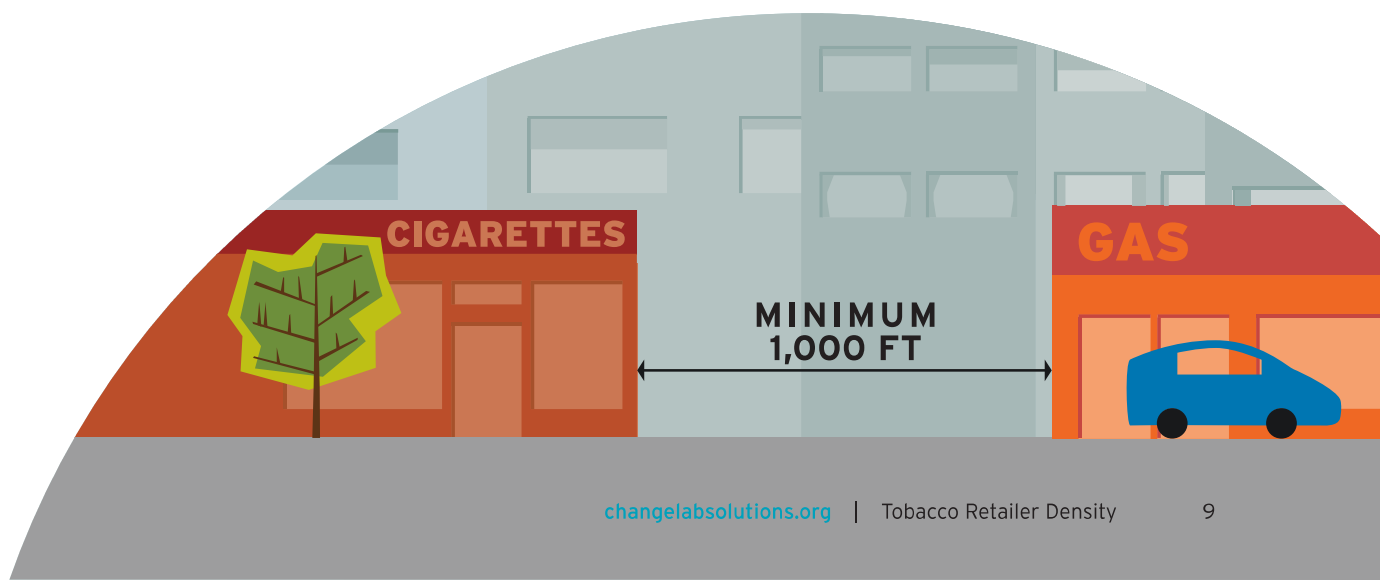
Another strategy to limit tobacco retailers is to require a minimum distance between stores. Depending on the distance and a community's layout and land uses, this option could reduce overall tobacco retailer density and address pre-existing inequities in the location and distribution of tobacco retailers. Jurisdictions can also consider proximity to retailers of other commonly co-used products such as alcohol or cannabis when creating policies on the siting of tobacco retailers.⁵²

The following examples from 3 different communities demonstrate some of the possible variations of this strategy:

- In 2017, **Palo Alto**, California, prohibited new tobacco retailers from locating within 500 feet of another tobacco retailer as part of a TRL ordinance.⁵³ Known as the birthplace of Silicon Valley, Palo Alto encompasses roughly 26 square miles (one-third of which is open space) and has about 67,000 total residents.⁵⁴
- Since 2011, the TRL ordinance of **Huntington Park**, California, has required that no new tobacco retailers be licensed to operate within 200 feet of another tobacco retailer.⁵⁵ Huntington Park, a city in southeast Los Angeles County, is only 3 square miles in area but has over 61,000 residents, who are predominantly Hispanic.⁵⁶
- In 2016, **Benton County**, Oregon, enacted a TRL ordinance with a restriction that prevents new tobacco retailers from opening within 1,000 feet of another tobacco retailer.⁵⁷ Benton County's population of over 91,000 residents spans 679 square miles.⁵⁸

In modeling studies, the strategy of requiring a minimum distance between tobacco retailers has been shown to reduce overall tobacco retailer density,⁵⁹ especially in dense, low-income, urban communities.⁶⁰ In fact, in one study testing the impact of tobacco retailer density in North Carolina, a 500-foot minimum distance between retailers reduced density by 22.1% for the state and 20.8% at the county level.⁶¹

In modeling studies, the strategy of requiring a minimum distance between tobacco retailers has been shown to reduce overall tobacco retailer density, especially in dense, low-income, urban communities.



