EXHIBIT B

Draft Ordinance Amending Sections 15-2761 and 15-6802 of the Citywide Development Code

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SECTIONS 15-6802 AND 15-2761 OF THE FRESNO MUNICIPAL CODE, RELATING TO TOBACCO AND VAPOR SALES AND SMOKESHOPS

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Sections 15-6802 and 15-2761 of the Fresno Municipal Code are amended to read as follows:

SECTION 15-6802. – DEFINITIONS

In any case of conflicting definitions, the Director shall determine which shall be applied.

Abandoned, Abandonment. When, for a period of over one year, a non-conforming use is either vacated, the business license lapses, the lease is terminated, and/or utilities are terminated.

Abutting, Adjoining, or Adjacent. Having a common property or district line, or separated only by an alley, path, private street, or easement.

Access. The place or way through which pedestrians and/or vehicles shall have safe, adequate, and usable ingress and egress to a property or use as required by this Code.

Accessory Building. See Building, Accessory.

Accessory Structure. See Structure, Accessory.

Date Adopted:
Date Approved
Effective Date:
City Attorney Approval: HT

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Accessory Use. See Use, Accessory.

Act of Nature. A natural occurrence such as an earthquake, flood, tidal wave, hurricane or tornado which causes substantial damage to buildings or property.

All Other General Merchandise Retailers. Establishments primarily engaged in retailing new and used general merchandise (except department stores, warehouse clubs, superstores, and supercenters). These establishments retail a general line of new and used merchandise, such as apparel, automotive parts, dry goods, groceries, hardware, housewares or home furnishings, and other lines in limited amounts, with none of the lines predominating. This industry also includes establishments primarily engaged in retailing a general line of new and used merchandise on an auction basis.

Alley. A public way permanently reserved for access to the rear or side of properties otherwise abutting on a street.

Alteration. Any change, addition, or modification that changes the exterior architectural appearance or materials of a structure or object. Alteration includes changes in exterior surfaces, changes in materials, additions, remodels, demolitions, and relocation of buildings or structures, but excludes ordinary maintenance and repairs.

Animal Keeping. The keeping of animals.

Arcade. A public passageway or colonnade open along at least one side, except for structural supports, usually covered by a canopy or permanent roofing.

Awning. An architectural projection that provides weather protection, identity, or decoration and is wholly supported by the building to which it is attached. An awning is typically constructed of non-rigid materials on a supporting framework which projects from and is supported by the exterior wall of a building.

Balcony. A platform that projects from the wall of a building 30 inches or more above grade that is accessible from the building's interior, is not accessible from the ground and is not enclosed by walls on more than two sides. See also Deck.

Base District. See Zoning District.

Bathroom. A room containing a sink, a toilet, and a shower and/or bathtub.

Bay Window. An angular or curved window that projects from the building surface.

Bedroom. Any habitable space in a dwelling unit or accessory structure other than a kitchen or living room that is intended for or capable of being used for sleeping and is at least 70 square feet in area.

Block. Property bounded on all sides by a public right-of-way.

Blockface. All property between two intersections that fronts upon a street or abuts a public right-of-way.

Building. Any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of any individual, animal, process, equipment, goods, or materials.

Building, Accessory. A detached building located on the same parcel as the principal building, which is incidental and subordinate to the principal building in terms of both size and use. A building will be considered part of the principal building if located less than six feet from the principal building or if connected to it by fully enclosed space.

Building, Principal. A building in which the principal use of the parcel on which it is located is conducted.

Building Code. Any ordinance of the City governing the type and method of construction of buildings, signs, and sign structures and any amendments thereto and any substitute therefore including, but not limited to, the California Building Code, other State-adopted uniform codes and the Minimum Building Security Standards Ordinance.

Building Face. The general outer surface of the structure or walls of a building. Where bay windows or pillars project beyond the walls, the outer surface of the windows or pillars shall be considered to be the face of the building.

Building Envelope. The aggregate of building mass and building bulk permitted on a parcel which is defined by height regulations, setbacks, and other property development standards.

Building Footprint. See Footprint.

Building Height. See Height.

Building Site. A parcel or parcel of land occupied, or to be occupied, by a main building and accessory buildings together with such open spaces as are

required by the terms of this title and having its principal frontage on a street, road, highway, or waterway.

Buffer, Buffering. An area on a parcel which is designed to separate structures and uses from the general public and/or adjacent properties to reduce negative impacts. It may include landscaping, fences, and walls.

California Department of Alcoholic Beverage Control (ABC). The California State agency that regulates the permitting of alcoholic beverage sales, including the sale of beer, wine, and distilled spirits.

California Environmental Quality Act (CEQA). Public Resources Code Section 21000 et seq. or any successor statute and associated guidelines (California Code of Regulations Section 15000 et seq.) that require public agencies to document and consider the environmental effects of a proposed action before a decision.

Canopy. A roofed shelter projecting over a sidewalk, driveway, entry, window, or similar area that may be wholly supported by a building or may be wholly or partially supported by columns, poles, or braces extending from the ground.

Carport. A permanently roofed structure providing space for parking or temporary storage of vehicles enclosed on not more than two sides.

Change of Use. A discontinuance of an existing use and the substitution therefore of a use such that the new use represents a different use group or is

otherwise differently regulated by the zoning code compared to the prior use. A change of ownership alone does not constitute a change of use.

Change of Occupancy. A discontinuance of an existing building use and substitution of a new use that changes the Building Code occupancy group classification and requires a building permit and new Certificate of Occupancy as determined by the Building Official.

[**Cigarette.** shall have the same meaning as Section 30003 of the Revenue & Taxation Code, including any amendments or successor statutes thereto.]

City. The City of Fresno.

City Council. The City Council of the City of Fresno.

Clear. Measured depth of frontage elements such as porches, arcades, galleries are free of encroachments other than allowed signs, light fixtures, sidewalk dining and allowed furnishings, and outdoor display of merchandise.

Conditionally Permitted. Permitted subject to approval of a Conditional Use Permit.

Construction. Construction, erection, enlargement, alteration, conversion, or movement of any building, structures, or land together with any scientific surveys associated therewith.

Convenience Retailers. Establishments primarily engaged in retailing a limited line of groceries that generally includes milk, bread, soda, and snacks, such as convenience stores (except those operating fuel pumps).

County. The County of Fresno.

Courtyard. An unroofed area that is completely or mostly enclosed by walls of a building.

Craft beer. A beer or malt beverage manufactured by a brewer with an annual production of six million barrels of beer or less, where less than 25 percent of the craft brewery is owned or controlled by an alcohol industry member, and where a majority of total beverage alcohol volume is beer that derives flavor from traditional or innovative brewing ingredients and their fermentation.

Curb Cut. A break in a curb allowing vehicle access from the roadway to a legal parking area within the parcel.

Deck. A platform, either freestanding or attached to a building that is used for outdoor space. It typically extends from the façade of a building and is supported by pillars or posts but may be located on a flat portion of a building, such as a roof or setback. It is distinct from a Patio. See also Balcony.

Demolition. The destruction, dismantling, or removal of a building or structure, or substantial portion of a building or structure so that it constitutes demolition pursuant to the provisions of this Code.

Density. See 15-310, Determining Residential Density.

Department Stores. Establishments generally known as department stores that have separate departments for general lines of new merchandise, such as apparel, jewelry, home furnishings, and toys, with no one merchandise line predominating. Department stores may sell perishable groceries, such as fresh fruits, vegetables, and dairy products, but such sales are insignificant. Department

stores with fixed point-of-sale locations may have separate customer checkout areas in each department, central customer checkout areas, or both.

Development. Any manmade change to improved or unimproved real estate, including, but not limited to, the division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, expansion, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; and any use or extension of the use of land.

Development Agreement. An agreement between the City and any person having a legal or equitable interest in real property for the development of such property and which complies with the applicable provisions of the Government Code and local law for such development agreements.

Director. The Director of the Development and Resource Management Department of the City of Fresno or their designee.

Discretionary Permit. A Minor Deviation, Development Permit, Major Permit Modification, Variance, Temporary Use Permit, Planned Development Permit, or Conditional Use Permit, or any other appealable permit that requires findings to be made.

District. See Zoning District.

Drive-In and Drive-Through Facilities. A facility designed to provide service to clients in a manner that does not require them to leave their vehicle.

Driveway. An accessway that provides vehicular access between a street and the parking or loading facilities located on an adjacent property.

Dwelling. A structure or portion thereof that is used principally for residential occupancy.

Dwelling Unit. One or more rooms designed, occupied, or intended for occupancy as separate living quarters, with full cooking, sleeping, and bathroom facilities for the exclusive use of a single household.

Easement. A portion of land created by grant or agreement for specific purpose; an easement is the right, privilege, or interest which one party has in the land of another.

Effective Date. The date on which a permit or other approval becomes enforceable or otherwise takes effect, rather than the date it was signed or circulated.

[**Electronic Cigarette** (or E-Cigarette) shall have the same meaning as Sections 31001(c) and 30121(c) of the Revenue & Taxation Code, including any amendments or successor statutes thereto.]

Emergency. A sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property, or essential public services.

Enclosed. Completely surrounded by walls.

Entitlement. Formal permission from the Planning Division to use or develop land, including Zone Clearances, Development Permits, and Conditional Use Permits, but not including legislative actions such as Rezones and Plan

Amendments. An individual entitlement may be sufficient for a project to proceed, or may need to be used in conjunction with another entitlement.

Entrance. An opening, such as a door, passage, or gate, that allows access to a place.

Environmental Review. An evaluation process pursuant to CEQA to determine whether a proposed project may have a significant impact on the environment.

Environmental Impact Report (EIR). An Environmental Impact Report as required under the California Environmental Quality Act.

Erect. To build, construct, attach, hang, place, suspend, or affix to or upon any surface.

Excavation. The removal of soils or other materials below grade.

[**Existing Smoke Shop** means any smoke shop lawfully established, with one business license per Smoke Shop location, pursuant to the Municipal Code prior to the effective date of Section 15-2761.]

Expressway. A roadway for through traffic with full control of access and generally with signalized intersections.

Façade. The face of the exterior wall of a building exposed to public view or that wall viewed by persons not within the building. The portion of any exterior elevation of a building extending vertically from the grade to the top of a parapet wall or eave, and horizontally across the entire width of the building elevation.

Façade, Street-Facing. Any building façade whose exterior wall faces or is within 45 degrees of parallel to an adjacent street, right-of-way, or public park, plaza, or open space.

Feasible. Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

Fee. A payment to the City for the processing of a permit, license, or appeal application by a City agency or department.

