



CITY OF CARSON

PLANNING COMMISSION STAFF REPORT

WORKSHOP: July 8, 2008

SUBJECT: Workshop to discuss potential land use regulations for tobacco facilities within the city.

APPLICANT: City of Carson – Planning Division

REQUEST: Direct staff to conduct further research and prepare an ordinance amendment addressing tobacco uses within the city or receive and file.

PROPERTY INVOLVED: Citywide

COMMISSION ACTION

- Concurred with staff
- Did not concur with staff
- Other

COMMISSIONERS' VOTE

AYE	NO		AYE	NO	
		Chairman Faletogo			Graber
		Cannon			Saenz
					Verrett

Item No. 12A

I. Introduction

Community concern and recent inquiries raised by the public have brought attention to tobacco shops within the city. In order to address those concerns, staff has provided the following information for a workshop discussion and to receive direction from the Planning Commission.

The Carson Municipal Code (CMC) automatically permits tobacco uses in all commercial, industrial, and mixed-use zoning districts with the exception of the Commercial Automotive (CA) zone. Tobacco shops are currently categorized in the same category as Food Sales and Services and similar uses such as grocery, fish, meat, bakery, pastry, health food, and take-out foods.

Tobacco uses are grouped in an inaccurate "Food Sales and Service" classification. The Food and Drug Administration (FDA) categorizes tobacco as a "drug and device which is intended to affect the structure or any function of the body". The FDA claimed that it could legally regulate tobacco as a combination product, categorizing it as both a "drug" and a "device." Therefore, based on the FDA's categorization, the City's zoning code classification for tobacco uses is inaccurate.

II. Background

Tobacco products and shops with tobacco products as primary uses contribute to significant negative impact on the health and general welfare of a community and may be associated with illegal behavior such as the illegal sale of tobacco products to minors. Tobacco shops have the potential to jeopardize and negatively impact the City's health, safety, and general welfare if the use continues to go without any land use regulations or restrictions. Tobacco shops may be affiliated with the sale of drug paraphernalia that encourage illegal behavior and negatively affect the surrounding community. It is a rational step for the City to use their zoning powers to regulate the location of tobacco retailers and warehouses. It is particularly important if youth access and community health are concerns for the City.

Other Laws and Regulations

Under the Cigarette and Tobacco Products Licensing Act of 2003, businesses in California that sell cigarettes and other tobacco products to the public must have a California Cigarette and Tobacco Products License in addition to a Seller's Permit by the State Board of Equalization. The State Board of Equalization requires licenses be displayed, invoices for sales be retained for a minimum of one (1) year, and all employees be trained in addition to other similar requirements.

As of January 1, 2005, the self-service display of tobacco products is against the law. Tobacco products include cigarettes, chewing tobacco, dipping tobacco, snuff, cigars, bidis, pipe tobacco, roll your own tobacco, and any other product containing tobacco. The self-service display of tobacco paraphernalia is also against the law. However, tobacco stores or stores that generate more than 60% of gross annual revenue from the



sale of tobacco products and paraphernalia –may have self-serving displays of pipe tobacco or cigars in packages of six or more in the original wrapping, provided that tobacco is not sold to unaccompanied minors and alcohol or food is not sold for consumption on the premises.

III. Analysis

Not regulating tobacco uses has the potential to cause an influx of tobacco shops since the City automatically permits this use in all zoning districts. Tobacco shops located near schools or parks attract and are easily accessible to minors, potentially causing an increase in violations.

According to the “California Tobacco Control Update 2006”, on average, California retailers have 24.9 cigarette marketing materials per store; more than two-thirds of stores have at least one piece of marketing material located at a height less than three feet, and therefore easily seen by young children; and the amount of cigarette advertising per store is higher in stores with lower prices.

Existing Uses

There are five (5) tobacco shops (primary use is the sale of tobacco products) with registered business licenses in the city. One (1) tobacco shop is located within each of the following zoning districts: Commercial General (CG), Commercial Regional (CR), and Commercial Neighborhood (CN). Two (2) tobacco shops are located within the Mixed-Use Carson Street (MU-CS) zone. In addition to the existing 5 tobacco shops, the City provides approximately seventy-two (72) tobacco retailers that adequately serve the community. Three (3) out of the five (5) existing tobacco shops are located within five-hundred feet of a park or school.

Neighboring Cities

Nine (9) cities in Southern California were consulted in regards to the treatment of tobacco shops. The cities surveyed include Bellflower, Cerritos, Gardena, Hawthorne, Lakewood, Long Beach, San Bernardino, Signal Hill, and Torrance. Among these cities, a majority of them automatically permit tobacco shops in their commercial zones or categorize the use as “retail shop” which is automatically permitted in commercial zones. The city of Hawthorne considers tobacco shops as an unlisted use therefore requires discretionary approvals. The city of Signal Hill prohibits tobacco shops in their commercial zones and only permits them in their industrial zones. The city of San Bernardino prohibits tobacco shops in their city entirely. The following is a list of the cities surveyed:



CITY	Land Use Regulations for Tobacco Use (Primary)	Automatically Permitted	COMMENTS
Bellflower		X	Tobacco shops permitted in commercial zones.
Cerritos		X	Tobacco shops permitted in commercial zones.
Gardena		X	Tobacco shops are not a listed use and are categorized as retail shops which are permitted in all commercial zones.
Hawthorne		X	Tobacco shops are not a listed use therefore require discretionary approvals.
Lakewood		X	Tobacco shops automatically permitted in commercial zones.
Long Beach		X	Tobacco shops are not a listed use and are categorized as retail shops which are permitted in all commercial zones.
San Bernardino	X		Prohibits tobacco shops in all zoning districts
Signal Hill	X		Tobacco shops are prohibited in all commercial zones and permitted in Industrial zones.
Torrance		X	Tobacco shops permitted in commercial zones.

Crime Statistics

On May 6, 2008, staff requested crime statistics for existing tobacco uses from the Los Angeles County Sheriff's Department. The crime statistics identified twenty-two (22) calls for service between May 6, 2007 and May 5, 2008. There were three (3) incidences where felonies occurred or tobacco laws such as selling to minors were violated.

On May 6, 2008, the City Council adopted Resolution No. 08-009 in order to increase the annual permit fee for tobacco retailers from \$500.00 to \$600.00. The tobacco retailers permit fees fund the tobacco enforcement program created in 2006 to enforce tobacco laws and prevent sales of tobacco products and related paraphernalia to minors.

Issue Areas to Consider

- Should we prohibit tobacco shops within certain zoning districts or continue to permit these uses within the city? If so, what zoning districts are appropriate?
- Should the City regulate tobacco shops via land use regulations?
- Should tobacco shops be listed as a separate use from "Food Service"?



- What are the major concerns tobacco uses generate and how should they be addressed?
- If restrictions are appropriate, what restrictions should be applied?
- If we prohibit these uses, what is an appropriate abatement period? Should the City allow tobacco shops to be legal non-conforming uses?

Alternatives

Below are some alternatives to take into consideration:

- Receive and File: Continue to allow tobacco shops as an automatically permitted use within all commercial and industrial zones.
- Prohibit tobacco shops within certain zoning districts.
- Amend Section 9131.1 – Permitted Uses (Commercial) and remove “Tobacco Shop” from the “Food Store” classification and separately list the use as requiring a conditional use permit within certain zones.
- Prohibit tobacco shops within the Mixed Use – Carson Street (MU-CS), Mixed Use – Sepulveda (MU-S), Commercial Automotive (CA), and Commercial Neighborhood (CN) zones and require conditional use permits within the Commercial General (CG), Commercial Regional (CR), Light Manufacturing (ML), and Heavy Manufacturing (MH) zones.
- Permit tobacco shops within certain zoning districts provided special limitations and requirements are satisfied in Division 8 Special Requirements for Certain Uses (L).
- If Special Requirements are required:
 - Require a minimum distance of five-hundred (500) feet from any school, park; and/or
 - Require that no tobacco shop shall be located within one-thousand (1,000) feet from one another.

IV. Conclusion

The CMC automatically permits tobacco uses in all commercial, industrial, and mixed-use zoning districts with the exception of the Commercial Automotive (CA) zone. Tobacco shops are currently categorized in the same category as Food Sales and Services and similar uses such as grocery, fish, meat, bakery, pastry, health food, and take-out foods.

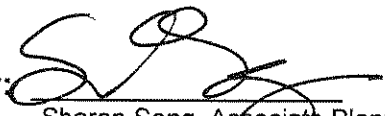
Tobacco shops have not been notified in regards to this workshop. Since the purpose of this workshop is for a preliminary discussion and to receive direction from the Planning Commission, staff felt that notifying businesses at this time would be premature and did not want to generate unnecessary concern within the community. If the Planning Commission wishes to move forward with additional research and a draft Ordinance addressing tobacco shops, staff will contact all applicable businesses at that time.

V. Recommendation

That the Planning Commission:

- CONSIDER and DISCUSS the information provided for the workshop.
- DIRECT staff to conduct further research and prepare a draft Ordinance Amendment; or
- RECEIVE and FILE.

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