Limit Proximity to Schools & Other Youth Areas

Given consistent research findings that the number of tobacco retailers near schools correlates with increased smoking rates, a common tobacco reduction strategy is limiting how close tobacco retailers can be to schools and other youth-oriented areas such as parks, playgrounds, and child care facilities. Tobacco retailers near schools with high smoking rates have also been shown to have lower cigarette prices and more in-store promotions.⁶² Studies that have mapped tobacco retailers have also shown that a substantial portion of access to tobacco products and exposure to point-of-sale tobacco advertising could be eliminated by creating, for example, a 1,000-foot buffer zone between schools and tobacco retailers.⁶³

In California's Eastern Sierra region, the city of **Bishop** adopted a zoning restriction in 2016 that prohibits tobacco retailers from locating within 1,000 feet of primary or secondary schools.⁶⁴ In southern Minnesota, **Renville County** adopted a TRL ordinance in 2015 that similarly prohibits tobacco retailers from operating within 1,000 feet of schools, playgrounds, houses of worship, and other youth-oriented facilities.⁶⁵

Depending on the distance selected and a community's layout and land uses, limiting tobacco retailers' proximity to youth-oriented facilities could reduce tobacco retailer density and address pre-existing inequities in the location and distribution of tobacco retailers. In modeling studies, this strategy has been shown to reduce overall tobacco retailer density,⁶⁶ with greater distances providing greater reductions in density.⁶⁷ For example, in a low-income, urban community, density decreased from 12.03 retailers per square mile to 11.27 with a distance of 500 feet, 6.75 at 1,000 feet, and 3.23 at 1,500 feet.⁶⁸ However, restricting retailers near schools could also have the unintended result of increasing tobacco retailer density in parts of a community that are not located near schools. Thus, combining this strategy with other restrictions would likely be necessary to prevent that outcome.

Research finds that the number of tobacco retailers near schools correlates with increased smoking rates.

Prohibit Tobacco Product Sales at Pharmacies & Other Health Institutions

In 2015, 14.3% of tobacco retailers in the country had a pharmacy counter,⁶⁹ despite the fact that in 2014, CVS pharmacies had voluntarily stopped selling tobacco products and state attorneys general from 28 states had sent letters to 5 of the nation's largest retail pharmacies, encouraging them to cease selling tobacco products in their stores.⁷⁰

Sales of harmful tobacco products in pharmacies and other health-promoting organizations like hospitals and behavioral health facilities are an inherent conflict of interest and send mixed messages to individuals about tobacco's health risks. Interestingly, research has also shown that the price of cigarettes is significantly cheaper in pharmacies, whereas bottled water costs substantially more in pharmacies than in other stores.⁷¹ Furthermore, while bottled water prices were not related to neighborhood demographics, cigarettes cost less in low-income areas and Newport menthol cigarettes were cheaper in African American communities.⁷² Thus, mandating tobacco-free pharmacies not only decreases the availability of tobacco products but also removes a source of discounted cigarettes.



Litigation against **San Francisco's** first-in-the-nation ban on tobacco sales in pharmacies in 2008 made clear that communities may prohibit tobacco sales in pharmacies as long as all pharmacy retailers are treated similarly (equal protection under the law).⁷³ In the context of prohibiting tobacco product sales at pharmacies or other health-promoting institutions, the more comprehensive (ie, without exceptions) the policy is, the more likely the law is to avoid equal protection challenges.

Since San Francisco led the way, at least 10 other California communities have applied the learnings from San Francisco to their own tobacco-free pharmacy laws.⁷⁴ For example, in 2015, **Hollister**, the county seat of San Benito County in central California, prohibited pharmacies from operating as tobacco retailers as part of a TRL ordinance.⁷⁵ Local jurisdictions in **Massachusetts** have been particularly active with this strategy; over 80 cities and towns have adopted tobacco-free pharmacy laws, prohibiting over 500 pharmacies from selling tobacco products.⁷⁶ First in Massachusetts and second in the nation was **Boston**, which prohibited not only pharmacies but also health care organizations and educational institutions from selling tobacco products.⁷⁷

Tobacco-free pharmacy policies decrease the availability of tobacco products by reducing tobacco retailer density by up to 3 times, compared with communities that do not have such policies.⁷⁸ Evidence from the nationwide CVS policy change showed that cigarette purchases declined and that smokers who had previously purchased their cigarettes exclusively at CVS were up to twice as likely to stop buying cigarettes entirely.⁷⁹

Over 80 cities and towns in Massachusetts have adopted tobacco-free pharmacy laws, prohibiting over 500 pharmacies from selling tobacco products.

Effective Approaches to Adopting Place-Based Strategies

Communities have long used their police power to adopt laws that protect and promote the health, safety, morals, and general welfare of their residents.⁸⁰ Two of the primary ways that communities have exercised this authority is through (1) licensing regulations and (2) regulating the use of land.^{81,82}

Licensing

Licensing is a tool that governments use to regulate businesses and professionals, usually to maintain a set of standards that a community deems important. A license grants the license holder permission to engage in the business or profession as long as minimum standards of conduct and operation are met. Communities set those standards, subject to state and federal limitations, and often require a fee to cover the costs of administering the license and ensuring compliance with license requirements and related regulations.



The privilege of engaging in the particular licensed business or profession is usually specific to the individual license holder. Thus, rather than creating a property right that attaches to the land where a business is located, the specific license holder is accountable for ensuring that the standards and conditions incorporated into the license are met. If license terms or conditions are violated, the license is suspended or revoked; it does not remain with the land where the business is located. Additionally, with varying eligibility requirements and standards of conduct for different types of licenses, many communities make licenses non-transferable to ensure that potential license holders are fit to engage in a particular business or profession responsibly.