Fence. An artificially-constructed barrier of any material or combination of materials erected to enclose or screen an area of land. Fences may also be walls, hedges, and screen planting.

Fire Code. An ordinance of the City adopting and amending the California Fire Code governing fire and life safety protection for new and existing buildings and facilities.

Flood or Flooding. Any general inundation of normally dry land from the overflow of tidal waters or from the unusual and rapid accumulation of runoff of surface waters from any source.

Floor Area. The total gross horizontal area of all the floors below the roof and within the outer surface of the walls of a building or structure, including basements, mezzanines, interior balconies, and upper stories or levels in a multi-story building unless otherwise stipulated. See Section 15-304, Measuring Distances, for rules for calculating floor area.

Floor Area Ratio. The ratio of the total floor area of all buildings on a parcel to the total area of the parcel. See Section 15-309, Determining Floor Area Ratio for rules on calculating floor area ratio.

Footprint. The horizontal area, as seen in plain view, of a building or structure, measured from the outside of exterior walls and supporting columns, and excluding eaves.

Freeway. A highway for through traffic with full control of access and grade-separated interchanges.

Full-Service Grocery Store. Establishments generally known as supermarkets and other grocery retailers (except convenience retailers) primarily engaged in retailing a general line of food, such as canned and frozen foods; fresh fruits and vegetables; and fresh and prepared meats, fish, and poultry. Included in this industry are delicatessen-type establishments primarily engaged in retailing a specialized category of food products such as foods from a specific country, ethnicity, or locality not often found in general markets. This definition excludes limited-service restaurants, convenience retailers, gasoline stations with convenience stores, department stores, pharmacies and drug retailers, warehouse clubs and supercenters, and all other general merchandise retailers.

Garage. A building or portion thereof, containing accessible and usable enclosed space designed, constructed and maintained for the parking or storage of one or more motor vehicles.

Garage Sales. The sale or offering for sale to the general public of over five items of personal property on a portion of a parcel in a residentially zoned district, whether inside or outside any building.

Gasoline Stations with Convenience Stores. Establishments primarily engaged in retailing automotive fuels (e.g., gasoline, diesel fuel, gasohol, alternative fuels) in combination with a limited line of groceries. These establishments can either be in a convenience store setting or a gasoline station setting. These establishments may also provide automotive repair services.

General Plan. The City of Fresno General Plan.

Glare. The effect produced by a light source within the visual field that is sufficiently brighter than the level to which the eyes are adapted, such as to cause annoyance, discomfort, or loss of visual performance and ability, and which may also cause damage to property.

Government Code. The Government Code of the State of California.

Grade. The location of the ground surface.

Average Grade. A horizontal line approximating the ground elevation through each building on a site used for calculating the exterior volume of a building. Average grade is calculated separately for each building.

Existing Grade. The elevation of the ground at any point on a parcel as shown on the required survey submitted in conjunction with an application for a building permit or grading permit. Existing grade also may be referred to as natural grade.

Ground Floor. The lowest floor of a building other than a basement that is closest to finished grade.

Ground-Floor Street Frontage. The first level of a building, other than a basement, that borders a public street.

Habitable Space. As defined in Section 202 of the California Building Code.

Habitation. Regular and exclusive use of a space or structure for shelter and other residential purposes in a manner that is private and separate from another residence on the same parcel.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Height. The vertical distance from a point on the ground below a structure to a point directly above. See also Section 15-305, Measuring Height.

Historic Preservation Commission. The Historic Preservation Commission of the City of Fresno.

Home Occupation. A commercial use conducted on residential property by the inhabitants of the subject residence, which is incidental and secondary to the residential use of the dwelling.

Household. One or more persons living together in a single dwelling unit, with common access to, and common use of, all living and eating areas and all areas and facilities for the preparation and storage of food; who share living expenses, including rent or mortgage payments, food costs and utilities; and who maintain a single mortgage, lease, or rental agreement for all members of the household.

Illegal Non-Conforming Use, Structure, or Site Feature. A use, structure, site feature, or lot shall be designated as having Illegal Non-Conforming status if it was not lawfully established under the regulations of the jurisdiction in which it was located at the time of its establishment or has not continuously remained in compliance with all terms and conditions imposed upon the use, structure, or site feature upon its establishment or imposed upon it any time thereafter.

Intensity of Use. The extent to which a particular use or the use in combination with other uses affects the natural and built environment in which it is located, the demand for services, and persons who live, work, and visit the area. Measures of intensity include, but are not limited to, requirements for water, gas, electricity, or public services; number of automobile trips generated by a use; parking demand; number of employees on a site; hours of operation; the amount of noise, light, or glare generated; the number of persons attracted to the site, or, in eating establishments, the number of seats.

Intersection, Street. The area common to two or more intersecting streets.

Kitchen. A room or space within a building with appliances used for cooking or preparing food.

Land Division-Related Definitions. The following terms are related to Part IV: Land Divisions.

Arterial. A street designated by the circulation element of the General Plan to serve high-volume inter- and intra-city traffic, and to act as a distributor between freeways, other arterials, and major traffic generators.

Block. An area of land within a subdivision entirely bounded by any streets (other than alleys), freeways, railroad rights-of-way, natural barriers, or the exterior boundaries of the subdivision.

Collector Street. A street designated by the circulation element of the General Plan to collect and distribute traffic between local streets and arterials.

Community Apartment. An undivided interest in common in the land coupled with the right of exclusive occupancy of an apartment unit which is part of a community apartment project.

Community Apartment Project. As defined by Section 11004 of the California Business and Professions Code.

Condominium. As defined by Section 783 of the California Civil Code.

Condominium Project. A development consisting of condominiums.

Conversion. The creation of separate ownership of existing real property together with a separate interest in space of a building.

Comparable Replacement Housing. Available rental housing located within a reasonable proximity to the proposed condominium conversion project, and to public and commercial facilities, with units which are decent, safe, and sanitary, and which are generally similar in size and price to those of the proposed project.

Cul-de-sac. A street which terminates in a permanent turn-around and which by design is not intended to continue beyond its terminal point.

Dead-End Street. A street which is terminated at the boundary line of the subdivision but which will be required to be extended at a later date to provide access to abutting land.

Expressway. A roadway for through traffic with full control of access and generally with signalized intersections.

Final Map. A map showing a subdivision of five or more lots, prepared for filing with the Fresno County Recorder in accordance with the provisions of the Subdivision Map Act and Part IV: Land Divisions, if deemed in substantial compliance with a previously approved tentative subdivision map and with any conditions to such approval.

Frontage. That portion of a parcel of property which abuts on a public street.

Frontage Road. A street adjacent and auxiliary to a Major Street, and separated by a divider strip, which street provides access to abutting property.

Handicapped. As defined by Section 50072 of the California Health and Safety Code.

Improvements. Any street work and utilities to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, ways, and easements, as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the Final Map thereof. Improvements also refers to any other specific improvements or types of improvements, the installation of which, either by the subdivider, by public agencies, by private utilities, by any other entity approval by the local agency, or by a combination thereof, is necessary to ensure consistency with, or implementation of, the General Plan or any applicable specific plan.

Improvement Plans. The plans, profiles, cross-sections, and specifications of all proposed improvements.

Local Collector Street. A local street also serving as a collector street for several local streets.

Local Street. Any public street that is used or is intended to be used for the principal purpose of serving as access to abutting property.

Lot Line Adjustment. A shift or rotation of an existing lot line or other adjustment where a greater or lesser number of parcels than originally existed is not created.

Map Act. The Subdivision Map Act of the State of California Government Code.

Merger. The joining of two or more contiguous parcels of land under one ownership into one parcel.

Outlot. A lot designated alphabetically on the subdivision map for specific use or nonuse.

Parcel. A single unit of land separated from other units of land by legal description, the boundaries of which are shown on a parcel map or final map, described in a deed, or for which a certificate of compliance has been issued pursuant to the Subdivision Map Act. Parcel shall also include two or more parcels where the owner(s) have recorded a covenant with the Office of the County Recorder that states the intention of the owner(s) to combine and use the parcels as a single unit of land in compliance with City regulations. Also referred to as "lot."

Parcel Map. A map prepared in accordance with the provisions of this Subdivision Ordinance, designed to be placed on record in the office of the Fresno County Recorder, and providing for the division of land which meets the exceptions set forth in Section 66426 of the Map Act.

Private Street. Any street, roadway, accessway or similar, lying in whole or in part within a subdivision which is privately owned and maintained and provides access to a development.

Public Improvement. Street work, utilities, and other facilities proposed or required to be installed within the subdivision for the general use of all the subdivision lot owners and for local neighborhood or community needs.

Remainder. That portion of an existing parcel which is not designated on the required map as part of the subdivision. The remainder shall not be considered as part of the subdivision but shall be shown on the required map as part of the area surrounding the subdivision.

Restricted Access Strip. A strip of land not less than one foot in width for the purpose of regulating access to part-width and dead-end streets until such time as such roads may be completed or extended.

Standard Specifications. The Standard Specifications of the Department of Public Works of the City as may be amended from time to time.

Stock Cooperative. The same as defined by Section 11003.2 of the California Business and Professions Code.

Subdivider. A person, firm, corporation, partnership, or association who proposes to divide, divides, or causes to be divided real property into a subdivision for their self or for others.

Subdivision. The division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof, shown on the latest equalized County assessment roll as a unit or as contiguous units, for the purpose of sale, lease, or financing, whether immediate or future. Property shall be considered contiguous units, even if it is separated by roads, streets, utility easement, or railroad rights-of-way. This definition shall specifically include Condominiums, Community Apartment Projects, or Stock Cooperative conversions.

Temporary Turn-Around. A paved area for turning vehicles at the end of a dead-end street, which is constructed either within the dedicated right-of-way or upon a temporary easement, to be obliterated when such street is extended.

Tentative Map. A map made for the purpose of showing the design and improvements of a proposed subdivision and the existing conditions in and around it.

Tentative Parcel Map. A map made for the purpose of showing the design and improvements of a proposed subdivision creating four or fewer parcels or more than four parcels as provided for in the State Subdivision Map Act and Part IV: Land Divisions, and the existing conditions in and around it.

Tract. A subdivision of real property into lots and rights-of-way.

Vesting Tentative Map. A Tentative Map for a subdivision that shall have printed conspicuously on its face the words "Vesting Tentative Map" at the time it is filed in accordance with Part IV: Land Divisions.

Landscape-Related Definitions. The following terms are related to Article 23, Landscape.

Automatic Irrigation System. An irrigation system that utilizes an automatic timing device (automatic controller) to remotely control valves for operation of water supply to landscapes.

California Building Code. A California Code (California Code of Regulations, Title 24, Part 2, California Building Code) adopted by the City of Fresno and incorporated into the Municipal Code Chapter 11.

