

DRAFT 4/28/26 RLM

ORDINANCE NO. _____-26

AN URGENCY INTERIM ORDINANCE PURSUANT TO GOVERNMENT
CODE SECTION 65858 ADOPTING A TEMPORARY MORATORIUM
ON THE ESTABLISHMENT AND OPERATION OF "SMOKE SHOPS,"
AS DEFINED, WITHIN THE CITY OF SUNNYVALE.

THE CITY COUNCIL OF THE CITY OF SUNNYVALE FINDS AND DECLARES AS FOLLOWS:

WHEREAS, the City of Sunnyvale ("City") is a municipal corporation duly organized as a Charter City under the California Constitution and laws of the State of California; and

WHEREAS, the City has broad discretion, pursuant to Article XI, Section 5 of the California Constitution, and the general laws of the state, including, but not limited to, the California Planning and Zoning Law (Gov. Code section 65000 et seq.) to legislate for public purposes and for the general welfare, including, but not limited to, matters of public health and safety; and

WHEREAS, California Government Code Section 65858 sets forth procedures for the adoption of an urgency interim ordinance to prohibit the approval of applications for additional subdivisions, use permits, variances, building permits, and other applicable entitlements for uses that may be in conflict with a contemplated specific plan or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study; and

WHEREAS, in California, individuals under the age of 21 are prohibited from purchasing or using tobacco or cannabis products. This regulation is based on evidence that smoking is the leading cause of preventable disease and mortality worldwide. Smokeless tobacco is also associated with increased risk for several cancers, including those of the mouth, esophagus, and pancreas. Additionally, marijuana smoke contains many of the same toxins, irritants, and carcinogens found in tobacco smoke; and

WHEREAS, while the majority of tobacco retailers in the City operate in conjunction with another land use activity (i.e., part of a grocery store, liquor store, gas station, convenience store), the City has recently seen an increase in the number of stand-alone "Smoke Shop" tobacco retail stores which primarily sell tobacco and related products; and

WHEREAS, the City's current tobacco regulations are fairly limited. The City currently prohibits sale of marijuana/cannabis (Sunnyvale Municipal Code Chapter 9.86) and flavored tobacco products (Sunnyvale Municipal Code Chapter 9.28). However, unlike other nearby cities such as San Jose, Cupertino, Palo Alto, and Los Gatos, Sunnyvale does not require a local or Santa Clara County tobacco retail permit. A tobacco retailer only needs a State retail tobacco license and a City business license to operate in Sunnyvale. Furthermore, the City has no standards addressing cumulative retailer density or operational expectations for stand-alone smoke shops; and

WHEREAS, stand-alone smoke shops throughout the City have been a source of unlawful activities in the City. In the most recent inspection in October 2025, City inspectors found seven smoke shops in violation of the City's ordinance prohibiting flavored tobacco, and all were offering various other products that are illegal under local, state, or federal law. The types of illegal products that have been observed in Sunnyvale smoke shops include products containing THC (derived from cannabis), psilocybin (a hallucinogen found in "magic mushrooms") and 7-hydroxymitragynine (a powerful opioid-like drug from the kratom plant).

WHEREAS, considering the foregoing findings, the City Council finds that there is a current and immediate threat to public health, safety, and welfare, and that operation of additional smoke shops would result in and exacerbate that threat to public health, safety and welfare; and

WHEREAS, within a reasonable time, the City Council or staff is considering studying or intending to study a contemplated general plan, specific plan, or zoning proposal to address the foregoing concerns, with which the currently allowed uses may be in conflict; and

WHEREAS, on May 5, 2026, in accordance with State law, the City Council provided due consideration of all evidence presented and provided in the entire administrative record and held a duly noticed public hearing and took testimony regarding this urgency interim ordinance.

NOW, THEREFORE, THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. Purpose and Authority. In the interest of protecting the health, safety, and welfare of the residents in the City of Sunnyvale, it is the purpose and intent of this urgency interim Ordinance to place a temporary moratorium on the establishment and operation of Smoke Shops as defined in this Ordinance. The City Council has authority to adopt this Ordinance pursuant to California Government Code Section 65858 as an urgency measure prohibiting any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

SECTION 2. Findings. The City Council hereby finds and determines that Smoke Shops constitute an immediate threat to public health, safety, and welfare. The establishment and operation of additional Smoke Shops or relocation or physical expansion of existing Smoke Shops will further threaten the public health, safety, and welfare. The adoption of this urgency interim Ordinance is therefore necessary for the immediate protection of public health, safety, and welfare. The above recitals are incorporated herein by reference as true and correct as the Council's findings.