All of the characteristics of licensing just described apply in the context of **tobacco retailer licensing (TRL)**. Under tobacco retailer licensing, all retailers who want to sell tobacco products to consumers in a particular jurisdiction must obtain and maintain a license from that jurisdiction. In order to do so, a retailer must meet eligibility requirements and comply with the license's standards of conduct and operation or risk having their license suspended or revoked. License fees generally and license revocation for retailers who violate their terms make licensing itself a strategy for reducing tobacco retailer density. In fact, in **Santa Clara County**, California, the implementation of TRL resulted in an immediate reduction of tobacco retailers.⁸³

A tobacco retailer license does not remain with the land where the business is located, and many communities make licenses non-transferable.

Land-Use Regulations: Zoning & Conditional Use Permits

Zoning is a way to specify both general and specific uses of property and may also govern the buildings themselves (eg, size, height, location on a lot). In use-based zoning, certain areas, or zones, are assigned general yet distinct, separate uses (eg, residential, commercial, industrial, or agricultural) or even mixed uses (eg, residential and commercial). In the various zones, specific types of use (eg, tobacco retail) are then categorized as permissible; prohibited; or permitted, subject to certain conditions specified in a conditional use permit (CUP).

A CUP allows a community to make an exception for specific land uses otherwise prohibited by general zoning controls (eg, allowing a business in a residential zone) or to attach certain conditions to the use of land, even if that use is consistent with zoning uses (eg, setting requirements to mitigate excessive traffic for a specific business in a commercial zone). CUPs give local governments flexibility to make an individualized decision about the suitability of a potential use in a particular area.

For example, a zoning restriction may require that a tobacco retailer apply for a CUP in order to open their business in an area zoned for residential use. The community could stipulate that a CUP can be issued to a tobacco retailer only if the business is not located within 500 feet of a school. If the proposed location is within 500 feet of a school, the community would deny the CUP and the business would not be permitted to open.

Zoning laws grant rights attached to the land, meaning that once a parcel of land is designated for a particular use, the designation remains with the land even if there is a change in ownership. This feature makes it difficult to impose new restrictions on existing businesses. Similarly, regardless of ownership changes, a CUP can apply indefinitely to its specific location, as long as the conditions set in the CUP are met. Thus, once zoning uses are in effect for a given property, they have long-lasting impacts.

The long-term nature of zoning means that land-use regulations can be beneficial for tobacco control purposes in the long run, but they can also pose immediate and long-term challenges, depending on a community's growth and redevelopment. In communities with little growth and redevelopment, new zoning restrictions may have little or no impact on tobacco retailer density, especially in the short term. Even in communities with strong growth and redevelopment, improvements in tobacco retailer density through land-use restrictions can take many years.

Zoning laws grant rights attached to the land, and the use designation remains with the land even if there is a change in ownership. Thus, once zoning uses are in effect for a given property, they have long-lasting impacts.



Tobacco Retailer Licensing Versus Land-Use Regulations

When TRL is not a feasible option, here are some considerations in deciding whether land-use restrictions are appropriate for your community:

- **How concerned is your planning commission about health and tobacco use in particular?**
The input of a city or county planning commission is typically required for land-use changes.
- **What is your community's interest in regulating sales practices for tobacco products (eg, price or flavor restrictions)?**
Because zoning and CUP restrictions are about regulating land uses, TRL is better suited for more complex regulations of tobacco product sales. While it is possible to impose these types of regulations via CUPs, this approach is less than ideal because the enforcement, administration, and funding mechanisms offered by CUPs are less effective than those available through TRL.
- **Who is best suited to administer and enforce restrictions?**
Land-use regulations are typically administered and enforced by zoning or building code departments, and CUPs often require the approval of a city council or county board of supervisors. TRL can be administered and enforced by the city or county department best suited to do so, particularly because the licensing fee creates a funding stream to cover ongoing program costs.
- **Will restrictions apply to existing tobacco retailers?**
Imposing new land-use restrictions on existing businesses can be difficult, but it is possible. New licensing requirements can be applied to existing businesses relatively quickly, given that license terms are usually a year. Grandfathering and amortization are discussed in the next section.

TRL is better suited for more complex regulations of tobacco product sales and can be applied to existing businesses relatively quickly.