California Green Building Standards Code. A California Code (California Code of Regulations, Title 24, Part 11, California Green Building Standards Code) adopted by the City of Fresno and incorporated into the Municipal Code Chapter 11.

California Model Water Efficient Landscape Ordinance. A California legislation that took effect in the City of Fresno on January 1, 2010. See California Code of Regulations, Title 23. Waters, Division 2. Department of Water Resources, Chapter 2.7 Model Water Efficient Landscape Ordinance.

California Plumbing Code. A California Code (California Code of Regulations, Title 24, Part 5, California Plumbing Code) adopted by the City of Fresno and incorporated into the Municipal Code Chapter 11.

Drought-Tolerant Plant. A plant that is adapted to arid or drought conditions. The use of drought-tolerant plants is essential to a successful xeriscape, which ideally requires no supplemental irrigation.

Hedge. Any group of shrubs planted in line or in groups so that the branches of any one plant are intermingled or form contact with the branches of any other plant in the line.

Heritage Tree. An indigenous tree whose size, as measured at 48 inches above natural grade, is defined below:

— Quercus lobata (Valley oak) is more than 30 inches in circumference.

— Fraxinus latifolia (Oregon ash) is more than 25 inches in circumference.

— Cephalanthus occidentalis (Buttonbush or Button-willow) is more than 36 inches in circumference.

— Community of trees;

— Founders tree;

— **Tree so designated by the City Council, based upon findings that the particular tree is unique and of importance to the**

public due to its unusual age, appearance, location, or other factors.

Hydrozone. A portion of the landscaped area having plants with similar water needs.

Landscape Mound. Any location on a lot or parcel of land where dirt, soil, top soil, or pile of earth is placed, or otherwise elevated, above the grade of surrounding land for any decorative or functional landscape architectural purpose.

Landscaping. The planting, configuration, and maintenance of trees, ground cover, shrubbery, and other plant material, decorative natural and structural features (walls, fences, hedges, trellises, fountains, sculptures), earth patterning and bedding materials, and other similar site improvements that serve an aesthetic or functional purpose.

"Private landscaping" means any landscaping located within the boundaries of privately owned property, and includes any landscaping located within any unimproved right-of-way abutting a private property and in any park strip other than the City-maintained park strip.

"Public landscaping" means any landscaping located within any street median, City park or other parcel of publicly owned property, including any landscaping located in a City-maintained park strip.

Mulch. Any organic material such as leaves, bark, straw, compost, or inorganic mineral materials such as rocks, gravel, and decomposed

granite left loose and applied to the soil surface for the beneficial purposes of reducing evaporation, suppressing weeds, moderating soil temperature, and preventing soil erosion.

Park Strip. The area of the public street located between the face of the curb and closest edge of the sidewalk.

Passive Solar-Oriented Tree. A deciduous tree which drops its leaves in fall and regains them in the spring, located in the south, southwest, or west yard and planted within 15 feet of a building.

Plant. Any turf, ground cover, shrub, vine, and tree suitable for planting.

Private Tree. Any tree located within the boundaries of privately owned property.

Pruning. The removal of more than one-third of the crown or existing foliage of the tree or more than one-third of the root system.

Remove. Cutting to the ground; extraction; killing by spraying, girdling, or any other means; or pruning done without a permit or which does not conform to the provisions of a permit.

Retention Basin. An impoundment created by a dam or an excavation for the purpose of storing and settling sediment and other pollutants from surface water. A retention basin is designed to hold a specific amount of water until the water can evaporate or infiltrate. Usually

the basin is designed to have overflows drain to a receiving conveyance system when the water level exceeds the basin capacity.

Shrub. A bush, hedge, or any woody plant of relatively low height, having several stems arising from the base and lacking a single trunk.

Trim. The cutting or removal of a portion of a tree which removes less than one-third of the crown or existing foliage of a tree, removes less than one-third of the root system, and does not kill the tree.

Turf. The upper stratum of soil bound by grass and plant roots into a thick mat or an artificial substitute thereof.

Water-Wise, Climate-Appropriate Plant. A plant that can survive periods of limited water availability and other environmental factors in the region that it is being planted.

Wind Buffer-Oriented Tree. An evergreen tree which keeps its leaves all year round and is located in a northwest or west yard to protect a building from Fresno's prevailing winds blowing from the northwest direction.

Legal Non-Conforming Use, Structure, or Site Feature. A use, structure, or site feature shall be designated as having Legal Non-Conforming status if it was lawfully established under the regulations of the jurisdiction in which it was located at the time of its establishment and has continuously remained in compliance with all terms and conditions imposed upon the use, structure, or site feature upon its establishment or imposed upon it any time thereafter, based on evidence provided

by the property owner, tenant, or applicant. Legal Non-Conforming status shall also be assigned if non-conformities were created by a public improvement, such as a street widening project.

Light Fixture. The assembly that holds a lamp and may include an assembly housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirrors, and a refractor or lens.

Limited-Service Restaurants. Establishments primarily engaged in providing food services (except snack and nonalcoholic beverage bars) where patrons generally order or select items and pay before eating. Food and drink may be consumed on premises, taken out, or delivered to the customer's location.

Loading Space. An off-street space or berth on the same parcel with a building for the temporary parking of a vehicle while loading or unloading of goods.

Loft. See Mezzanine.

Lot. A parcel, tract, or area of land whose boundaries have been established by a legal instrument such as a deed or map recorded with the County of Fresno, and which is recognized as a separate legal entity for purposed of transfer or title, except public easements or rights-of-way.

Corner Lot. A parcel of land abutting two or more streets at their intersection, or upon two parts of the same street forming an interior angle of less than 135 degrees.

Flag Lot. A parcel not fronting on or abutting a public road and where access is from a public road by a narrow right-of-way or driveway.

Key Lot. The first interior parcel to the rear of a reversed corner parcel and not separated therefrom by an alley.

Reverse Corner Lot. A corner parcel, the side street line of which is substantially a continuation of the front parcel line of the first parcel to its rear.

Through Lot. A parcel which fronts on two parallel streets or which fronts upon two streets which do not intersect at the boundaries of the parcel.

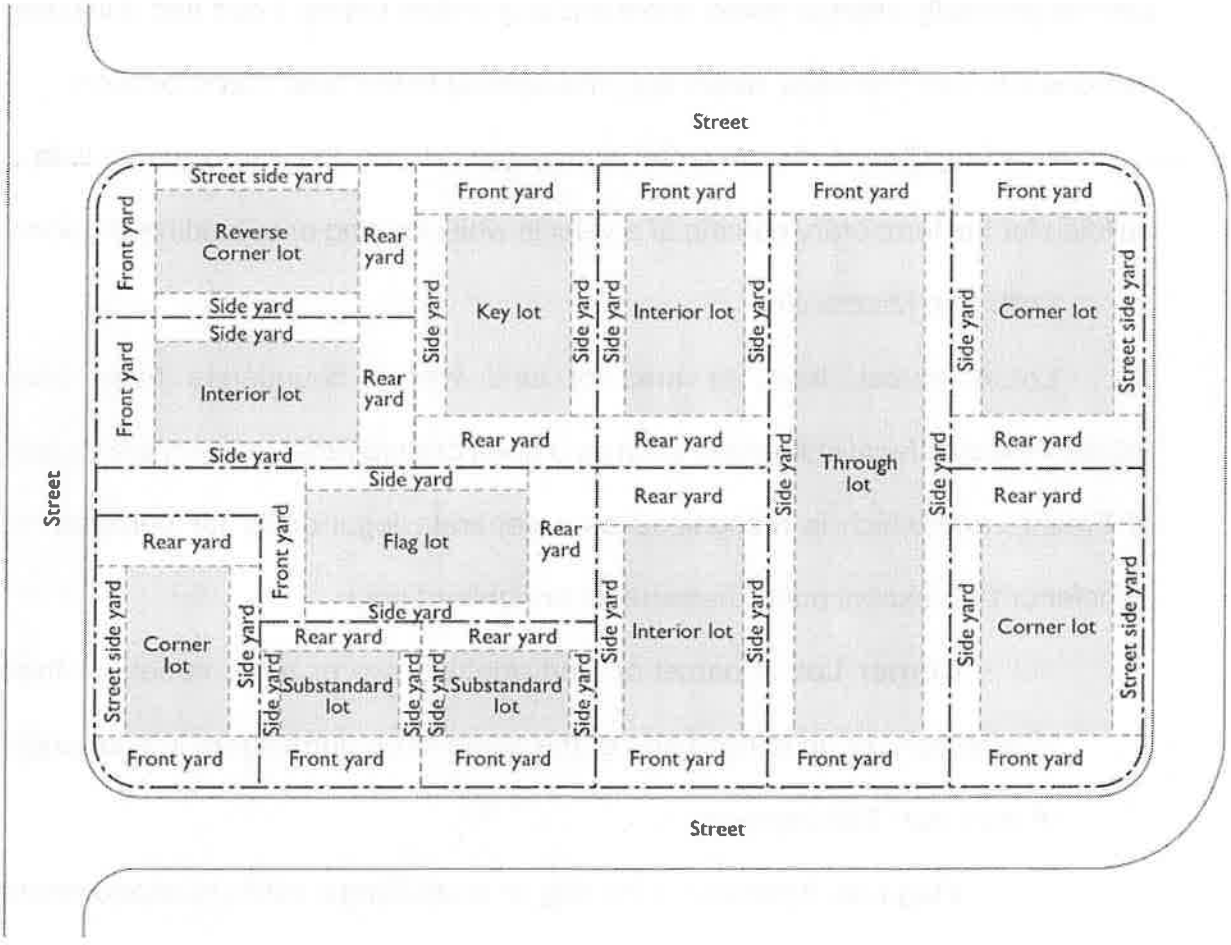


FIGURE 15-6802-1: LOT AND YARD TYPES

Lot Area. The total area within the property lines of a parcel, excluding any street or alley right-of-way.

Lot Depth. The average distance from the front lot line to the rear lot line measured in the general direction of the side lines. See also Section 15-306, Measuring Lot Width and Depth.

Lot Frontage. The width of the front parcel line measured at the street right-of-way.

Lot Line. A line of record bounding a parcel that divides one parcel from another parcel or from a public or private street or any other public space.

Front Lot Line. The parcel line separating a parcel from a street right-of-way. In the case of a corner parcel, the line separating the narrowest street frontage of the parcel from the street shall be considered the front.

Rear Lot Line. The parcel line opposite and most distant from the front parcel line; or in the case of triangular or otherwise irregularly shaped parcel, a line ten feet in length entirely within the parcel, parallel to, and at a maximum distance from the front parcel line.

