



PLANNING COMMISSION MEMORANDUM

Date: September 6, 2023 for September 13, 2023 scheduled meeting Page: 1 of 4
To: Planning Commission
From: Kristina Swallow, Director of Planning and Development Services,
and Executive Secretary
Subject: C8-23-02 Smoke Shop Unified Development Code (UDC)
Amendment (Citywide)

Issue – This is a public hearing to discuss a proposed code amendment to establish new regulations for smoke shops in the Unified Development Code (UDC) administered by Planning and Development Services (PDS), and the Tucson Code. This proposed amendment was directed by Mayor and Council during the February 7, 2023 study session to discuss the impacts of smoke shops on the community. At that meeting, staff was requested to research potential regulations, including separation distances, develop a proposal, and continue with the formal amendment process (See Attachment A for the Legal Action Report from the February 7, 2023 Study Session).

Per the direction of Mayor and Council from the February 7, 2023 meeting, PDS worked with the Business Services Department and community stakeholders to develop this Smoke Shop Amendment (See Attachment B for the draft redline UDC Amendments). Community engagement was conducted virtually allowing for both verbal and written community feedback and dialogue to support the proposed language in this UDC Amendment.

This engagement process was followed by a Planning Commission Study Session on August 16, 2023 in which PDS staff reviewed the proposed amendment with the Planning Commission members (See Attachment C for the Legal Action Report from the August 16, 2023 Planning Commission Study Session).

The proposed amendment would create a new land use classification for smoke shops and establish minimum separation distance of 1,000 feet from schools and from other smoke shops.

Staff Recommendation – Staff recommends the Planning Commission recommend adoption of the Smoke Shop UDC Amendment to the City of Tucson Mayor and Council.

Background – On February 7, 2023, Mayor and Council directed staff to develop an ordinance to regulate the location of smoke shops. This request followed a presentation by representatives of the Liberty Partnership Kino Neighborhoods Council (LPKNC) regarding the impacts of smoke shops on the community, and youth, in particular. This included concerns about the clustering of smoke shops around schools, and within the vicinity of other smoke shops, as well as tobacco products being marketed to youth.

Based on feedback from Mayor and Council, staff from Planning and Development Services Department (PDS), in coordination with the Business Services Department (BSD), researched the issue. Areas of focus included approaches taken by other municipalities (See Attachment D for a summary of smoke shop regulations in other municipalities), review of relevant existing codes, geospatial analysis of different separation distance scenarios of the location of future smoke shops, and development of the recommendations below (See Attachment E for the geospatial analysis of smoke shop separation distances). These were presented to smoke shop owners and other stakeholders at a meeting held virtually on June 27, 2023.

This smoke shop code amendment stakeholder meeting was publicized via the PDS web page, as well as a PDS direct mailing and emails to smoke shop owners, ward offices, public health officials, non-profits, and other stakeholders. Following the meeting, stakeholders were given the opportunity to provide written comments via a web link supplied by PDS.

At the stakeholder meeting PDS staff provided background and an overview of the proposed amendment, including a definition for smoke shops and potential separation distances. Staff emphasized that items such as separation distances and permitted uses by zone could be regulated through the UDC. However, hours of operation, background checks, advertising and other operational matters were beyond the scope of zoning.

Staff reviewed two alternative standards for the regulation of smoke shops based on the geospatial analysis conducted. These consisted of either a 500-foot separation from schools and other smoke shops, or a 1,000-foot separation from schools and other smoke shops.

Stakeholders expressed a preference for the 1,000-foot separation distance. Questions about other items outside of the purview of the zoning code amendment, such as background investigations and hours of operation were also discussed. Attachments F and G include a summary of the stakeholder feedback received during the meeting as well as the written comments submitted after the meeting.

Present Consideration(s) – Currently smoke shops are regulated under the Tucson Code as Tobacco Retail Establishments under T.C. Secs. 7-426 through 7-435. These sections provide that tobacco retailers must secure a tobacco retail license and comply with a variety of regulations relating to the sale and display of tobacco products, signage, and controlled accessibility.

From a zoning standpoint, smoke shops do not have a separate land use classification in the UDC and are considered a general retail land use. Other uses that also sell tobacco and fall within the general retail land use are convenience stores and grocery stores. This creates a need for a new separate land use classification for smoke shops so they can be regulated differently. Additionally, because there currently isn't a smoke shop land use, the UDC does not currently impose separation requirements, such as minimum distance separation from other smoke shops or sensitive uses such as schools.

Based on the direction from Mayor & Council, feedback from the Planning Commission, stakeholders and the public, and research conducted, staff recommends amending the UDC Retail

Trade Use Group (4.9.9) to create a new Smoke Shop land use classification and establish a 1,000-foot separation distance between smoke shops and schools, as well as 1,000-foot separation distance from other smoke shops (proposed redline UDC amendments related to the separation distances are included in Attachment C).

The new Smoke Shop land use classification is as follows:

Smoke Shop means any establishment in which the sales or display of tobacco products consists of fifteen (15) percent or more of the product display, sales or storage of the space.

Tobacco Product is defined as:

- (1) any product made or derived from tobacco or that contains nicotine and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including cigarettes, cigars, pipe tobacco, chewing tobacco, shisha, snuff, snus, and liquid nicotine solution; and
- (2) any component, accessory, instrument, or paraphernalia that is used in the consumption of a tobacco product or that is solely designed for the smoking or ingesting of tobacco or shisha, including a hookah, water pipe, filter, rolling papers, pipe, or electronic smoking device; except that:
- (3) the term "tobacco product" does not include drugs, devices, or combination products, as those terms are defined in the Federal Food, Drug and Cosmetic Act, that are authorized for sale by the United States Food and Drug Administration.

These requirements will only apply to new smoke shop uses. Existing legal smoke shop uses would become “grandfathered” or legally non-conforming uses. As such, their operation would be governed by the applicable non-conforming use standards contained within UDC where they could continue to operate their business but would be limited in their ability to expand.

At the August 16, 2023 Planning Commission Study Session, commissioners provided feedback, and requested that staff follow up on a number of items. These included further geospatial analysis to determine the impacts of adding separation distances from parks (Attachment E), as well as discussion about the inclusion of childcare centers. Staff noted that childcare centers were not included because a link between tobacco consumption by children at daycare centers could not be established. Parks were not included in the initial analysis presented in an effort to avoid overly restricting the number of commercial parcels available for future smoke shop locations. The inclusion of parks led to a significant increase in new non-conforming businesses and a decrease in available parcels for new businesses or relocated businesses. Staff do not recommend including a separation distance from parks in the proposed regulation for smoke shops.

Commissioners also requested clarification on the regulation of lighting from the interior of smoke shops. Staff determined that the Outdoor Lighting Code does not apply to interior signage, but the Sign Ordinance may apply to signage that touches the interior of a window. Each situation would need to be evaluated on a case-by-case basis should a complaint be filed with Code Enforcement.

Further detail on how tobacco is marketed to children is included as Attachment I. PDS staff is currently coordinating with the Tucson Police Department to acquire information on correlation between crime and the presence of smoke shops.

PDS staff also researched how other jurisdictions within Arizona regulate separation distances for smoke shops but was unable to identify additional examples. However, staff did find examples from California and Oregon which showed separation distances of 500 to 1,000-feet from other smoke shops and schools. These are shown in Attachment D. Staff further coordinated with the City Attorney's Office and other PDS staff to assuage any concerns about separation distances prohibiting smoke shops by eliminating the number of usable commercial parcels outside of the separation distances, and the ability to measure the separation distances for enforcement purposes.

Staff also recommends amending the *Tucson Code*, Sections 7-427, 7-435, and 7-436 to align with existing processes used in the Business Services Department for the issuance of business licenses. This process occurs through Mayor and Council per Chapter XXVI of the *Tucson Code*. This amendment is outside of the purview of the Planning Commission but related to the proposed UDC Amendment. The proposed Tucson Code amendments establish a new definition of smoke shops that is the same definition used in the UDC amendment. Additionally, the Tucson Code amendment creates the requirement for a zoning letter for licensing of smoke shops to facilitate enforcement of the proposed zoning standards.

Plan Tucson Consideration(s) – This item is related to the Element of *Public Health Policies*. Specifically, this item is supported by the following:

- **Public Health GOAL** The city strives for a community that is healthy physically, mentally, economically, and environmentally.
- **PH1:** Pursue land use patters; alternate mode transportation systems that encourage physical activity, promote healthy living, and reduce chronic illness.

Attachments:

- A – Legal Action Report from the February 7, 2023 Mayor and Council Study Session
- B – Draft redline of UDC Amendments for Smoke Shops
- C – Planning Commission Legal Action Report August 16, 2023
- D – Updated Summary of Smoke Shop Regulations in Other Municipalities
- E – Updated Geospatial Analysis of Potential Separation Distances for Smoke Shops
- F – Summary of June 27, 2023 Smoke Shop Stakeholder Meeting
- G – Comment Matrix from the June 27, 2023 Smoke Shop Stakeholder Meeting
- H – Smoke Shop Youth Marketing