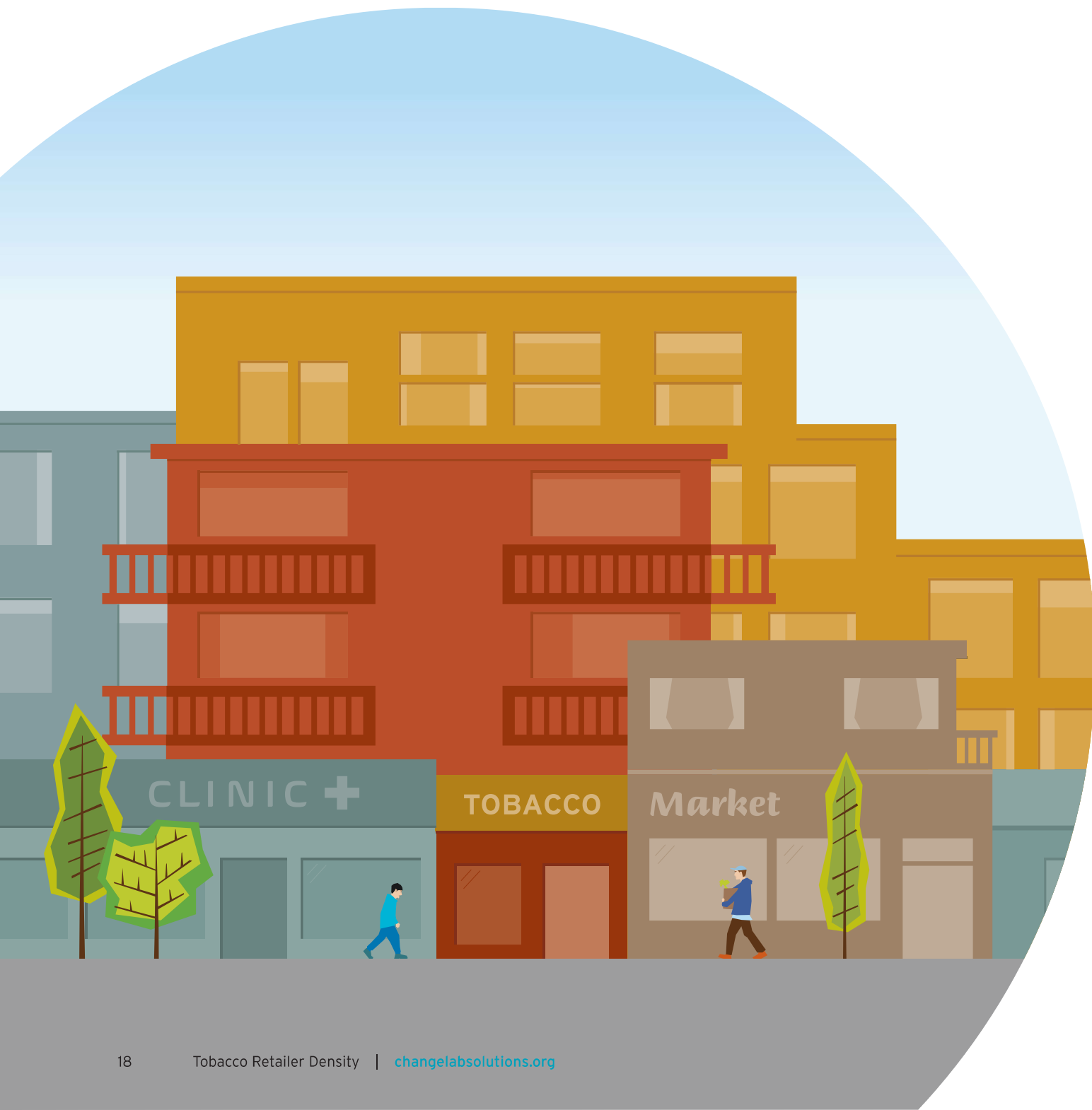
Additional Policy Implementation & Enforcement Considerations

When deciding on the best way to reduce the availability of tobacco products and advance health equity, communities may want to consider a variety of additional factors:

- Geographic information systems (GIS) are a tool that can be used to present spatial data. **GIS mapping** can be helpful for showing a community's current tobacco retailer landscape (eg, identifying store locations and their proximity to each other, schools, and other points of interest); measuring retailer density in different neighborhoods; showing how different minimum distance requirements would affect various factors; or overlaying population demographics to provide information on existing and potential disparities as well as to help with selection of the most appropriate strategies.
- Determining the **impact** of new tobacco retailer location, density, and type restrictions on existing businesses is important. This consideration may be particularly important in underserved communities. Exempting existing businesses is often the default choice for political or other reasons, but it is not required. As already discussed, it can be difficult to apply new land-use regulations to existing businesses, but it is possible. And in the context of TRL, communities have a number of choices, including applying restrictions to existing businesses. When implementing restrictions on existing retailers, communities may want to consider the following options:
 - **Grandfathering** existing retailers memorializes the status quo and can limit the proliferation of additional tobacco retailers, but it can also minimize the practical effect and dramatically slow the impact of TRL in improving public health and advancing health equity. Awaiting natural turnover of businesses through either failure or changes in ownership may seem like a gradual phase-out, but in reality, grandfathering reduces competition among existing retailers and may have the unintended result of keeping the status quo indefinitely. Adding a **sunset provision** to any grandfathering policy can limit these drawbacks to a specific period of time.

Grandfathering reduces competition among existing retailers and may have the unintended result of keeping the status quo indefinitely, but a sunset provision can limit these drawbacks.

- **Amortization**, conceptually similar to a sunset provision for grandfathering, is employed in land-use planning to eliminate nonconforming land uses. Amortization allows existing retailers to operate during a set time period (eg, a few months) to recover their investment before the nonconforming use must be terminated. The appropriate time period will vary by jurisdiction, but amortization periods have been upheld by courts in other contexts as a constitutional way for local governments to balance the public interest and the financial impact on a private business.



Conclusion

Tobacco retailer licensing is a proven effective means of restricting tobacco retailer density and reducing access to and use of tobacco products. Depending on state law and a locality's licensing authority, TRL may be the best strategy for reducing tobacco retailer density. All California cities and counties have the legal authority to enact TRL.⁸⁴ By implementing a comprehensive TRL policy, a community can help prevent illegal access to tobacco products, decrease tobacco product use and initiation among its most vulnerable populations, and enjoy the health benefits of reduced tobacco use.