Side Lot Line. Any parcel line other than a front or rear parcel line.

Street Side Lot Line. A side lot line of a corner lot that is adjacent to a street.

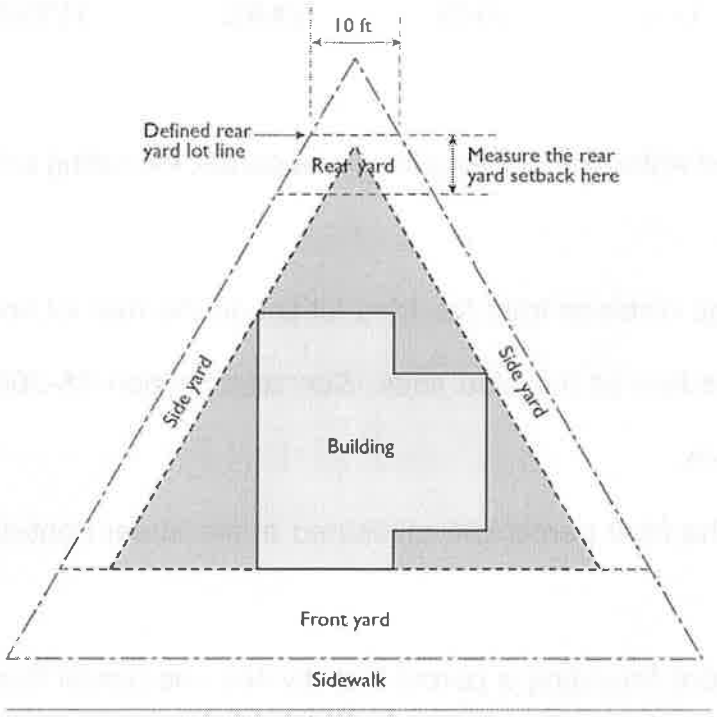


FIGURE 15-6802-2: REAR LOT LINE FOR PURPOSES OF DETERMINING SETBACKS

Lot Width. The horizontal distance between the side lines of a parcel measured at right angles to its depth along a straight line parallel to the front parcel line at the street or public right-of-way that is identified as the parcel's address.

Main Structure. See Structure, Main.

Maintenance and Repair. The repair or replacement of nonbearing walls, fixtures, wiring, roof, or plumbing that restores the character, scope, size, or design of a structure to its previously existing, authorized, and undamaged condition.

Mezzanine. An intermediate floor within a building interior without walls, partitions, closets, screens, or other complete enclosing interior walls or partitions

that is open to the floor below and has a floor area that is no greater than one-third of the total floor area of the floor below. When the total floor area of a mezzanine exceeds one-third of the total floor area of the floor below it constitutes an additional story. In some instances, mezzanine may be defined differently by the Building Code.

Mixed-Use Development. The development of a parcel or building with two or more different land uses such as, but not limited to, a combination of residential, office, manufacturing, retail, public, or entertainment in a single or physically integrated group of structures.

Mobile Vendor. Any person that sells, or causes or allows another, whether as an employee or as an independent contractor leasing or renting equipment, to sell any food, drinks, or merchandise by means of a motorized or non-motorized vehicle, such as a wagon, pushcart, handcart, bicycle, motorized cart, or food truck.

Muntin. A bar or rigid supporting strip between adjacent panes of glass.

Noise-Related Definitions.

Community Noise Equivalent Level (CNEL). The average equivalent A-weighted sound level during a 24-hour day, obtained after addition of five decibels to sound levels in the evening from 7 p.m. to 10 p.m. and after addition of 10 decibels to sound levels in the night from 10 p.m. to 7 a.m.

Day-Night Average Sound Level (Ldn). The A-weighted average sound level for a given area (measured in decibels) during a 24-hour period with a 10 dB weighting applied to night-time sound levels (after 10 p.m. and before 7 a.m.). The Ldn is approximately numerically equal to the CNEL for most environmental settings.

Decibel (dB). A unit of measurement used to express the relative intensity of sound as heard by the human ear describing the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals (20 micronewtons per square meter).

Decibel, A-weighted (dBA). The "A-weighted" scale for measuring sound in decibels; weights or reduces the effects of low and high frequencies in order to stimulate human hearing. Every increase of 10 dBA doubles the perceived loudness though the noise is actually ten times more intense.

Equivalent Sound Level (Leq). A single-number representation of the fluctuating sound level in decibels over a specified period of time. It is a sound-energy average of the fluctuating level.

Maximum Noise Level (Lmax). The highest value measured by the sound level meter over a given period of time, based on the time-weighted sound level in dB, using either the Fast or Slow time constant.

Non-Conforming Building. See Non-Conforming Structure.

Non-Conforming Lot. A legally-created lot of land having less area, frontage, or dimensions than the existing Code requires in the Zoning District in which it is located.

Non-Conforming Use, Structure, or Site Feature. See Legal Non-Conforming Use, Structure, or Site Feature.

Occupancy Group. The Building Code use category for determining requirements for building construction elements and life safety system requirements.

On-Site. Located on the lot that is the subject of discussion.

Open Space Types.

Open Space, Common. Any outdoor area, not dedicated for public use, which is designed and intended for the common use and enjoyment of the residents and guests of more than one dwelling unit.

Open Space, Private. Open areas for outdoor living and recreation that are adjacent and directly accessible to a single dwelling unit, reserved for the exclusive use of residents of the dwelling unit and their guests.

Open Space, Usable. Outdoor areas that provide for outdoor living and/or recreation for the use of residents.

Outdoor Sales, Temporary and Seasonal. The sale or offering for sale to the general public of merchandise outside of a permanent structure on property owned or leased by the person, firm, or corporation. These sales are of a limited

duration and conducted on an occasional basis, and are secondary or incidental to the principal permitted use or structure existing on the property.

Outdoor Storage. The keeping, in an unroofed area, of any goods, junk, material, merchandise or vehicles in the same place for more than 72 hours except for the keeping of building materials reasonably required for construction work on the premises pursuant to a valid and current Building Permit issued by the City.

Overlay District. A zoning designation specifically delineated on the Zoning Map establishing land use requirements that govern in addition to the standards set forth in the underlying zoning district.

Parapet. A low wall or railing extending above the roof and along its perimeter.

Parcel. See Land Division-Related Definitions.

Parking Facility. An area of a parcel, structure, or any other area, including driveways, which is designed for and the primary purpose of which is to provide for the temporary storage of operable motor vehicles.

Accessory Parking. An area of a parcel, structure, or any other area, which is designed, reserved for, and the primary purpose of which is to provide off-street parking to serve a building or use that is the primary or main use of the parcel.

Long-Term Parking. An area designed for employee parking, when a vehicle is not normally moved during the period of an employee's work shift, as opposed to customer or visitor parking.

Parking, Bicycle. A covered or uncovered area equipped with a rack or other device designed and useable for the secure, temporary storage of bicycles.

Long-Term. Bicycle parking that is designed to serve employees, students, residents, commuters, and others who generally stay at a site for two hours or longer.

Short-Term. Bicycle parking that is designed to serve shoppers, customers, messengers, guests, and other visitors to a site who generally stay for a period of less than two hours.

Parking Space, Off-Street. An area, covered or uncovered, designed and usable for the temporary storage of a vehicle, which is paved and accessible by an automobile without permanent obstruction.

Parking Structure. A structure used for parking and storage of vehicles.

Patio. An outdoor area, often paved, adjoining a building that is used for outdoor open space. It is not enclosed by walls and typically is located at grade or supported by minimal footings.

Paving. A type of material used over areas of a parcel such as driveways, parking spaces and areas, pathways, patios, and front setbacks used for access by vehicles and pedestrians.

Permit. Any Conditional Use Permit, Temporary Use Permit, Building Permit, license, certificate, approval, or other entitlement for development and/or use of property as required by any public agency.

Permitted Use. Any use or structure that is allowed in a Zoning District without a requirement for approval of a Use Permit, but subject to any restrictions applicable to that Zoning District.

Person. Any individual, firm, association, organization, partnership, business trust, company, or corporation.

Person with Disabilities. Under the Americans With Disabilities Act, an individual with a disability is a person who: (1) has a physical or mental impairment that substantially limits one or more major life activities; or (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

Pharmacies and Drug Retailers. Establishments generally known as pharmacies and drug retailers engaged in retailing prescription or nonprescription drugs and medicines.

Planning Commission. The Planning Commission of the City of Fresno.

Plaza. An outdoor space set aside for gathering or congregating and commercial activities, typically surrounded by building frontages.

Pocket Park. A park of one-half to two acres in size that intended to serve the needs of a smaller, specific neighborhood located within a half-mile radius of the pocket park.

Podium. A continuous raised platform supporting a building or a large block of two or three stories beneath a multi-story block of smaller area.

Porte Cochere. A roofed structure through which a vehicle can pass, extending from the entrance of a building over an adjacent driveway, the purpose of which is to shelter persons entering and exiting a building.

Pre-Existing. In existence prior to the effective date of this Code.

Primary Use. See Use, Primary.

Project. Any proposal for a new or changed use or for new construction, alteration, or enlargement of any structure, that is subject to the provisions of this ordinance. This term includes, but is not limited to, any action that qualifies as a "project" as defined by the California Environmental Quality Act.

Public Land. Any government-owned land, including, but not limited to, public parks, beaches, playgrounds, trails, paths, schools, public buildings, and other recreational areas or public open spaces.

Public Resources Code. The Public Resources Code of the State of California.

Qualified Applicant. The property owner, the owner's agent, or any person or other legal entity that has a legal or equitable title to land that is the subject of a development proposal or is the holder of an option or contract to purchase such land or otherwise has an enforceable proprietary interest in such land.

Ramp. An access driveway leading from one parking level to another, or an access driveway from an entrance leading to parking at a different level.

Recreational Vehicle (RV). A mobile, temporary lodging space, usually housed in a motor vehicle or trailer, generally for the purposes of travelling.

Residential Use. One or more rooms designed, occupied, or intended for occupancy as primary living quarters in a building or portion thereof.

Review Authority. Body responsible for making decisions on zoning and related applications.

Right-of-Way. A strip of land acquired by reservation, dedication, forced dedication, prescription, or condemnation and intended to be occupied or occupied by a road, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer, or other similar use.

Roof. That portion of a building or structure above walls or columns that shelters the floor area or the structure below.

Screening. Buffering of a building or activity from neighboring areas or from the street with a wall, fence, hedge, informal planting, or berm.

Security Grate or Grilles. A metal grate that rolls up over, or slides across, a window or door to provide protection against unwanted entry. It also can be a fixed metal fixture over window openings.

