

ATTACHMENT 1

ORDINANCE O2025-XX

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANTECA, STATE OF CALIFORNIA, ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW, AND RELOCATION OR EXPANSION OF EXISTING TOBACCO RETAILER BUSINESSES, ALSO KNOWN AS SMOKE SHOPS, WITHIN THE CITY OF MANTECA TO BECOME EFFECTIVE IMMEDIATELY

WHEREAS, the City of Manteca (the "City") is a municipal corporation duly organized as a general law city under the Constitution and laws of the state of California; and

WHEREAS, the City has the authority to make and enforce within its limits all local ordinances and regulations not in conflict with general law pursuant to California Constitution Article XI, Section 7; and

WHEREAS, the City has a duty to protect the public health, safety, and welfare of its residents, including health and safety regulations on specified commercial activities; and

WHEREAS, the City has seen a recent proliferation of tobacco retailer businesses, also known as smoke shops, which sell tobacco products and paraphernalia; and

WHEREAS, the City has at least thirteen (13) (if not more) tobacco retailers/smoke shops within the City; and

WHEREAS, the City is concerned about the proliferation of these businesses, and the harmful effects of tobacco and other products sold at these establishments on the health, safety, and welfare of the City's residents, especially youth; and

WHEREAS, the Manteca Police Department, along with the California Department of Tax and Fee Administration (CDTFA), regularly conduct inspections of tobacco retailers, and continually find that these businesses are often engaged in illegal activity, including the sale of cannabis, flavored tobacco products, unstamped cigarettes, out of state stamped cigarettes, untaxed tobacco products, and various activity without the required permits and licenses; and

WHEREAS, the sale of illegal items at these businesses encourages criminal activity, and these businesses are often a target for theft, vandalism, and loitering; and

WHEREAS, on November 8, 2022, California voters upheld the state law SB 793 prohibiting a tobacco retailer and its employees from selling most flavored tobacco products; and

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WHEREAS, on October 7, 2023, Governor Newsom signed into law AB 935, strengthening the enforcement of the flavored tobacco retail law and broadening the definition of retail location; and

WHEREAS, in addition to the above many other state laws have been adopted to address the health impacts of tobacco, particularly flavored tobacco products, and the impact on minors; and

WHEREAS, various local jurisdictions have adopted similar urgency ordinances to address these concerns, including San Joaquin County, the City of Stockton, and the City of Modesto; and

WHEREAS, Government Code section 36937 authorizes the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health, or safety; and

WHEREAS, pursuant to Government Code section 65858, the legislative body of a city, to protect the public safety, health, and welfare, may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time; and

WHEREAS, this temporary moratorium will provide the City with the opportunity to study the various options to more effectively regulate tobacco retailer businesses.

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

SECTION 1: Recitals. The above recitals are true and correct and are hereby adopted as the City Council's findings.

SECTION 2: Purpose and Authority. In the interest of protecting the health, safety, and welfare of the residents in the City of Manteca, it is the purpose and intent of this Ordinance to place a temporary moratorium on the issuance of any new permit, license, or other entitlement for any tobacco retailer business, also known as smoke shop, in the City of Manteca. This includes any new permit, license, or other entitlement for the relocation or physical expansion of existing business falling under the definition of a tobacco retailer as defined under this Ordinance. The City Council has the 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 3: Findings. The City Council hereby finds and determines that Tobacco Retailer Businesses and Smoke Shops constitute an immediate threat to the public health, safety, and welfare. The approval of additional entitlements for Tobacco Retailer Businesses and approval of the relocation or physical expansion of existing Tobacco Retailer Businesses under the City's current regulations will further threaten the public

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health, safety, and welfare. The adoption of this Urgency 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 and as the Council's findings.

SECTION 4: Definitions.

"Person" shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"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 or cannabis, notwithstanding that the device, product, equipment, or material may also be used for smoking, inhaling, or ingesting 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) bong; (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.

"Tobacco Product" means any product containing, made, 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, e-cigarettes (with or without flavoring), cigars, little cigars, chewing tobacco, pipe tobacco, or snuff, or vaping accessories. Tobacco Product shall include any component, part, or accessory of the foregoing, whether or not sold separately. Tobacco Product does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and solely for such an approved purpose.

"Tobacco Retailer Business" or "Smoke Shop" shall mean a retailer or wholesale business or any person that: (1) sells, offers for sale, or offers to exchange for any form of consideration, tobacco, hemp products, Tobacco Products, or Tobacco Paraphernalia; and (2) has fifteen percent (15%) or more of the square feet in the establishment used for the sale or display of tobacco, hemp products, Tobacco Products, or Tobacco Paraphernalia.

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SECTION 5: Moratorium Imposed.

Scope. In accordance with Government Code sections 36937 and 65858, 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 Tobacco Retailer Business. Additionally, the establishment, relocation, or physical expansion of the Tobacco Retailer Business is hereby expressly prohibited in all areas and zoning districts of the City.

Exceptions. This Ordinance shall not prohibit the renewal of a business license for an existing Tobacco Retailer Business, provided that the renewal seeks to maintain the business without physical expansion and in its current location, and the Tobacco Retailer Business is operating in a manner, and housed within a building, which complies with all City, State, Federal, or otherwise applicable, codes, rules, regulations, or laws.

SECTION 6: Violation. Except as otherwise permitted under this Ordinance, the establishment, relocation, or physical expansion of a Tobacco Retailer Business within the limits of the City is declared to be a public nuisance. Violations of this Ordinance may be enforced by any applicable laws or ordinances, including, but not limited to, injunctions or administrative or criminal penalties under the Manteca Municipal Code.

SECTION 7: Term of Ordinance. This 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 8: Environmental Review / California Environmental Quality Act (CEQA). This Ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this Ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA.

SECTION 9: Severability. If any provision of this Ordinance or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions be severed, and the balance of the Ordinance be enforced.

SECTION 10: Effective Date and Publication. This Ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an interim Urgency Ordinance for

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preserving the public health, safety, and welfare and shall take effect and be enforced immediately upon adoption pursuant to Government Code section 36937.

City of Manteca, a municipal corporation

MAYOR: _____
GARY SINGH

ATTEST: _____
CASSANDRA CANDINI-TILTON
CITY CLERK

STATE OF CALIFORNIA }
COUNTY OF SAN JOAQUIN } SS:
CITY OF MANTECA }

I, Cassandra Candini-Tilton, City Clerk of the City of Manteca, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the public meeting of the City Council on the ____ day of _____, 2025, and had its second reading and was adopted and passed during the public meeting of the City Council on the ____ day of _____, 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
CASSANDRA CANDINI-TILTON
City Clerk