Resources from ChangeLab Solutions

- For a more detailed guide to licensing and zoning, see *Licensing & Zoning: Tools for Public Health*.
changelabsolutions.org/publications/licensing-zoning
- For a look at how licensing can be used to achieve public health goals, see *Tobacco Retailer Licensing: An Effective Tool for Public Health*.
changelabsolutions.org/publications/tobacco-retailer-licensing
- For a more in-depth look at how TRL works in practice, read *Show Me Your License: The Basics of Tobacco Retailer Licensing*.
changelabsolutions.org/publications/show-me-your-license
- For a comprehensive strategy to implement a TRL policy, see *Tobacco Retailer Licensing Playbook*.
changelabsolutions.org/publications/tobacco-retailer-licensing-playbook
- For answers to frequently asked questions about TRL, visit Tobacco Control FAQs.
changelabsolutions.org/tobacco-control/ask-question#licensing
- For model TRL ordinance language, check to see whether an organization in your state has produced model language or visit California Comprehensive Tobacco Retailer Licensing: Model Ordinance, Checklist, and Supplemental Plug-Ins.
changelabsolutions.org/publications/model-TRL-Ordinance
- For a broader look at regulating the sale and marketing of tobacco products, read the *Point of Sale Playbook*.
changelabsolutions.org/publications/point-of-sale

Notes



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Acknowledgments



This fact sheet was written by Darlene Huang (consultant), with assistance from Jessica Breslin (staff attorney), Erin O’Malley (legal fellow), Pratima Musburger (program director), and Derek Carr (staff attorney). Editorial and design support was provided by Carolyn Uno (copywriter & editor) and Kim Arroyo Williamson (director of communications). All are affiliated with ChangeLab Solutions.

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This material was made possible by funds received from Grant Number 14-10214 with the California Department of Public Health, California Tobacco Program.

Design and illustration by Karen Parry | Black Graphics

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Motion carried 5-0-2, with Commissioner Brown and Commissioner Talley being absent.

[DECISION FINAL. SUBJECT TO APPEAL OR CALL UP BY COUNCIL.]

D. Zoning Amendment 17-043 – Check Cashers, Pawnbrokers, and Smoke Shops Ordinance (Perez)

Public hearing to consider a proposal to amend San Clemente Municipal Code Title 17, the Zoning Ordinance, regarding the regulation of check cashers, pawnbrokers, and smoke shops. The Planning Commission will be considering changes to the Zoning Ordinance in Chapters 17.28, 17.36, 17.40, and 17.88 related to special uses, the permitted zones for the special uses, and related definitions.

Gabriel J. Perez, City Planner, narrated a PowerPoint Presentation entitled, "Zoning Amendment 17-043, Standards for Check-Cashers, Pawnbrokers, and Smoke or Tobacco Shops," dated May 8, 2019. A copy of the Presentation is on file in Planning Division.

Chair Crandell opened the public hearing.

Theodore Lee, Laguna Niguel resident and San Clemente Smoke Shop owner, provided public testimony and stated he has been in business for 20 years in this location. Although he has been informed his business is grandfathered and will be able to operate as current unless he relocates or expands, he expressed concern regarding some of the regulations proposed. He is currently open from 9:00 a.m. to 10:00 p.m. daily; if he had to close at 7:00 p.m. per the new regulations, it will impact his business.

During the ensuing discussion, the Commissioners, either individually or in agreement, provided the following commentary:

- Established from staff that the distance buffers proposed are arbitrary and chosen after review of other cities' regulations; they can be increased or decreased at the Commission's discretion.
- Recommended that regulations regarding smoking and smoking or tobacco shops should apply to vaping as well.
- Referred to past minutes where this item was discussed that reference requests for additional information and requests for clarification that has not been provided; suggested no backup information is being presented to justify the regulations proposed. Suggested findings in the resolution be
- Clarified one of the reasons for including the regulation is to establish standards that can be enforced going forward.

- Suggested eliminating smoke shop uses from Mixed Use and Neighborhood Commercial zoning designations, as smoking creates a health risk for others living nearby, especially for children.
- Expressed concern of imposing arbitrary rules that may be unnecessary. If check cashers and/or pawnbrokers attract customers who may be a problem, there may be a need for security plans, but questioned whether security plans should be required for smoking/tobacco businesses; questioned why these businesses should not be allowed to operate up to 10:00 p.m.
- Suggested staff provide the information requested at the previous meeting, revise the ordinance in response to concerns expressed this evening, and bring it back to the Commission for further review/final approval.
- Regulations proposed should be reasonable, defensible, make sense from a land use perspective, and backed up with relevant facts.
- Suggestion that smoke shops not be permitted in mixed-use areas.
- Expressed concern if existing businesses would be protected from the proposed regulations if adopted. Assistant City Attorney indicated that the existing businesses appear to be protected by the nonconforming regulations of the City.
- Expressed concern that without proof of illicit activities, the City's regulations of the subject uses may be considered arbitrary and capricious. Assistant City Attorney mentioned these businesses are not constitutionally protected uses and the City has broad legislative authority to regulate these uses as it sees fit.
- Recommended that staff communicate with existing operating businesses, that are subject of the proposed ordinance, to receive communications about the proposed regulations.