Service Areas. Portions of a building which are utilitarian in nature and are not typically frequented by the general public or occupants of the building, such as utility equipment rooms, freight loading areas, trash/recycling rooms, and emergency exit stairways/hallways.

Setback. The distance between the parcel line and a building, not including permitted projections, that must be kept clear or open. See also Section 15-304, Measuring Distances, and Section 15-313, Determining Setbacks (Yards).

Shielded Light Fixture. Outdoor light fixtures shielded or constructed so that light rays emitted by the lamp are projected below the horizontal plane passing through the lowest point on the fixture from which light is emitted.

Sidewalk. A paved, surfaced, or leveled area, paralleling and usually separated from the street, used as a pedestrian walkway.

Sidewalk Café. Any outdoor dining area located in or adjacent to any public sidewalk or right-of-way which is associated with a restaurant or other eating and drinking establishment on a contiguous adjacent parcel.

Sign-Related Definitions. The following terms are related to Article 26, Signs.

Animated Sign. A sign with messages that visually change, or images that move or appear to move, more frequently than once every 24 hours, regardless of the method by which the visual change is affected. This definition does not include traditional barber poles, hand-held signs, personally attended signs, commercial mascots, scoreboards, or signs which merely display time or temperature. Animated signs include electronic message signs, sometimes called electronic reader boards. A sign that displays a series of still images which change more frequently than once per 24 hours, whether by digital, LED, or functionally equivalent method, is within this definition.

Awning. Any structure made of flexible fabric or similar material covering a metal frame attached to a building, whether or not the same is

so erected as to permit its being raised to a position flat against the building when not in use.

Awning or Canopy Sign. Sign copy placed on an awning or any other projecting structure made of flexible fabric or similar material covering a metal frame supported by the ground or sidewalk.

Banner. Any sign of lightweight fabric or similar material that is mounted to a pole or a building at one or more edges. Flags are not within this definition.

Billboard. See Outdoor Advertising Display.

Changeable Copy Sign. A sign constructed or designed to allow for periodic changes of copy, and for which the copy is changed not more than once each 24 hour period. Examples include signs for an auditorium, theater, church, meeting hall, or similar uses characterized by public assembly and changing programs or events, or gas station prices. This definition does not include animated signs or electronic reader board signs.

Commercial Message. A message on a sign, or portion of a sign, that promotes, informs, or proposes an economic transaction, primarily concerns the economic interests of the sign sponsor and/or audience, or is intended to further discussion in the marketplace of goods and services.

Construction Sign. A temporary sign displayed on the site of a construction, remodeling, or major landscaping project during the period of time of actual construction activity.

Copy. Any letters, numerals, or symbols displayed on a sign face conveying a message to the public.

Directional Sign. Any sign, other than a highway marker or any sign erected and maintained by public authority, or a public utility which is designed, erected, and maintained for the purpose of directing persons to a place, structure, or activity.

Exempt Sign. A sign which may be legally displayed, erected or maintained, but is not subject to a sign permit requirement. See Section 15-2604, Exempt Signs.

Face. That portion of a sign upon which the copy is mounted or displayed.

Flag. Any fabric or banner containing distinctive colors, patterns, or design that displays the symbol(s) of a nation, state, local government, company, organization, belief system, idea, or other meaning.

Freestanding Sign. A permanent sign that is self-supporting in a fixed location and not attached to a building. Freestanding signs are of two types: monument and pole. Monument signs are connected or attached to a sign structure, fence, or wall that is not an integral part of a building. Pole signs are mounted on a pole(s) or other support(s) that are placed on and anchored in the ground or on a base and that is independent from any building or other structure. Flag poles are not within this definition.

Graffiti. Marks, such as inscriptions, drawings, or designs, which are placed, scratched, etched, painted, or sprayed on public or private property without the owner's consent.

Illuminated Sign. A sign with an artificial light source incorporated internally or externally for the purpose of illuminating the sign. This includes signs made from neon or other gas tube(s) that are bent to form letters, symbols, or other shapes. Ambient lighting, by itself, does not make a sign "illuminated."

Master Sign Program. A coordinated sign plan which includes details of all signs (not including exempt or temporary signs) which are or will be placed on a site, including master identification, individual business, and directory signs.

Mobile Billboard. Any vehicle, or wheeled conveyance which carries, conveys, pulls, displays, or transports any sign or billboard for the primary purpose of advertising a commercial or noncommercial message, or other general advertising for hire.

Monument Sign. See Freestanding Sign.

Name Plate. A sign that identifies an occupant and/or address.

Non-Conforming Sign. A sign lawfully erected and legally existing prior to the effective date of this Code, or of amendments thereto, but which does not conform to the provisions of this Code.

Non-Commercial Message. A message or image on a sign, or portion of a sign, which displays noncommercial speech, e.g., commentary or advocacy on topics of public debate and concern. This definition shall be construed and interpreted in light of relevant court decisions. Noncommercial messages do not have a location factor, such as on-site or off-site.

Non-Communicative Aspects. Those aspects of a sign that are not directly communicative, such as physical structure, mounting device, size and height, setback, illumination, spacing, and scale relative to other structures.

Off-Site or Off-Premise Sign. A sign that identifies, advertises, or attracts attention to a business, product, service, event, or activity sold, existing, or offered at a different location. The off-site/on-site distinction applies only to commercial messages.

On-Site or On-Premise Sign. Any sign or portion thereof that identifies, advertises, or attracts attention to a business, product, service, event, or activity sold, existing, or offered upon the same property or land use as the sign. The off-site/on-site distinction applies only to commercial messages.

Outdoor Advertising Signs. Billboards and any other outdoor advertising signs which convey an off-site commercial message as their primary purpose.

Pennant. Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, attached to a rope, wire, or string, usually in a series, designed to move in the wind and attract attention. Flags and banners are not within this definition.

Pole Sign. See Freestanding Sign.

Projecting Sign. Any sign that is perpendicular to the face of a building and projects more than 18 inches from the face. This category includes awning and under canopy signs.

Primary Building Face. The wall of a building which contains the principal entrance(s) to the building. If there are principal entrances in more than one wall, the longest of the walls in which principal entrances are located shall be the primary building face. "Primary building face" shall include not only the wall itself but all doors, windows, or other openings therein and projections therefrom.

Real Estate Sign. Any sign, temporary in nature, with copy which concerns a proposed sale, rent, lease, or exchange of real property. This definition does not include occupancy signs at establishments offering transient occupancy, such as hotels, motels, and "bed and breakfast" facilities.

Roofline. The top edge of a roof or building parapet, whichever is higher, excluding any cupolas, pylons, chimneys, or minor projections.

Roof Sign. Any sign located on a roof of a building or having its major structural supports attached to a roof.

Sign. Any identification, description, illustration, or device illuminated or non-illuminated, which is visible to the general public from any exterior public right-of-way, and directs attention to a product, service, place, activity, person, institution, business, or solicitation, including any permanently installed or situated merchandise; or any emblem, painting, banner, pennant, or placard designed to advertise, identify, or convey information. A display, device, or thing need not contain lettering to be a sign. Notwithstanding the generality of the foregoing, the following are not within this definition:

Architectural features. Decorative or architectural features of buildings (not including lettering, trademarks, or moving parts), that do not perform a communicative function;

Fireworks, etc. The legal use of fireworks, candles, and artificial lighting not otherwise regulated by this Code;

Foundation stones, cornerstones;

Grave markers, grave stones, headstones, mausoleums, shrines, and other markers of the deceased;

Personal appearance. Items or devices of personal apparel, decoration, or appearance, including tattoos, makeup, wigs, costumes, and masks, but not including commercial mascots or hand-held signs; and

Symbols embedded in architecture. Symbols of non-commercial organizations or concepts including, but not limited to, religious or political symbols, when such are permanently integrated into the structure of a permanent building, including stained glass windows on churches, carved or bas relief doors or walls, bells, and religious statuary.

Sign Area. The area contained within a single continuous perimeter enclosing all parts of such sign copy, excluding any structural elements outside the limits of the sign required to support the sign.

Temporary Sign. A structure or device used for the public display of visual messages or images, which is typically made of lightweight or flimsy materials which is not intended for or suitable for long term or permanent display.

Wall Sign. Any sign attached to, erected against, or painted upon the wall of a building or structure, the face of which is in a single plane parallel to the plane of the wall. Wall signs also include signs on a false or mansard roof.

Window Sign. Any sign painted, etched, or otherwise affixed to an exterior window of a building, or in the interior of the building, within three feet of a window, intended to be viewed from the exterior of such building. On-site advisory signs are not considered window signs.

Site. A parcel, or group of contiguous parcels, that is proposed for development in accordance with the provisions of this Ordinance and is in a single ownership or under unified control.

[**Smoke And Vapor Products** include, but may not be limited to, Tobacco Products and Smoking Paraphernalia.]

[**Smoke Shop** means any business that primarily sells or offers for sale any Smoke and Vapor Products, but shall not include: Tobacco Retailers; establishments that sell Smoke and Vapor Products for onsite consumption (such as cigar lounges); or establishments operating under Article 33 of Chapter 9 (Cannabis Retail Business and Commercial Cannabis Business).]

[**Smoke Shop Operator** includes all Persons who own and/or operate the Smoke Shop. An owner is any Person who owns 5% or more of the Smoke Shop.]

[**Smoking** shall have the same meaning as Section 22950.5(c) of the Business and Professions Code, including any amendments or successor statutes thereto.]

[**Smoking Paraphernalia** means any device, substance, or accessory intended for the smoking of tobacco, cannabis, vaping or electronic cigarette, illicit drug use, or any other substance.]

Story. That portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the upper surface of the roof above. A mezzanine with a floor area that exceeds one third of the total floor area of the floor or level below constitutes a story. In some instances, story may be defined differently by the Building Code.

Street. A public or private thoroughfare which affords the access to a block and to abutting property. "Street" includes avenue, place, way, drive, boulevard, highway, road, and any other thoroughfare, except an alley as defined herein.

Street Tree. A tree fronting private property within the street right-of-way.

Streetwall. A wall or portion of a wall of a building facing a street.

Structural Alterations. Any physical change to or the removal of the supporting members of a structure or building, such as bearing walls, columns, beams, or girders including the creation, enlargement, or removal of doors or windows and changes to a roofline or roof shape.

Structure. Anything constructed or erected, which requires a fixed location on the ground, or is attached to a building or other structure having a fixed location on the ground.

Structure, Accessory. A detached subordinate structure, used only as incidental to the main structure on the same parcel.

Structure, Main. A structure housing the principal use of a site or functioning as the principal use.