SECTION 3. Moratorium Imposed. This Ordinance imposes a moratorium on the establishment and operation of Smoke Shops within the City of Sunnyvale. From and after the effective date of this Ordinance, no license, permit, or other entitlement for use, including, but not limited to, the issuance of a business license, building permit, conditional use permit, or other land use approval, shall be approved or issued by the City for the establishment, relocation or physical

expansion of a Smoke Shop as defined in this Ordinance. This moratorium shall not apply to Existing Smoke Shops as defined in this Ordinance.

- a) Existing Smoke Shop means any Smoke Shop lawfully established with a City business license, a California Cigarette & Tobacco Products Retailer's License, and all other required permits, licenses, and/or land use entitlements as of May 5, 2026.
- b) Smoke Shop means a retailer or any person that primarily sells, offers for sale, or offers to exchange for any form of consideration Tobacco Products and/or Tobacco Paraphernalia, and in which the sale of other products is merely incidental.
- c) Tobacco Paraphernalia means any device, product, equipment, or material of any kind that is intended or designed for use for smoking, inhaling, or ingesting tobacco, notwithstanding that the device, product, equipment, or material may also be used for smoking, inhaling, or ingesting cannabis or and any controlled substance. Tobacco paraphernalia includes, but is not limited to, all of the following: (i) metal, ivory, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured bowls; (ii) water pipes; (iii) bongos; (iv) chillums; (v) ice pipes or chillers; (vi) cigarette papers or wrappers; (vii) cigarette rolling machines; (viii) blunt wraps, as defined in Section 308 of the Penal Code; (ix) hookahs and similar devices constructed with a receptacle or container in which water or some other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested; and (x) any electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to an electronic cigarette, cigar, pipe, or hookah. Tobacco Paraphernalia shall include any component, part, or accessory of the foregoing, whether or not sold separately.
- d) Tobacco Product means any product containing, made from, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, cigarillos, chewing tobacco, pipe tobacco, and snuff; and any electronic smoking device. "Tobacco product" also includes any component, part, or accessory intended or reasonably expected to be used with a tobacco product, whether or not sold separately. "Tobacco product" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration as defined in Sections 321 and 353(g) of Title 21 of the United States Code, relating to the Federal Food, Drug and Cosmetic Act.

SECTION 4. Violation. Except as otherwise permitted under this urgency interim Ordinance, the establishment, operation, relocation, or physical expansion of a Smoke Shop is declared to be a public nuisance. Violations of this urgency interim Ordinance may be enforced by any applicable laws or ordinances, including, but not limited to, injunctions or administrative or criminal penalties under the Sunnyvale Municipal Code.

SECTION 5. Term of Ordinance. This urgency interim Ordinance shall be in effect from the date of adoption for a period of forty-five (45) days, unless it is extended pursuant to California Government Code Section 65858 or other applicable law, as approved by the City Council.

SECTION 6. Severability. If any section, subsection, subdivision, sentence, clause or phrase of this urgency interim Ordinance is for any reason held to be unconstitutional or otherwise void or invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this urgency interim Ordinance. The City Council hereby declares that it would have passed this urgency interim Ordinance and each section, subsection, subdivision, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, or phrases may be declared unconstitutional or otherwise invalid by a court of competent jurisdiction.

SECTION 7. CEQA Determination. This urgency interim Ordinance is exempt from environmental analysis under the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that this Ordinance has no possibility of having a significant effect on the environment, as it merely preserves the status quo in accordance with Government Code Section 65858 in the interest of evaluating and preventing potential harms related to tobacco sales.

SECTION 8. Effective Date. This Ordinance is declared to be an interim urgency Ordinance for preserving the public health, safety, and welfare and shall take effect and be enforced immediately upon adoption pursuant to Government Code Section 36937(b) and Sunnyvale City Charter Section 701.

SECTION 9. PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on _____, 2026, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____ 2026, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

DAVID CARNAHAN
City Clerk
(SEAL)

LARRY KLEIN
Mayor

APPROVED AS TO FORM:

REBECCA L. MOON
City Attorney