A Motion was made by Vice Chair Ruehlin, and seconded by Commissioner Wu, to continue Zoning Amendment 17-043 – Check Cashers, Pawnbrokers, and Smoke Shops Ordinance, to the Regular Meeting of June 19, 2019. The Commission also recommended that amendments include prohibitions of smoke shops in mixed-use zones, prohibitions of smoke shops in neighborhood commercial zones within 300 feet of existing residential development, extending proposed smoke shop operating hours from 7 p.m. to 10 p.m., and additional staff research on illicit activities related to the subject uses.

Motion carried 6-0-1, with Commissioner Brown being absent.

[ITEM CONTINUED. PLANNING COMMISSION DECISION PENDING.]

9. NEW BUSINESS

None

10. OLD BUSINESS

Commissioner Talley referred to recent City Council consideration of the City's Leaf Blower Ordinance. The Ordinance was presented to the Planning Commission for consideration, revised, and forwarded to City Council. He questioned why City Council was presented with an alternative recommendation proposed and recommended for approval by staff that had not been vetted at the Planning Commission meeting. Additionally, he questioned why the Commission had not been notified in advance or subsequent to the alternative/revised recommendation. Mr. Talley stated the appropriate course of action should have been for this item to return to the Planning Commission.

City Planner Perez explained that the alternative recommendation was created in response to concerns raised by Code Compliance and Public Works staff.

The Commission concurred to add this item to a future agenda for discussion/consideration.

11. REPORTS OF COMMISSIONERS/STAFF

- A. Development Story Map Demonstration
- B. Tentative Future Agenda
- C. Zoning Administrator Minutes of April 4, 2019
- D. Staff Waiver 19-106
- E. Staff Waiver 19-129
- F. Staff Waiver 19-141

City Planner Perez demonstrated a new online interactive tool that identifies all current, ongoing projects and is available to the public via the City's website. By selecting the identified location on the map, users can look at projects and get the project description, information, and photos.

12. ADJOURNMENT

A Motion was made by Commissioner Talley, and seconded by Vice Chair Ruehlin, to adjourn at 8:46 p.m. to the Adjourned Regular Meeting of the Planning Commission to be held on **Thursday, May 23, 2019**, at 6:00 p.m. in Council Chambers located at 100 Avenida Presidio, San Clemente, California, as the May 22, 2019, Regular Study Session and Regular Meeting have been previously cancelled.

Motion carried 6-0-1, with Commissioner Brown being absent.

IT WAS MOVED BY VICE CHAIR RUEHLIN, SECONDED BY CHAIR PRO TEM BLACKWELL, AND UNANIMOUSLY CARRIED to receive and file the minutes from the Regular Planning Commission Meeting of September 19, 2018 as submitted.

B. Minutes from the Adjourned Regular Planning Commission Meeting of October 3, 2018

IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY COMMISSIONER WU, AND UNANIMOUSLY CARRIED to receive and file the minutes from the regular meeting of October 3, 201, as submitted.

6. ORAL AND WRITTEN COMMUNICATION

None

7. CONSENT CALENDAR

None

8. PUBLIC HEARING

A. 235 Avenida Lobeiro, Unit 101 – Appeal (STLU 18-507) of Denial of Short-Term Lodging Unit Permit No. 18-357 – Continued from October 3, 2018 (Roxas)

Public hearing to consider an appeal of the Community Development Director’s denial of a Short-Term Lodging Unit (STLU) Permit requesting to operate a STLU at 235 Avenida Lobeiro, Unit 101 within the Montalvo STLU area.

Sheri Vander Dussen, Interim City Planner, requested the Commission continue this public hearing to the November 8, 2018, Regular Planning Commission meeting.

IT WAS MOVED BY VICE CHAIR RUEHLIN, SECONDED BY COMMISSIONER TALLEY, AND UNANIMOUSLY CARRIED TO CONTINUE 235 AVENIDA LOBEIRO, UNIT 101 – APPEAL (STLU 18-507) OF DENIAL OF SHORT-TERM LODGING UNIT PERMIT NO. 18-357.

[ITEM CONTINUED. PLANNING COMMISSION DECISION PENDING.]

B. Zoning Amendment 17-043 – Thrift Store Ordinance (Morones)

Public hearing to consider a proposal to amend San Clemente Municipal Code Title 17, the Zoning Ordinance, regarding the regulation of check

cashers, pawnbrokers, secondhand dealers, and smoke shops. The Planning Commission will be considering changes to the Zoning Ordinance in Chapters 17.28, 17.36, 17.40, and 17.88 related to special uses, the permitted zones for the special uses, and related definitions.

Veronica Morones, Assistant Planner, narrated a PowerPoint Presentation entitled, "Zoning Amendment, Thrift Store Ordinance, Zoning Amendment 17-043," dated October 17, 2018. A copy of the Presentation is on file in Planning Division.

In response to questions, Assistant Planner Morones indicated the filing for a CUP requires a deposit of \$2,500-\$5,000 and noted the CUP takes approximately 5-6 months to process.

Chair Crandell opened the public hearing.

Jim Glynn, resident, questioned why thrift stores were lumped together with other uses such as pawn shops, smoke stores, etc.; advised the Commission that federal regulators have come in to ensure his thrift shop is not selling used car seats, cribs, etc., that have been banned; noted many people buy things in his store and resell in other San Clemente stores; stated he immediately took care of one Code violation when brought to his attention from Code Enforcement; noted most thrift stores raise funds for charities/other causes to benefit society.