Structure, Temporary. A structure without any foundation or footings and which is intended to be removed when the designated time period, activity, or use for which the temporary structure was erected has ceased.

Swimming Pool. A pool, pond, or open tank capable of containing a large and deep enough body of water for people to use to swim.

Telecommunication-Related Definitions. The following terms are related to Section 15-2759, Telecommunication and Wireless Facilities.

Alternative Tower Structure. Artificial trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Antenna. Any system of poles, panels, rods, reflecting discs, wires, or similar devices used for the transmission or reception of electromagnetic signals, including, but not limited to, radio waves and microwaves. An antenna does not include the support structure the antenna(s) is mounted upon.

Antenna, Amateur Radio. A ground-, building-, or tower-mounted antenna operated by a federally licensed amateur radio operator that is used for the purpose of transmitting and receiving radio signals as part of the Amateur Radio Service as designated by the Federal Communications Commission (FCC).

Antenna, Building- or Structure-Mounted. An antenna mounted to a building, rooftop equipment screen, or structure that transmits or receives electromagnetic signals.

Antenna, Ground-Mounted. Any antenna that is not mounted on a pole, a structure, or the roof or wall of a building.

Antenna, Satellite Earth Station. An antenna designed and used to receive and/or transmit radio frequency signals directly to and/or from orbiting communications satellites.

Antenna, Whip. An antenna consisting of a single, slender, rod-like element, less than one wave length long, which is supported only at or near its base.

Antenna Structure. An antenna array and its associated support structure, such as a mast or tower (not including a suspended simple wire antenna), that is used for the purpose of transmitting and/or receiving electromagnetic signals, including, but not limited to, radio waves and microwaves.

Antenna Structure, Freestanding. An antenna structure or mast that is not attached to any part of a building, fence, or other such structure. Freestanding antenna structures include communications towers, wooden utility poles, and concrete and steel monopoles. If the total height of the structure, including the antenna, is at least 17 feet high, it shall be treated as a monopole.

Antenna Structure, Monopole. An antenna structure, often tubular in shape, usually made of metal, reinforced concrete, or wood, which is at least 17 feet in height. A monopole may also be an alternative antenna structure that is designed to replicate a tree or other natural feature.

Slim Line Monopole. A continuous, smooth, round cross section monopole with no cut-outs or exterior attachments such as climbing pegs.

Co-Location. The location of two or more wireless communications facilities owned or used by more than one public or private entity on a single support structure or otherwise sharing a common location. Co-location shall also include the location of wireless communications facilities with other facilities such as buildings, water tanks, light standards, and other utility facilities and structures.

Distributed Antenna System. A system of small antennas installed on existing infrastructure such as telephone poles and streetlights throughout an area, which are interconnected by fiber optic cable to a central hub location, and are generally designed to support multiple wireless carriers.

Equipment Cabinet or Enclosure. A cabinet or structure used to house equipment associated with a wireless communications facility.

Feasible. Feasible means in light of technical feasibility, radio signal transmitting and receiving requirements, aesthetics, electromagnetic fields, costs, landowner permission, facility owner permission, and all necessary approvals under this Code and the California Building Code, as well as the common meaning of the term.

Mast. A pole of wood or metal or a tower fabricated of metal that is used to support an antenna and maintain it at the proper elevation.

Microcell Facility. A wireless communication facility serving a single carrier and consisting of an antenna no larger than four feet in height or, if tubular, no more than six feet long and four inches in diameter comprised of a networked set of antennas that are connected with each other and to a wireless service source, such that a one or more high-power antennas that serve a given area are replaced by a group of lower-power antennas to serve the same geographic area.

Readily Visible. An object that can be identified as a wireless telecommunications facility when viewed with the naked eye.

Related Equipment. All equipment ancillary to the transmission and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit, and connectors.

Service Provider. Any authorized provider of wireless communications services.

Telestyles. Architecturally blended cell towers, the result of cooperation with designers and architects.

Tower. Any structure that is designed or constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes, but is not limited to, radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like.

Wireless Communications Facility. Personal wireless service facilities as defined by the federal Telecommunications Act of 1996 including, but not limited to, facilities that transmit and/or receive electromagnetic signals for cellular radio telephone service, personal communications services, enhanced specialized mobile services, paging systems, and related technologies. Such facilities include antennas, microwave dishes, parabolic antennas, and all other types of equipment used in the transmission or reception of such signals; telecommunication towers or similar structures supporting said equipment; associated equipment cabinets and/or buildings; and all other accessory development used for the provision of personal wireless services. These facilities do not include radio towers, television towers, and government-operated public safety networks.

Temporary Structure. See Structure, Temporary.

Temporary Use. A use that is intended to be of a limited duration of time and that will not permanently alter the character or physical facilities of the property where it occurs.

Tenant. A person who rents, leases, or subleases, through either a written or oral agreement, real property from another.

Tiny House. A structure intended for separate, independent living quarters for one household that meets these six conditions:

1. Is licensed and registered with the California Department of Motor Vehicles and meets ANSI 119.2 or 119.5 requirements;

2. Is towable by a bumper hitch, frame-towing hitch, or fifth-wheel connection. Cannot (and is designed not to) move under its own power. When sited on a parcel per requirements of this Code, the wheels and undercarriage shall be skirted;

3. Is no larger than allowed by California State Law for movement on public highways;

4. Has at least 100 square feet of first floor interior living space;

5. Is a detached self-contained unit which includes basic functional areas that support normal daily routines such as cooking, sleeping, and toiletry; and

6. Is designed and built to look like a conventional building structure.

[**Tobacco Product** shall have the same meaning as provided in 22950.5(d) of the Business and Professions Code, including any amendments or successor statutes thereto.]

[**Tobacco Retailer** means any establishment whose business includes the incidental sale of Smoke and Vapor Products, such as supermarkets and convenience stores.]

Trailer. A vehicle without motor power, designed to be drawn by a motor vehicle and to be used for human habitation or for carrying persons or property, including a mobile home, trailer coach or house trailer.

Trash Screen/Enclosure. A permanent, immobile structure, designed for the storage of a mobile resource recovery, recycling, or compost bin or container.

Unit. See Dwelling Unit.

Use. The purpose for which land or the premises of a building, structure, or facility thereon is designed, arranged, or intended, or for which it is or may be occupied or maintained.

Use, Accessory. A use that is customarily associated with, and is incidental and subordinate to, the primary use and located on the same parcel as the primary use.

Use, Primary. A primary, principal, or dominant use established, or proposed to be established, on a parcel.

Use Classification. A system of classifying uses into a limited number of use types on the basis of common functional, product, or compatibility characteristics. All use types are grouped into the following categories: residential; public and semi-public; commercial; industrial; transportation, communication, and utilities; and agricultural and extractive.

Use Permit. A discretionary permit, such as a Conditional Use Permit, which may be granted by the appropriate City authority to provide for the accommodation of land uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, which are not permitted as of right, but which may be approved upon completion of a review

process and, where necessary, the imposition of special conditions of approval by the permit granting authority.

Use Type. A category which classifies similar uses based on common functional, product, or compatibility characteristics.

Utilities. Equipment and associated features related to the mechanical functions of a building(s) and services such as water, electrical, telecommunications, and waste.

Variance. A discretionary grant of permission to depart from the specific requirements of this Code that is warranted when, due to special circumstances regarding the physical characteristics of the property, the strict application of standards would deprive the property of privileges available to other property in the same zoning district. See Article 55, Variances.

Vehicle. Any vehicle, as vehicle is defined by the California Vehicle Code, including any automobile, camper, camp trailer, trailer, trailer coach, motorcycle, house car, boat, or similar conveyance.

Vibration. A periodic motion of the particles of an elastic body or medium in alternately opposite directions from the position of equilibrium.

Visible. Capable of being seen (whether or not legible) by a person of normal height and visual acuity walking or driving on a public road.

Walk-Up Facility. A facility designed to provide service to pedestrian clients, where clients typically are queued on the outside of the main structure or

room. Typical facility types include, but are not limited to, automatic teller machines (ATMs) and food-service windows.

Wall. Any exterior surface of building or any part thereof, including windows.

Warehouse Clubs and Supercenters. Establishments generally known as warehouse clubs, superstores, or supercenters, primarily engaged in retailing a general line of groceries, including a significant amount and variety of fresh fruits, vegetables, dairy products, meats, and other perishable groceries, in combination with a general line of new merchandise, such as apparel, furniture, and appliances.

Watercourse. A strip of land over which water flows, having a definite bed, bank, and channel, wherein the water need not flow continually, but usually flows in a particular direction.

Window. An opening in a wall of a building that is filled with glass in a frame. They typically allow light and air into the interior of a building, but also serve as mediums for viewing merchandise in commercial properties.

Yard. See Setback.

Yard Sales. See Garage Sales.

Zoning District. A specifically delineated area or district in the city within which regulations and requirements uniformly govern the use, placement, spacing, and size of land and buildings.

SECTION 15-2761. – ~~TOBACCO AND VAPOR SALES~~ [SMOKE SHOPS – PERMIT AND OPERATIONAL REQUIREMENTS].

~~A. **Signage.** Any establishment located within 400 feet of a park, school (private or public), day care, or other youth-sensitive places (e.g. boys and girls club, youth activity centers) may not advertise smoking sales (such as for tobacco, vapor, or similar products) or related paraphernalia in a manner visible from the outside of the establishment, such as from a public thoroughfare, sidewalk, or parking lot.~~

A. **[Purpose.** The purpose of this section is as follows:

1. To establish regulations for Smoke Shops, as defined in Section 15-6802 of this Code.

2. To amortize existing Smoke Shops and allow up to seven Smoke Shops per City Council District, unless otherwise provided pursuant to Subsection 15-2761(D)(4) hereinunder.

B. **Applicability; Exemptions.**

1. **All Smoke Shops will be required to comply with this section.**

a. **New Smoke Shops.** Any New Smoke Shop established after the effective date of this section shall obtain a Conditional Use Permit as provided herein and shall comply with all requirements of this section.

b. **Existing Smoke Shops**. All Existing Smoke Shops must comply with all the requirements of this section, including the amortization provisions.

c. **Exemptions.** This section does not apply to temporary uses issued a Temporary Use Permit for special events such as fairs or cultural festivals and established in compliance with all City laws and ordinances.

C. **Legal Nonconforming Smoke Shops; Amortization.**

1. Existing Smoke Shops, lawfully established pursuant to the Municipal Code prior to the effective date of this ordinance, must come into compliance with all operational requirements within 30 days of the Effective Date of this Ordinance. No Existing Smoke Shop may make a substantial change of mode or character of their operation. A substantial change of mode or character shall include, but not be limited to, structural changes which expand the sales area of Smoke and Vapor Products and related items by more than a cumulative 5% commencing from the effective date of the ordinance, or a period of closure for more than 30 days; transfers of ownership shall not be considered a substantial change of mode or character of operation.

2. Existing Smoke Shops may sell or transfer their existing Business License, but the new owner shall also be subject to all provisions of this Code applicable to Existing Smoke Shops.

3. Existing Smoke Shops may continue operation for 18 months from the effective date of this Ordinance (the "Amortization Period"), provided they

comply with Subsection C.1. The Amortization Period shall be outlined by the City Manager, or designee, pursuant to Section I.1., below. Existing Smoke Shops which are not awarded a Conditional Use Permit, as required by Section D., below, may operate until the end of the Amortization Period. Once the Amortization Period has expired, the Existing Smoke Shop must immediately cease all operations in perpetuity.

a. Existing Smoke Shops that can demonstrate that 18 months is an insufficient amount of time to amortize their investment, must submit a request for reconsideration to the Director no later than 90 days prior to the expiration of the Amortization Period. The request for reconsideration shall be subject to the appeal provisions of Section 15-5017, Appeals. Each request for a longer term for amortization shall be considered on the basis of the submitted evidence and any extension provided shall be specific to the individual request. Factors to be considered by the Review Authority in determining if the time provided hereinabove is insufficient for the Existing Smoke Shop which requests reconsideration shall include:

    i. The precise nature of the nonconforming use.

    ii. The portion of the business that will be affected, on a pro rata basis.

    iii. The total amount of the investment made for the

business, including on the property and any improvements thereon, as well as the total investment for the pro rata portion of the business that sells Smoke and Vapor Products, including the present or depreciated value of any property owned.

iv. The expiration date and termination rights under leases related to the operation of an Existing Spoke Shop. Any new leases or lease extensions, amendments, or renewals entered into in close proximity to the passage of this Ordinance may be a basis for denial of the request for extension.

v. The ability of the business to recover its investment by changing the use of the property, and the amount of time and additional investment needed to do so.

vi. Any violations of Federal, State, or local law.

vii. Any other information the Smoke Shop Operator deems relevant for the City to consider.

viii. Any other information requested by the City to clarify the request for extension of the Amortization period.

D. **Establishment of New Smoke Shops.** Up to seven Smoke Shops may operate in each City Council District. New Smoke Shops shall be required to

obtain a Conditional Use Permit pursuant to the requirements of Chapter 15, Article 53, Conditional Use Permits. New Smoke Shops and Existing Smoke Shops may apply for available Conditional Use Permits in any given District immediately following the effective date of this ordinance. Any Smoke Shop which receives a Conditional Use Permit shall be subject to all provisions of Chapter 15, Article 53, Conditional Use Permits, including the expiration provisions therein.

1. The City shall provide public notice of an available Conditional Use Permit any time one or more Smoke Shop vacancies become available in a District. Public Notice shall be provided in a newspaper of general circulation for a period of 10 consecutive days. Applicants shall have 60 days from the date of the notice to apply for any available Conditional Use Permit. City shall review timely-filed applications within 60 days of the close of the application period to ensure they meet all requirements set forth in this Ordinance. Should no applications be received within 60 days of publishing the notice, the City shall re-notice the availability following the above process. Councilmembers shall be provided with notice of any applications received for their respective District.

2. The City shall hold a lottery within 120 days of the close of the application period whenever the number of qualified applications exceeds the number of Conditional Use Permits available within a given Council District. The

lottery shall be conducted in a manner determined by the City Manager, or designee, under the authority granted by Section I.1., below. A lottery selection does not confer any right to operate a Smoke Shop, only the right to file an application for a Conditional Use Permit. All other requirements of this Ordinance must be met for the issuance of a Conditional Use Permit.

3. At any time that one or more Smoke Shop vacancies become available in a District, the City shall grant a Conditional Use Permit for a New Smoke Shop following the above process.

4. City Council may increase the number of new Smoke Shops permitted in any given District upon passage of a Council resolution brought forward by the Councilmember of the District for which the limit increase is being requested. The Councilmember who brings forward the Resolution to Increase may do so at any time after the passage of this ordinance.

5. City Council may decrease the number of Smoke Shops permitted in any given District upon passage of a Council resolution brought forward by the Councilmember of the District for which the limit decrease is being requested. In no event shall the number of Smoke Shops permitted in any given District be reduced to below seven.

E. **Business License Required.** All Smoke Shops must obtain a Business License in accordance with Chapter 7 of the Fresno Municipal Code. Every

Smoke Shop location must have an individual Business License. It shall not be permitted for multiple Smoke Shop locations to operate under the same Business License or Conditional Use Permit.

F. **Location restrictions.** The following location restrictions apply to all Smoke Shops, except Existing Smoke Shops not seeking a Conditional Use Permit to continue operations after expiration of the Amortization Period.

1. **Near Sensitive Uses.** The Smoke Shop shall not be located within 1,000 feet of the following:

   a. A public park, playground, recreational area including a trail that is immediately adjacent to a public park, or youth facility, including a boys and girls club, nursery school, preschool, or day care facility;

   b. A public or private State-licensed or accredited school; or

   c. An alcohol or other drug abuse recovery or treatment facility.

2. **Near Other Smoke Shops.** The Smoke Shop shall not be located within 1,000 feet of another Smoke Shop. Smoke Shop Conditional Use Permits shall be granted first come first served, on the basis of the date the application is deemed complete and the provisions of Chapter 15, Article 53, Conditional Use Permits are met.

3. **Concentration.** Up to seven Smoke Shops may be permitted within each City Council District following the effective date of this Ordinance, except

for Existing Smoke Shops during the Amortization Period.

G. **Operational Requirements**

1. **Landscaping.**

a. **New Buildings.** Landscaping shall be provided per the underlying zone district's development standards, and applicable Conditions of Approval.

b. **Existing Buildings.** Perimeter landscaping and Parking Lot Shading standards shall be provided per the underlying zone district. The Review Authority, at their discretion, may make exceptions to the prescribed standards, however in no case shall the reduction result in a net reduction of 35% or greater in the amount of landscaping provided. Landscaping may also be aggregated to minimize the impact on existing parking areas.

2. **Lighting.** The exterior of the premises, including adjacent public sidewalks and all parking lots under the control of the Smoke Shop, shall be illuminated in accordance with the lighting requirements of the underlying zone district, and applicable Conditions of Approval.

3. **Litter and Graffiti.**

a. Trash and recycling receptacles shall be provided near public entrances to and exits from the building.

b. The Smoke Shop Operator shall provide for daily removal of trash, litter, and debris from the premises and on all sidewalks that abut the premises, including the Smoke Shop's parking areas.

c. The Smoke Shop Operator shall remove graffiti in accordance with the requirements of Section 9-2514 of the Fresno Municipal Code, including any amendments or successor ordinances thereto.

4. **Vending Machines.** Internal and external vending machines are prohibited.

a. No tobacco products or paraphernalia may be sold via vending machine or automatic sales dispenser on the premises of the Smoke Shop.

b. No food or beverage products may be sold via vending machine or automatic sales dispenser on the premises of the Smoke Shop.

5. **Video Surveillance.**

a. Smoke Shops must equip a fully functional color digital video camera system.

b. The system must continuously record, store, and be capable of playing back images and be fully functional at all times, including during any hours the business is closed. The system must be maintained in a secured location inside of the business.

c. The system shall have the correct date and time stamped onto the image at all times.

d. The camera storage capacity should be for at least two weeks (14 calendar days). Such cameras must be capable of producing a retrievable and identifiable image that can be made a permanent record and that can be enlarged through projection or other means.

e. If utilizing a digital video recorder, it must be capable of storing at least 14 days of real-time activities.

f. The system shall be capable of producing a CD or digital playback feature. The Fresno Police Department may request such digital media in relation to a criminal investigation; in such case, the digital media shall be provided to an authorized representative of the Fresno Police Department, upon request, within 24 hours of the request.

g. The interior of the business must have at least one camera placed to focus on each cash register transaction to include the clerk as well as the customer waiting area.

h. There shall be a minimum of three cameras placed so as to record activities in the primary customer areas of the business; such cameras must, at minimum, provide surveillance for all entry and exit areas, customer parking, and the cash register. These cameras should be of sufficient quality to be able to identify persons and/or

vehicles utilizing the business parking lot.

i. All interior cameras shall record in color.

j. All exterior cameras shall record in color and have automatic low light switching capabilities to black and white. Exterior cameras should be in weatherproof enclosures and located in a manner that will prevent or reduce the possibility of vandalism.

k. An inoperable system may be good cause for revocation of the Conditional Use Permit.

l. In the event of a security breach, vandalism, theft, or other offense, the Smoke Shop Operator must ensure preservation of the relevant security footage beyond the required two weeks in coordination with the Fresno Police Department.

6. **Signage.**

a. The provisions specified under Article 26, Signs, and this subsection shall apply. Where conflict may occur between the provisions of Article 26 and this subsection, the more restrictive provisions shall govern.

b. In addition to the requirements found in the California Cigarette and Tobacco Products Licensing Act of 2003 and all updated and related State and Federal Laws, including any amendments and successor

statutes thereto including any State or Federal regulations, the following copy is required to be prominently posted in a readily visible manner on an interior wall or fixture and not on windows:

i. "California State Law Prohibits the Sale of Tobacco Products to Persons Under 21 Years of Age"

ii. "No Persons Under The Age Of 21 May Enter Theses Premises"

iii. "No Loitering is Allowed On or In Front of These Premises"

iv. "No Smoking or Vaping Allowed on These Premises"

7. **Glazing.** At least 50% of any street facing façade must be glazed with a clear, non-tinted material.

a. No more than 5% of the square footage of each window that is visible to the public from a public thoroughfare, sidewalk, or parking lot of tobacco and vapor sales retail outlet shall bear advertising, signs, or other obstructions of any sort.

b. Doors must be free from signs regardless of door type or material.

c. The area covered by signs or advertising shall be measured using the border of such sign, and shall include all areas within a sign or advertisement that may not include writing, such as the clear area within neon signs.

d. Signage, advertising, or other obstructions inside or outside the Smoke Shop that are not physically attached to the windows or doors, but are visible from a public thoroughfare, sidewalk, or parking lot in the same manner as if they were physically attached is included in the 5%limitation.

e. Any signage required by law shall not count towards the 5% limitation, but shall nonetheless follow rules related to visual obstruction.

f. Advertising and signage on windows shall be placed and maintained in a manner that ensures that law enforcement personnel have a clear and unobstructed view of the interior of the business, including the area in which the cash registers are maintained, from exterior public sidewalks, parking lots, or entrance to the business.

g. Any Smoke Shop located within 1,000 feet of a sensitive use, as listed in Subsection F.1, shall not advertise tobacco or vapor sales in a manner visible from the outside of the Smoke Shop, such as from a public thoroughfare, sidewalk, or parking lot.

8. **Loitering and Other Nuisance Activities.**

a. The operation of a Smoke Shop shall not result in repeated nuisance activities on the property, which may include, but are not limited to, disturbances of the peace, illegal drug activity, public intoxication,

drinking in public, Smoke and Vapor Product sales to minors, harassment of passersby, gambling, prostitution, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, loitering, excessive littering, graffiti, illegal parking, excessive loud noises (especially in the late night or early morning hours), traffic violations, curfew violations, lewd conduct, or other violations of City, State, or federal laws, especially when contributing to a proportionally high rate of police reports and arrests to the area. Any violations of this section shall be considered an egregious violation of this ordinance and a public nuisance that is imminently dangerous to life, health, safety or adjacent property such that it requires immediate correction or elimination. Such a violation shall subject the Smoke Shop Operator to immediate suspension, pursuant to Section 10-609 of the Fresno Municipal Code, of their right to operate a Smoke Shop within the limits of the City. Suspension of a Smoke Shop Operator's right to operate a Smoke Shop shall continue for 30 calendar days or until the Smoke Shop Operator remediates the egregious violation, and receives written permission from the City Manager, or designee, to resume operation of the Smoke Shop after inspection of the premises to confirm remediation of the egregious violation. Should an egregious violation not be remedied, or a second violation of this section occurs after resumption of operations, the Director may begin

proceedings to revoke the Smoke Shop's Conditional Use Permit pursuant to Fresno Municipal Code Section 15-5016. This section shall not apply to Smoke Shop Operators where offenses are the result of third-party conduct beyond the Smoke Shop Operators' control.

b. The Smoke Shop Operator shall post the property with the appropriate Fresno Municipal Code signs advising that consumption of alcoholic beverages, gambling, trespassing, or loitering on private property is a violation of municipal ordinances. The Smoke Shop Operator must send a letter to the Fresno Police Department, signed and dated by the applicant, every 12 months that authorizes Fresno Police Department peace officers to enter the Smoke Shop premises and remove trespassers when the business is closed to the public, in accordance with Section 602(o) of the California Penal Code, including any amendments or successor statutes thereto. The owners and employees are responsible for abating nuisance activities when they occur during business hours.

9. **Training.**

a. **Initial Training.** The Smoke Shop Operator and all employees of the Smoke Shop who are involved in the sale of Smoke and Vapor Products must complete approved course(s) in training of Smoke and

Vapor Product sales and handling within 60 days after approval of the Conditional Use Permit becomes final, or for employees hired after the approval of the Conditional Use Permit, within 60 days from the date of hire. Existing Smoke Shop Operators and employees shall have 60 days from the effective date of this ordinance to come into compliance with the training requirement, and thereafter new owners and employees shall obtain the necessary training within 60 days of the date of hire or from the date of ownership. To satisfy this requirement, a certified program must meet the standards of the California Department of Public Health on the Stop Tobacco Access to Kids Enforcement (STAKE) Act or other certifying or licensing body designated by the State of California. If the Smoke Shop Operator is a legal entity, the manager or executive responsible for the Smoke Shop shall obtain the requisite training.

b. **Annual Training.** The Smoke Shop Operator and all employees shall also be required to complete annual trainings which comply with State standards, including changes to tobacco sales laws and regulations. Smoke Shops shall be required to keep up to date record which prove that all individuals listed above have completed the requisite annual trainings and shall furnish these records to the City during inspections and upon a reasonable request from the City.

10. **Compliance with Laws.** The Smoke Shop must remain in compliance with all local, State, and federal laws, regulations, and orders, as well as all conditions of approval imposed on the use. This includes compliance with annual City business license fees. In the event of non-compliance, the Smoke Shop Operator shall be given written notice by the City and an opportunity to cure. Article 63 of Chapter 15, regarding Enforcement of the Citywide Development Code shall also apply in relation to compliance issues, in addition to the annual inspection requirements listed within Section G.14.e, below.

11. **Posting of Conditions.** A copy of all conditions of approval and training requirements shall either be posted in a conspicuous and unobstructed place near the entrance, cashier counter, or customer service area of the Smoke Shop or posted in an employee area and provided upon request (e.g. via flyer or brochure) to patrons and enforcement officials.

12. **Prohibited Products.** The sale or distribution of one or more of the following is prohibited.

    a. Cannabis or Cannabinoid products. Sale of this product shall immediately subject the Smoke Shop to Conditional Use Permit revocation proceedings pursuant to Fresno Municipal Code Section 15-5016.

    b. Drug paraphernalia not directly related to legal Smoke and Vapor

Products.

c. Nitrous oxide.

d. Flavored tobacco. Sale of this product shall immediately subject the Smoke Shop to Conditional Use Permit revocation proceedings pursuant to Fresno Municipal Code Section 15-5016. Should flavored tobacco products be found during an inspection of the Smoke Shop, the Fresno Police Department or the City's Code Enforcement may seize and destroy said products.

e. A maximum of 25% of the floor area of the premises may display Smoking Paraphernalia for sale or viewing.

f. Other products prohibited by law.

g. Onsite or online gambling activities not related to the California Lottery.

13. **Hours of Operation.** All Smoke Shops must operate within the maximum hours of operation. A Smoke Shop may operate for fewer hours than provided herein but in no case shall the operations extend beyond the hours listed:

TABLE 15-2761-G: SMOKE SHOP HOURS

	Opening	Closing
Daily	8 AM	10 PM

14. **Non-Operating Rule.** Whenever all of the rights granted by a Conditional Use Permit are discontinued, the following rules to reestablish the use shall apply:

    a. **One Year or Less.** The same Smoke Shop Operator or a different Smoke Shop Operator may reestablish the use pursuant to the preexisting Conditional Use Permit and all conditions applicable thereto.

    b. **More Than One Year.** A new permit is required.

15. **Additional Requirements.**

    a. Security Plan required. Smoke Shop Operators/Applicants shall submit a security plan consistent with Fresno Police Department policy on sale of age-restricted materials. Prior to the approval of the Conditional Use Permit, the Applicant shall prepare and submit for review by the Fresno Police Department District Commander, a security plan for approval. Approval of the security plan by the District commander or their designee shall not be unreasonably denied. The

contents of the Security Plan shall be incorporated as conditions of approval to the Conditional Use Permit. As a part of the annual inspection process, the Security Plan shall be resubmitted for approval by the District Commander.

b. The Director may require the Smoke Shop Operator/Applicant to submit additional information, of such type and in such form as the Director may specify, as the Director may deem relevant to the application, including, but not limited to, an operational statement, floor plans, architectural renderings, and technical studies, as appropriate.

c. The Director may refer the application to other City departments to determine whether the Smoke Shop's location will comply with building, health, zoning, and fire ordinances or other applicable ordinances or laws. City departments may conduct an inspection of the premises to determine compliance with the ordinances and other laws they administer, and may subsequently prepare reports summarizing their inspections and recommend whether to approve or deny the application based on their inspections.

d. Additional and/or security measures such as reduced hours of operation, security guards, door monitors, and burglar alarm systems may be required if harm, nuisance, or related problems are

demonstrated to occur as a result of business practices or operations. This will be determined on a case-by-case basis upon review by the Police Department.

e. Smoke Shops shall be subject to routine unannounced inspections at least annually, to ensure compliance with this section and any additional conditions of the Conditional Use Permit. The Smoke Shop Operator shall reimburse the City for the cost of such inspection(s) pursuant to the City's Master Fee Schedule. If an annual inspection results in a finding that a Smoke Shop Operator is not in compliance with this section or the specific conditions of the Conditional Use Permit, that finding may be used as a basis for amending or revoking the Conditional Use Permit, pursuant to Article 50 of Chapter 15 of the Fresno Municipal Code.

i. If a Smoke Shop is determined to be out of compliance with its Conditions of Approval, the person or entity acting as the Smoke Shop Operator may be subject to administrative fines as set by City Council resolution. The fine structure shall consist of progressively higher fines for violations occurring within 24 months of a prior violation, and upon the fourth violation being upheld within a three-year period of the first violation, the Conditional Use Permit for the business shall

be subject to revocation. These fines shall be levied in accordance with the Master Fee Schedule.

ii. If an Existing Smoke Shop is purchased by a unassociated and unrelated new Smoke Shop Operator seeking to continue operation of the Smoke Shop, and the new Smoke Shop Operator is not subject to administrative fines as set forth above at any other Smoke Shop in the City, the City Manager, with concurrence of the City Attorney, may waive any administrative fines imposed upon the Existing Smoke Shop upon transfer to the new Smoke Shop Operator and upon proof that the new Smoke Shop Operator has cured all previous violations to the satisfaction of the City Manager.

H. **Violations of this Section.**

1. Violation of these standards at any time may result in the amendment or revocation of a Conditional Use Permit.

2. Fines may be imposed upon business owner and/or Conditional Use Permit holder, in accordance with Sections 1-305 and 1-308 of this Code. Fines pursuant to Section 1-305 shall be imposed in accordance with the Master Fee Schedule, except as follows:

Table 15-2761-H: FINES FOR VIOLATIONS		
	Sales to Minors	External Advertising
Misdemeanor	$2,500 per offense	$1,000 per offense

3. The City may seek recovery of its costs of enforcement and abatement pursuant to Article 5 (Cost and Penalty Recovery) of Chapter 1 (General Provisions) of this Code. Both the property owner and the Smoke Shop Operator shall be liable to the City for recovery costs as specified under Section 1-504.

4. Remedies shall not be exclusive of each other, and may also include any remedy available to the City at law or equity.

5. Any violation of this section is deemed a public nuisance and may be abated.

I. **Promulgation of Regulations, Standards and Other Legal Duties.**

1. In addition to any regulations adopted by the City Council, the City Manager or designee is authorized to establish any additional rules, regulations and standards governing the issuance, denial or renewal of Smoke Shop Conditional Use Permits and Business Licenses, the ongoing operation of Smoke Shops and the City's oversight, or concerning any other subject determined to be necessary to carry out the purposes of this ordinance.

2. Regulations shall be published on the City's website.

3. Regulations promulgated by the City Manager shall become effective upon date of publication.]

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * * * * * * * * * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2025.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2025
Mayor Approval/No Return: _____, 2025
Mayor Veto: _____, 2025
Council Override Vote: _____, 2025

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Heather Thomas
Deputy City Attorney

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