Kathy Manuel, Mission Viejo resident, representing the Bargain Box Thrift Store, noted their store is run by volunteers, associated with the Assistance League, and uses revenues to benefit residents; advised their store and others on the block are well maintained and bring business to the City.

Theodore Lee, Aliso Viejo Resident and Smoke Shop owner, has operated for 15 years, employs others, and pays sales tax to the City. He noted there is no illegal activity at his store and questioned how the new regulations will affect his business.

Kim Anderson, resident and upscale women's clothing consignment owner, stated that many other stores in town, such as jewelers, surf shops, etc., also have resale items in their stores. She questioned how resale establishments were that different from stores that deal in new clothing. She advised there are many homeless and shady dealings around this area and she has concerns for her safety. She questioned whether in the future she would be able to sell her business if this ordinance is approved.

Adam Cloeters, resident and consignment store owner, noted many out of city/state customers come to enjoy all the thrift/resale/consignment stores within the 500 block of El Camino Real and bring business to local hotels

and restaurants as well; questioned whether he and his partner will be able to sell their store if desired; commented that police services do not come when called because they claim they are understaffed and unable to arrest people; noted due to the homeless/loitering in the alley he has to hose down/clean up human waste on a daily basis.

Pat Serrano, resident and volunteer at the Coral Thrift Shop, which has operated in this location for 54 years, advised all profits realized by the shop are used for scholarships and support the local community; and questioned why thrift stores have been lumped together with dissimilar uses.

Terry Daum, resident, questioned why the ordinance is being called the "Thrift Store Ordinance;" stated many other stores in town sell a mix of new and resale items; questioned why the stores need distance between them when together they attract a large following; expressed concern about how the new ordinance will affect selling or passing down stores to others.

Kaete Daum, resident, suggested the new ordinance is discriminatory and may result in liability for the City; noted the stores do not attract vagrancy and questioned what business will be blamed for attracting vagrants to T-Street Beach; suggested police enforcement of existing laws to curtail vagrants; noted the thrift stores are an asset to the community.

J.P. Spitz, resident, stated that the City Council opposed him opening up a thrift store in the vacant Baker's Square restaurant and requested staff develop regulations for such businesses; described the good work his ministry and La Tienda Thrift Store does for the community and those struggling with addiction; opposed the Thrift Store Ordinance as it will eliminate the financial support that allows the ministry to help those with addiction.

Thomas Kennon, resident, objected to putting smoke shops, pawn shops and thrift stores into the same category. The thrift stores do not increase crime, but if the police are not enforcing laws, crime increases. Customers come from all around to shop at the stores on El Camino Real, which is called the "Rodeo Drive of Secondhand Stores." He does not believe a total of 100 complaints in 20 years justifies this ordinance. Repurposing/selling used goods is good for the environment and community.

Mary Gray Purdue, resident and operator of Family Assistance Ministries, noted the FAM Thrift Store has been generating income to help with their programs; and the thrift/resale stores in this block are very well maintained and together attract people from all over.

Chair Crandell closed the public hearing.

During the ensuing discussion the Commissioners, either individually or in agreement, provided the following commentary:

- Confirmed that existing business owners whose businesses become non-conforming due to the new ordinance would still be able to sell their businesses as a going concern, but certain restrictions, such as no lapse in business for up to one year, no expansions, etc., would be in place.
- Established that defining the difference between a store that sells new goods versus used goods, as well as stores that sell a mixture of both, would have to be a policy determination, and directed staff to determine a more detailed definition of “secondhand dealer.”
- Commented on the difficulties associated with treating sellers who sell new goods differently from those selling used goods; suggested thrift store uses should not be lumped in with pawn shops and check cashing stores.
- Suggested the Commission remove “secondhand stores” from the uses listed in the proposed Ordinance.
- Requested additional information regarding the 100 complaints that have come in during the last 20 years, including whether the complaints were justified, the businesses’ responses to the complaints, and the focus of the complaint.
- Requested staff clarify with City Council what problem the proposed land use regulations are intended to solve/address.
- Requested additional analysis including correlation between illicit activities and these stores; suggested police enforcement and increased public safety might be the first step to address the problem; noted lack of information on the complaints does not provide specific information to conclude that restricting the businesses in this manner is a good solution; questioned how the Ordinance would affect the many businesses that sell both new and used items; commented that thrift stores extend the usable lives of many items, help to make things more affordable, and prevent things from going to landfills. Their profits support community organizations, provide scholarships, and help those struggling with addiction.
- Discussed whether this item be continued or tabled to allow additional information to be gathered, additional outreach to the public and stakeholders, and clarification from City Council.
- Established that staff’s preference is to table the item to ensure adequate time for gathering information, clarifying intent, and meeting with stakeholders before bringing a revised Ordinance back for consideration. Notice of the future public hearing would be provided per legal requirements.

IT WAS MOVED BY COMMISSIONER TALLEY, SECONDED BY VICE CHAIR RUEHLIN AND UNANIMOUSLY CARRIED TO TABLE ZONING AMENDMENT 17-043 – THRIFT STORE ORDINANCE.

Amended as follows:

Staff asked to return this proposal if and when staff believes it is necessary with guidance for the Commission; recommendation that all references to secondhand or thrift stores be eliminated from the Ordinance in their entirety.

[AGENDA ITEM TABLED.]

9. NEW BUSINESS

A. Standard Conditions (Vander Dussen)

Proposal to endorse revised procedures to maintain standard conditions of approval that may be imposed on land use applications.

Sheri Vander Dussen, Interim City Planner, narrated a PowerPoint Presentation entitled, "Revisions to Standard Conditions, Planning Commission," dated October 17, 2018. A copy of the Presentation is on file in Planning Division.

Comments included:

- Established that all applicants/businesses are expected to comply with all City, State and Federal Laws.
- Suggestion to revise Condition no. 1.4 to provide notice to the applicant that certain provisions of the San Clemente Municipal Code, such as noise levels, can change in the future, and the applicant will be required to abide by these changes. Staff agreed to modify Condition No. 1.4 by inserting "current and future" after "applicable."
- Requested that the Commission be informed when changes to the standard conditions of approval are approved.

IT WAS MOVED BY VICE CHAIR RUEHLIN, SECONDED BY COMMISSIONER TALLEY, AND UNANIMOUSLY CARRIED TO ADOPT RESOLUTION NO. 18-030, A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SAN CLEMENTE, CALIFORNIA, RECOMMENDING THE CITY COUNCIL RESCIND RESOLUTION NO. 10-29 AND ALLOW THE COMMUNITY DEVELOPMENT DEPARTMENT TO MAINTAIN STANDARD CONDITIONS OF APPROVAL RELATING TO THE DEVELOPMENT REVIEW PROCESS.

8. UNFINISHED BUSINESS

A. Thrift Store Zoning Amendment 17-043 - Regulation of Check Cashers, Pawnbrokers, Secondhand Dealers, and Smoke and Tobacco Shops

Report from the Community Development Director concerning an update, and request for Council direction, on Thrift Store Zoning Amendment 17-043, Regulation of Check Cashers, Pawnbrokers, Secondhand Dealers, and Smoke and Tobacco Shops.

City Planner Perez reviewed the contents of the Administrative Report and responded to Council inquiries.

Kimberly Anderson, Owner of Sweet Repeat Consignment, urged Council to not include secondhand dealers in the Zoning Amendment; noted that many businesses in San Clemente re-sell items.

Pat Serrano, President of Coral Thrift Store, suggested that thrift stores should be removed from the Zoning Amendment; reported on Coral Thrift Store's financial support to non-profit organizations within the City; reviewed recent improvements to Coral Thrift Store on both the interior and exterior, which included a surveillance camera on the alley side of the property.

Kaete Daum, San Clemente, spoke in support of local thrift stores; stated that she has never felt unsafe in the alley behind the thrift store.

Terry Daum, San Clemente, spoke in support of local businesses; suggested that thrift stores should not be in the same category as check cashers, pawnbrokers, and smoke and tobacco shops; opined that thrift stores do not pose an attractive nuisance.

Gizele Farland Stotts, La Tienda Thrift Store volunteer, spoke in support of the La Tienda ministry.

Laurie Moore, La Tienda Thrift Store volunteer, commented on the benefits that La Tienda provides to persons in need of healing.

J.P. Spitz, Co-Owner of La Tienda Thrift Store, noted that that La Tienda changes lives; stated that thrift stores are a ministry, as opposed to a business, and should not be categorized with check cashers, pawnbrokers and smoke and tobacco shops.

Laura Glynn, Co-Owner of La Tienda Thrift Store, spoke on the importance of thrift stores to the community; urged Council to remove thrift stores from the Zoning Amendment.

Following discussion, MOTION BY COUNCILMEMBER HAMM, SECOND BY COUNCILMEMBER FERGUSON, CARRIED 5-0, to direct Staff to remove or revise references to thrift store regulations in the Zoning Amendment, and move forward with a modified amendment regulating the remaining uses (check cashers, pawnbrokers, and smoke shops).

Council referred the issue of thrift stores back to the Planning Commission with particular direction to review the following: 1) definition of "Secondhand dealers", 2) justification for the 100' buffer between thrift store establishments and residential development inasmuch as a 100' buffer does not also apply between residential development and other retail uses, 3) Means by which thrift store operations shall be approved (i.e., Minor Use Permit versus Conditional Use Permit), and 4) methods used by other local cities to regulate thrift stores.

MEETING RECESSED/RECONVENED

Council recessed at 8:38 p.m. and reconvened at 8:48 p.m., with all members present, except Councilmember Hamm.

9. **NEW BUSINESS**

A. **Code Amendment - Floodplain Management Regulations**

Report from the Public Works Director/City Engineer concerning an amendment to Municipal Code Chapter 15.76 regarding Floodplain Management Regulations.

Senior Civil Engineer Ponsen reviewed the contents of the Administrative Report and responded to Council inquiries.

MOTION BY MAYOR PRO TEM BANE, SECOND BY COUNCILMEMBER WARD, CARRIED 4-0 (COUNCILMEMBER HAMM ABSENT), to introduce Ordinance No. 1669 entitled AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTER 15.76 TO UPDATE THE FLOODPLAIN MANAGEMENT CODE TO MEET THE MINIMUM REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM.