

ORDINANCE NO. 2023-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMECULA AMENDING TITLES 5, 8, AND 17 OF THE TEMECULA MUNICIPAL CODE TO (1) AMEND MASSAGE ESTABLISHMENT REGULATIONS, (2) ADD DEFINITIONS FOR TOBACCO SHOP, TOBACCO SHOP PERMIT AND UPDATE DEFINITIONS OF TOBACCO PRODUCT AND TOBACCO PARAPHERNALIA, (3) IMPLEMENT A TOBACCO SHOP PERMIT PROGRAM TO INCLUDE STRUCTURAL AND OPERATIONAL REQUIREMENTS, (4) UPDATE TOBACCO RETAILERS LICENSE PROCESSES, (5) AMEND REGULATIONS ON SMOKING IN HOTEL ROOMS, (6) REMOVE TOBACCO SHOP AS A CONDITIONALLY PERMITTED USE IN TABLE 17.08.030, (7) IMPLEMENT TOBACCO SHOP PERMIT REQUIREMENTS IN PLANNED DEVELOPMENT OVERLAY ZONING DESIGNATIONS 1 AND 4, AND (8) MAKE A FINDING THAT THIS ORDINANCE IS EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15061 (B)(3)

THE CITY COUNCIL OF THE CITY OF TEMECULA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Procedural Findings. The City Council of the City of Temecula does hereby find, determine and declare that:

A. City staff identified the need to make minor revisions and clarifications to portions of Title 5 (Business Licenses and Regulations), Title 8 (Health and Safety), and Title 17 (Zoning) of the Temecula Municipal Code.

B. The code amendments are being made to address operational concerns surrounding massage establishments, implement a new permit for tobacco shops to include operational standards, and remove tobacco shop as a conditionally permitted use in the neighborhood commercial zoning district. In addition, the ordinance updates the number of permitted smoking rooms allowed in hotels in accordance with changes in state law. Finally, the code amendment makes minor typographical edits to the code.

C. As required by State law, the Planning Commission considered the proposed amendments to Title 17 (Zoning) of the Temecula Municipal Code (“Ordinance”) on July 19, 2023, at a duly noticed public hearing as prescribed by law, at which time the City staff and interested persons had an opportunity to and did testify either in support of or opposition to this matter.

D. At the conclusion of the Planning Commission hearing and after due consideration of the testimony, the Planning Commission adopted PC Resolution No. 2023-14, recommending that the City Council approve the code amendments.

E. The City Council, at a regular meeting, considered the Ordinance on August 22, 2023, at a duly noticed public hearing, as prescribed by law, at which time the City Staff and interested persons had an opportunity to and did testify either in support or opposition to this matter.

F. Following the public hearing, the City Council considered the entire record of information received at the public hearings before the Planning Commission and City Council.

Section 2. Further Findings. The City Council, in approving the proposed Ordinance, hereby makes the following additional findings as required by Section 17.01.040 (“Relationship to General Plan”) of the Temecula Municipal Code:

1. The proposed uses are allowed in the land use designation in which the use is located, as shown on the land use map, or is described in the text of the general plan.

The proposed changes to Title 17 include removal of tobacco shop as a permitted use in Neighborhood Commercial Zoning Designation and requiring Tobacco Shops in Planned Development Overlay (PDO) districts No. 1 and 4 to adhere to the new requirements of a Tobacco Shop Permit. These changes are prohibiting land uses or imposing requirements on existing uses, rather than allowing a use where it was not previously permitted. All other proposed amendments are minor clarifications and typographical edits and do not propose any land use changes contrary to the adopted General Plan.

2. The proposed uses are in conformance with the goals, policies, programs and guidelines of the elements of the general plan.

The proposed amendments to Title 17 of the Temecula Municipal Code do not propose any land use that is inconsistent with the Temecula General Plan. The majority of the Code Amendments do not create or allow new uses where they were not previously allowed. Only the revisions to the Neighborhood Commercial (NC) Zoning district impact the use of land. The Code Amendments would remove Tobacco Shop as a permitted use in the NC Zoning district only. The remaining proposed amendments to the Temecula Municipal Code are minor clarifications and typographical edits and do not result in a contrary policy direction or indicate an inconsistency between the Temecula Municipal Code and the adopted General Plan.

3. The proposed uses are to be established and maintained in a manner which is consistent with the general plan and all applicable provisions contained therein.

The proposed amendments to Title 5, 8, and 17 of the Temecula Municipal Code do not propose any land use that is inconsistent with the Temecula General Plan. The proposed changes to massage establishments modify definitions and operational requirements, require notarized documentation for exempt massage facilities and the prohibition of pets furthers Policy 5.4 of the Economic Development Element of the Temecula General Plan, which is to “Monitor existing businesses

and support small businesses and the business retention program to encourage local employment and growth of local businesses.” Changes to tobacco regulations include modifying definitions, implementing an annual permit for tobacco shops to include operational requirements, and updating the number of designated smoking rooms is in compliance with Goal 3 of the Community Design Element of the Temecula General Plan which is to ensure “Preservation and enhancement of the positive qualities of individual districts or neighborhood.” All other proposed amendments are clarifications and typographical edits and do not propose any land use changes contrary to the adopted General Plan.

Section 3. Environmental Findings. The City Council hereby finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (“CEQA”) pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Municipal Code amendments would have a significant impact on the environment. The Municipal Code amendments are minor policy changes, changes required by state law, and the imposition of regulations on existing uses and will not increase the intensity or density of any land use. A Notice of Exemption has been prepared and will be filed in accordance with CEQA and the State CEQA Guidelines.

Section 4. Section 5.22.020 (Definitions) of Chapter 5.22 (Massage and Massage Establishments) of Title 5 (Business License and Regulations) of the Temecula Municipal Code is hereby amended to amend the definition of “Massage” as follows (with additions appearing in underlined text), with all other provisions of Section 5.22.020 remaining unchanged:

“Massage” means the scientific manipulation of the soft tissues of the human body. “Massage” includes bodywork such as reiki, trigger point, hiatsu, cupping and lymphatic drainage.

Section 5. A new Item 5.22.040.A.1 is hereby added to Subsection 5.22.040.A of Section 5.22.040 (Massage Establishment Permit Required) of Chapter 5.22 (Massage and Massage Establishments) of Title 5 (Business License and Regulations) of the Temecula Municipal Code (with additions appearing in underlined text), with all other provisions of Section 5.22.040 remaining unchanged:

- A. It is unlawful for any person to engage in, operate, conduct or carry on, in or upon any premises, a massage establishment without first obtaining a massage establishment permit pursuant to this chapter, securing the necessary business license as required by this code, and complying with Title 5 of this code. A separate permit shall be obtained for each separate massage establishment operated by such person.
1. Massage establishments include facilities that provide Reiki, Trigger Point, Shiatsu, Cupping, Lymphatic Drainage and any other activity that meets the definition of massage, as defined in Section 5.22.020 of this code.

Professionals of such massage practices or any activity that meets the definition of massage as defined in Section 5.22.020 of this code shall be CAMTC certified in accordance with Section 5.22.030 of this code.

Section 6. Item 5.22.090.A.1 of Subsection 5.22.090.A (Requirements applicable to the operation of outcall services) of Chapter 5.22 (Massage and Massage Establishments) of Title 5 (Business License and Regulations) of the Temecula Municipal Code is hereby amended to read as follows (with additions appearing in underlined text), with all other provisions of Section 5.22.090 remaining unchanged:

- A. Outcall Massage. No person shall provide outcall massage in the city unless all of the following requirements are met:
 - 1. The appointment for the outcall massage is performed only under a physician's written recommendation or order and the appointment was made by a massage establishment in good standing under this chapter and the massage professional is employed by the same massage establishment.

Section 7. A new Subsection "28" (Pets) is hereby added to Subsection B (Operations) of Section 5.22.080 (Requirements applicable to the operation of massage establishments.) of Chapter 5.22 (Massage and Massage Establishments) of Title 5 (Business License and Regulations) of the Temecula Municipal Code to read as follows (with additions appearing in underlined text), with all other provisions of Section 5.22.080 remaining unchanged:

- 28. Pets. No pet(s) or live animal mascots, regardless of species, shall be allowed on site of any massage establishment, except for a working "service animal" as defined in Section 6.04.010 of this code.

Section 8. Subsection 5.22.120A.1 (Exemptions) of Chapter 5.22 (Massage and Massage Establishments) of Title 5 (Business License and Regulations) of the Temecula Municipal Code is hereby amended to read as follows (with deletions shown in strikethrough text and additions appearing in underlined text), with all other provisions of Section 5.22.120 remaining unchanged:

A. This chapter shall not apply to the following individuals or businesses while engaged in the performance of the duties of their respective professions:

- 1. ~~Persons holding a valid certificate to practice the healing arts under the laws of the state of California, including, but not limited to, holders of medical degrees, such as pPhysicians, surgeons, chiropractors, osteopaths, and persons other~~ medical professionals and other persons holding a valid certificate to practice the healing arts, except for CAMTC-certified massage therapists, working under their direct supervision who are working at the same location as the licensed person, provided such professionals are performing massage, as defined in this chapter, at a licensed business as part of, and to the extent permitted by, their respective professions. Direct supervision, as used in this subsection, requires persons holding a valid certificate to practice the healing arts under the provisions of Division 2 (commencing with Section 500) Business and Professions Code to be present at the office of the business establishment and immediately available to furnish assistance and direction throughout the performance of the massage. The supervising medical professional is required to be physical present on site. The required presence does not include virtual presence through audio/video real-time communications technology;

Section 9. A new subsection “C” (Affidavit) is hereby added to Section 5.22.120 (Exemptions) of Chapter 5.22 (Massage and Massage Establishments) of Title 5 (Business License and Regulations) of the Temecula Municipal Code to read as follows (with additions appearing in underlined text), with all other provisions of Section 5.22.120 remaining unchanged:

- C. Affidavit. All persons holding a valid certificate to practice the healing arts under the laws of the state of California who operate an exempt massage facility as defined by Section 5.22.120 of this code shall provide a notarized affidavit attesting that all massage treatments performed are under their order or direction and that they will remain on site during all such treatments. Such persons must assure that all assistants, students or aides do not function autonomously.

Section 10. A new Section 5.22.155 (Violation Summary) is hereby added to Chapter 5.22 (Massage and Massage Establishments) of Title 5 (Business License and Regulations) of the Temecula Municipal Code to read as follows:

5.22.155 Violation and Penalty Table.

<u>Table 5.22.155 - Violation Summary¹</u>	
<u>Level 1 VIOLATIONS</u>	
<u>Code Section</u>	<u>Per TMC 5.22.140(B)(1) - Any violation of the provisions below are grounds to revoke a Massage Establishment Permit</u>
<u>5.22.070(C)(1)(a)</u>	<u>Applicant or any officer/director of a corporation operating a massage establishment has been convicted of any crime that requires registration with any level of government or agency similar to and including Penal Code Section 290 or involves conduct that violates any law similar to and including Penal Code Sections 266(h), 266(i), 314, 315, 316, 318, 647 (a), (b), or (d), 653.22, 653.23 or any crime settled in a plea to violations of Penal Code Section 415, 602 or any lesser included or related offense.</u>
<u>5.22.070(C)(1)(b)</u>	<u>Applicant or any officer/director of a corporation operating a massage establishment has been convicted of a Health and Safety Code Section 11550 offense or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Sections 11054, 11055, 11056, 11057 or 11058.</u>
<u>5.22.070(C)(1)(c)</u>	<u>Applicant or any officer/director of a corporation operating a massage establishment has engaged in conduct in another jurisdiction which, if it had occurred within the City, would constitute grounds for denial or revocation under this chapter.</u>
<u>5.22.070(C)(1)(d)</u>	<u>Applicant or any officer/director of a corporation operating a massage establishment has been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Penal Code Sections 11225 through 11235 or any similar provisions of law in a jurisdiction outside the state of California.</u>
<u>5.22.070(C)(1)(e)</u>	<u>Applicant or any officer/director of a corporation operating a massage establishment has engaged in conduct in any state or country which would constitute an offense as described in subsection 5.22.070(1)(a) or (b) of this section.</u>

5.22.070(C)(1)(f)	<u>Applicant or any officer/director of a corporation operating a massage establishment has been convicted of an act involving theft, dishonesty, fraud, deceit or moral turpitude or an act of violence, which act or acts are related to the qualifications, functions or duties of the operator of a massage establishment, or which act or acts occurred in connection with the operation of a massage establishment.</u>
5.22.070(C)(1)(g)	<u>Applicant or any officer/director of a corporation operating a massage establishment is registered under Penal Code Section 290, or any similar law in any state or other jurisdiction.</u>
5.22.070(C)(1)(h)	<u>Applicant or any officer/director of a corporation operating a massage establishment has had a massage establishment permit, or other similar license or permit denied, suspended or revoked for cause by any governmental authority.</u>
5.22.070(C)(1)(i)	<u>Applicant or any officer/director of a corporation operating a massage establishment has had any massage therapist or massage practitioner permit, license, or certification denied, revoked or suspended by the CAMTC.</u>
5.22.080(B)(5)	<u>No person or persons shall be allowed to live inside the massage establishment at any time. Beds, mattresses, waterbeds, futons, sofa beds, or any type of portable or convertible beds are not permitted on the premises.</u>
5.22.080(B)(7)	<u>No person shall enter, be in or remain in any part of a massage establishment while in possession of, consuming, using or under the influence of any alcoholic beverage, recreational drugs or controlled substance. The operator and on-duty manager shall be responsible to ensure that no such person shall enter or remain upon the massage establishment. Service of alcoholic beverages or recreational drugs shall not be allowed.</u>
5.22.080(B)(8)	<u>No contraceptive devices; i.e., condoms or other prophylactics, or sexual devices, the primary purpose of which is for sexual stimulation, shall be sold, utilized, or allowed on the premises or possessed by any employee while on the premises.</u>
5.22.080(B)(20)	<u>No massage professional or any person employed by the massage establishment, including independent contractors, may engage in acts that a reasonable person in the client’s perspective, would be understood as an offer to perform or engage in with a client, acts that are sexual in nature, nor shall any massage professional or any person employed by the massage establishment, massage the genitals or anal area of any patron, nor shall any operator or manager allow or permit such massage. An operator must comply with Business and Professions Code Section 4609(a) relating to sexual acts, including not allowing massage professionals to engage in any form of sexual activity on the premises of the massage establishment, or to engage in sexual activity while providing massage for compensation. A massage professional may only provide massage of female breasts with written consent of the person receiving the massage and a referral from a licensed California health care provider. This section is not intended to prohibit any massage technique recognized by CAMTC as legitimate, or to impose any specific restriction or professional practice beyond those set forth in Business and Professions Code Section 4609(a). No operator, manager or employee while performing any task or service associated with the massage business, shall be present in any room with another person unless the person’s genitals, gluteal crease, anus and, in the case of a female, her breasts, are fully covered.</u>

5.22.080(B)(21)	A massage professional may not wear attire that is transparent, see-through, or substantially exposes the massage professional's undergarments or that exposes his or her breasts, buttocks or genitals, or that in any way willfully and lewdly exposes his or her private parts in any place that is in public or where there are other people present who may be offended or annoyed by such action. Swim attire may not be worn unless the massage professional is providing a water-based massage modality approved by the CAMTC. A massage professional shall not wear any clothing that is deemed by the CAMTC to constitute unprofessional attire. All employees of the massage establishment that are not massage professionals shall also adhere to these clothing requirements.
5.22.140(B)(1)(a)	The massage establishment is employing a massage therapist that does not hold a valid CAMTC license.
5.22.140(B)(1)(d)	Alcoholic beverage or recreational drugs are found on-site.
5.22.140(B)(1)(e)	The massage establishment has violated any provision of Business and Professions Code Section 4600 et seq.
5.22.140(B)(1)(f)	The chief of police determines that the massage establishment's operations constitute an immediate threat to the public health and safety.
<u>Level 2 VIOLATIONS</u>	
Code Section	<u>Per TMC 5.22.140(B)(2) - Any three violations in a 12 month period of the provisions below are grounds to revoke a Massage Establishment Permit</u>
5.22.080(A)(1)(a)	Massage establishments shall be located in a zoning district which permits such use. When a new massage establishment is proposed to be constructed, a set of plans shall be submitted to the city for approval and shall be accompanied by the appropriate application and plan check fee.
5.22.080(A)(1)(b)	No massage establishment located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area, shall, during business hours, block visibility into the interior reception and waiting area through the use of curtains, closed blinds, or any other material that obstructs, blurs or darkens the view into the premises.
5.22.080(A)(2)	Neither signs nor the front of the business shall be illuminated by strobe, flashing lights or string lights. Each operator and/or on-duty manager shall display the massage establishment permit in a conspicuous public place in the lobby of the massage establishment. In addition, each operator and/or on-duty manager shall ensure: (a) CAMTC Certificates for each massage professional employed at the establishment (whether on-duty or not) are conspicuously displayed in the lobby area of the massage establishment; and (b) that each massage professional has his or her identification card in his or her possession while providing massage services for compensation.
5.22.080(A)(3)	Services List. Each operator shall post and maintain a list of services available and the cost of such services, in a conspicuous public place within the premises. No owner, manager or operator shall permit, and no massage professional shall offer or perform, any service other than those posted, nor shall an operator or a massage professional request or charge a fee for any service other than those on the list of services available and posted in the reception area or provided to the client in advance of any outcall services.

5.22.080(A)(4)	Each operator shall illuminate each room or area where massage is performed with <u>light equivalent to a minimum of forty-watt incandescent light bulb, and shall provide sufficient ventilation. Such lighting and ventilation shall otherwise comply with the current mechanical and building code of the city. The lighting in each massage room shall be activated at all times while the patron is in such room or area.</u>
5.22.080(A)(5)	A minimum of one toilet and one separate wash basin shall be provided for patrons in each massage establishment. Each wash basin shall be equipped with soap or detergent and hot running water at all times and shall be located in close proximity to the area devoted to the performing of massage services. A permanently installed soap dispenser, filled with soap, and a single service towel dispenser or hand air dryer shall be provided at the restroom hand wash sink. Bar soap shall not be used. A trash receptacle shall be provided in each toilet room. Showers may be provided at the operator's option.
5.22.080(A)(6)	If male and female patrons are to be treated simultaneously at the same massage establishment, separate massage rooms shall be provided for male and female patrons provided, however, that massage establishments having separate massage rooms for male and female patrons may provide "couples massage" in a single room, subject to the requirements of this subsection. Couples massage, i.e., concurrent massage of two persons, is permitted within one room provided all other requirements of this chapter are satisfied including, but not limited to, provision of a separate massage table and massage professional for each customer. Any room to be used for couples massage shall be sufficiently sized so as to comply with any and all applicable building and fire codes and to permit free passage and movement of the massage professionals.
5.22.080(A)(7)	All facilities of the massage establishment must be in good repair and shall be thoroughly cleaned and sanitized each day the business is in operation. All walls, floors and ceilings of each restroom and shower area, if any, shall be made of washable mold-resistant surfaces.
5.22.080(A)(8)	A massage table shall be provided in each massage room and the massage shall be performed on this massage table. The tables shall have a minimum height of twenty-eight inches. Two-inch thick foam pads with maximum width of four feet may be used on a massage table and must be covered with durable, washable plastic or other waterproof material. Beds, floor mattresses and waterbeds are not permitted on the premises.
5.22.080(B)(1)	Each operator and/or on duty manager shall provide and maintain on the premises adequate equipment for disinfecting and sterilizing instruments used in massage.
5.22.080(B)(3)	Common use of towels or linen shall not be permitted. Towels and linen shall be laundered or changed promptly after each use. Separate cabinets or containers shall be provided for the storage of clean and soiled linen and towels, and such cabinets or containers shall be plainly marked: "clean linen" and "soiled linen."
5.22.080(B)(4)	Each massage establishment and/or massage professional shall provide and maintain at the location where the massage is performed adequate equipment for disinfecting and sterilizing instruments used in massage. Instruments utilized in performing massage shall not be used on more than one client unless they have been sterilized, using approved sterilization methods.
5.22.080(B)(6)	No food of any kind shall be cooked or prepared in a massage establishment. No food of any kind shall be for sale or sold in the establishment.

5.22.080(B)(9)	<u>No electrical, mechanical or artificial device shall be used by the operator or any employee of the massage establishment for audio and/or video recording or for monitoring the performance of a massage or the conversation or other sounds in the massage rooms without the written consent of the patron.</u>
5.22.080(B)(10)	<u>The operator and/or manager of the massage establishment shall maintain a roster of all employees, including operators, managers and massage professionals, showing each name, nickname and alias, home address, age, birth date, gender, height, weight, color of hair and eyes, phone number, Social Security Number, CAMTC certificate number, date of employment, and duties of each employee. The foregoing roster and all information therein shall be maintained on the premises for a period of two years following the termination of each employee. Upon consent or upon obtaining an applicable warrant, the operator or manager on duty shall make the roster immediately available for inspection during all hours the massage establishment is open for business. Information in the roster shall be available for inspection only to city or police department representatives while performing official duties. It is unlawful for a massage establishment to employ or retain any person to provide massage for compensation, or to allow any person to provide massage for compensation on the premises of a massage establishment, unless that person is listed as a massage professional on the massage permit issued pursuant to this chapter.</u>
5.22.080(B)(11)	<u>The massage professional shall provide to each patron clean, sanitary and opaque coverings capable of covering areas of the patron identified as prohibited massage areas including the genital area, anus and female breast(s). Re-use of such coverings is prohibited unless adequately cleaned and sanitized.</u>
5.22.080(B)(12)	<u>Every person operating a massage establishment shall keep a record of the dates and hours of each treatment or service provided, the name and address of the patron, the name of massage professional administering such service and a description of the treatment or service rendered.</u>
5.22.080(B)(13)	<u>The owner must advise the city, in writing, at the time of application for a permit of the business hours, and any change in hours occurring thereafter. No person shall operate a massage establishment or administer a massage in any massage establishment or at an outcall location booked by that massage establishment between the hours of nine p.m. and seven a.m. All massages must terminate by nine p.m., regardless of the start time. All customers, patrons and visitors shall be excluded from the massage establishment during these hours and be advised of these hours. The hours of operation must be displayed in a conspicuous public place in the lobby within the massage establishment and in the front window clearly visible from the outside. It is the obligation and responsibility of the massage establishment to inform clients of the requirement that any massage service must cease by nine p.m.</u>
5.22.080(B)(14)	<u>No permitted massage establishment shall place, publish or distribute, or cause to be placed, published or distributed, in any publication or any website, any advertising that depicts any portion of the human body that would reasonably suggest to prospective patrons that any service is available other than those services authorized by the Massage Therapy Act and pursuant to this chapter. No massage establishment shall employ language in the text of such advertising that would reasonably suggest to a prospective patron that any service is available other than those services authorized by this chapter. The massage establishment shall ensure that it and all certified massage professionals comply with Business</u>

	<p>and Professions Code Sections 4608, 4609 and 4611, by requiring the massage professionals to include the name under which he or she is certified and his or her certificate number in any and all advertising of massage for compensation; to not engage in sexually suggestive advertising related to massage services; to not hold him or herself out as a certified massage professional, or use terms such as “licensed” or “certified,” that implies that an uncertified person is certified as a massage professional; to not falsely state or advertise or put out any sign or card, or to falsely represent to the public, that any individual is licensed, certified, or registered as a massage professional if that individual is not so certified by the CAMTC.</p>
5.22.080(B)(15)	<p>No operator or manager shall engage in, conduct or carry on the business of a massage establishment unless there is on file with the police department, in full force and effect at all times, documents issued by an insurance company authorized to do business in the state of California evidencing that the permit holder is insured under a liability insurance policy providing minimum coverage of one million dollars for personal injury or death to one person arising out of the operation of the massage establishment and/or the administration of any massage. Evidence of the required insurance shall be provided to the chief of police at the time an initial application, or renewal application, is filed.</p>
5.22.080(B)(16)	<p>All massage establishments must comply with all state and federal laws and regulations providing for access to and receipt of services by disabled persons.</p>
5.22.080(B)(17)	<p>All front, reception, hallway or front exterior doors (except back or exterior doors used solely for employee entrance to and exit from the massage establishment) shall be unlocked during business hours, except as may be permitted by applicable law (such as the Temecula Fire Code) which allow for safety doors that may be opened from the inside when locked. No massage may be performed within any cubicle, room, booth or any other area within a massage establishment that is fitted with a lock of any kind (such as a locking doorknob, padlock, dead bolt, sliding bar or similar device), unless the door is an exterior door. No entry doors to any room shall be obstructed by any means. The requirement that an exterior door must remain unlocked at all times does not apply to any massage establishment owned by one individual with one or no employees or independent contractors.</p>
5.22.080(B)(18)	<p>No person shall be permitted to be within a massage establishment except within the lobby or reception area, or area where a customer is receiving massage services, during hours of operation, unless that person has been disclosed to the city as required under this chapter, including Section 5.22.060(A)(5).</p>
5.22.080(B)(19)	<p>No massage establishment may discriminate or exclude patrons on the basis of their race, sex, religion, age, disability or any other classification protected under federal or state laws, rules or regulations.</p>
5.22.080(B)(22)	<p>The operator and on duty manager shall be jointly responsible for the conduct of all employees while the employees are on the premises of the massage establishment. Any act or omission of an employee constituting a violation of any provision of this chapter shall be deemed to be an act or omission of the operator and on duty manager for purposes of determining whether the massage establishment permit should be revoked, or an application for such permit or renewal thereof, denied.</p>

5.22.080(B)(23)	<u>No operator or manager shall employ any person as a massage professional who does not hold a CAMTC Certificate. Every operator or manager shall report to the chief of police any change of employees, whether by new or renewed employment, discharge or termination, on the form and in the manner required by the chief of police. The report shall contain the name of the employee and the date of hire or termination. The report shall be made within ten business days of the date of hire or termination. The operator and manager must notify the chief of police immediately upon the massage establishment’s notice of any disciplinary action taken by the CAMTC regarding one of the establishment’s massage professionals and submit a copy of the notice or order. This provision requires reporting to the chief of police, even if the operator or manager believes that the chief of police has or will receive the information from another source.</u>
5.22.080(B)(24)	<u>No massage establishment shall operate as a school of massage, or use the same facilities as that of a school of massage.</u>
5.22.080(B)(25)	<u>Operation of a massage establishment without a qualified manager being present at all times that the massage establishment is open for business is prohibited.</u>
5.22.080(B)(26)	<u>Each operator and on-duty manager shall at all times comply with all provisions of this chapter and all other applicable provisions of the Temecula Municipal Code, all conditions of any required zoning approvals, conditions imposed by the chief of police, and all state and federal laws, statutes and regulations, and shall provide proof of compliance upon request by the police department.</u>
5.22.080(B)(27)	<u>Each massage establishment shall have and maintain a dedicated telecommunication device physically at the business location with an assigned telephone number capable of receiving incoming calls and dialing out to emergency services, specifically 911.</u>
5.22.080(B)(28)	<u>No pet(s) or live animal mascot(s), regardless of species, shall be allowed on site of any massage establishment, the only exemption shall be a working “service animal” as defined in Section 6.04.010 of this code.</u>
<u>¹ This is a summary of violations only. Please see the referenced code sections for complete details, an omission from this table does not remove the burden of compliance.</u>	

Section 11. Chapter 5.24 is hereby renamed as “Licensure of Tobacco Retailers and Tobacco Shops”.

Section 12. Section 5.24.030 (Definitions) of Chapter 5.24 (Licensure of Tobacco Retailers) of Title 5 (Business Licenses and Regulations) of the Temecula Municipal Code is hereby amended to add definitions for “Tobacco Shop” and “Permit” and to revise the definitions for “Tobacco paraphernalia” and “Tobacco product” to read as follows (with additions appearing in underlined text) with all other provisions of Section 5.24.030 remaining unchanged:

“Tobacco Shop” means any premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, tobacco accessories, or tobacco paraphernalia, including all non-tobacco products that contain nicotine. Any premises that dedicates more than 10 percent of its floor space (excluding bathrooms, kitchens, breakrooms, and other exclusive employee use common areas) to tobacco products, tobacco accessories or tobacco paraphernalia shall be considered a “Tobacco Shop” for purposes of this chapter. If a premises dedicates less than 10 percent of its floor space (excluding bathrooms, kitchens, breakrooms, and

other exclusive employee use common areas) to tobacco products, tobacco accessories or tobacco paraphernalia, then it shall be considered a “Tobacco Retailer” as defined in Section 5.24.030, and is not governed by this Chapter.

“Tobacco Shop Permit” or “TSP” means a Tobacco Shop Permit issued pursuant to this chapter.

“Tobacco paraphernalia” means cigarette papers or wrappers, pipes, electronic cigarette or vaping devices, holders of smoking materials of all types, cigarette rolling machines, and any other item designed for the smoking, preparation, storing, or consumption of tobacco products.

“Tobacco product” means:

1. Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, electronic cigarette or vaping device to include liquid, snuff, chewing tobacco, dipping tobacco, bidis, or any other preparation of tobacco; and
2. Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body but does not include any product specifically approved by the Federal Food and Drug Administration for use in treating nicotine or tobacco product dependence.

Section 12. A new Section 5.24.120 “Tobacco Shops” is hereby added to Chapter 5.24 (Licensure of Tobacco Retailers) of Title 5 (Business Licenses and Regulations) of the Temecula Municipal Code to read as follows (with additions appearing in underlined text):

5.24.120 Tobacco Shops.

A. Tobacco Shop Permit (TSP) Required.

1. It is unlawful for any person to engage in, operate, conduct or carry on, in or upon any premises, a tobacco shop without first obtaining a permit pursuant to this chapter, securing the necessary business license as required by this code, and complying with Title 5 of this code. A separate permit shall be obtained for each separate tobacco shop operated by such person.
2. A permit to operate a tobacco shop shall be valid for a period of one year and shall expire in conjunction with the business license.

B. Maximum Number of Tobacco Shops.

1. The maximum number of tobacco shops within the city shall not exceed one tobacco shop per every ten thousand (10,000) inhabitants of the city, with any fraction of that ratio being rounded down to the nearest whole number. For purposes of this section, the total number of inhabitants of the city shall be determined by the most current published data available from the California State Department of Finances, as of the date an application for a tobacco shop permit is filed.
2. If there is no lapse in the timely renewal of a city business license and tobacco retailers license as required under this chapter, tobacco shops operating with a valid and current business license and current and valid Tobacco Retailers License no later than sixty (60) days after the effective date of this ordinance and that operate in compliance with all local, state and federal laws, ordinances, rules and regulations, may continue to operate in the

city even if the number of tobacco shops exceed the maximum number of tobacco shops permitted in the city pursuant to subsection B(1) above and separation requirements pursuant to subsection E(1)(a) of this chapter.

3. Any owner that meets the requirements of subsection 2 above may sell or transfer the tobacco shop, but the new owner of the tobacco shop shall apply and obtain a tobacco shop permit before the new owner or operator begins operating the tobacco shop. If the tobacco shop that is sold or transferred does not have a history of violating any provisions of the chapter for at least one year preceding the date of sale or transfer of the business, the business may obtain a tobacco shop permit to operate in the city even if the number of tobacco shops exceed the maximum number of tobacco shops permitted in the city pursuant to subsection B(1) above, as long as the business meets all the requirements of Section 5.24.120(D).

C. Application for Tobacco Shop Permit.

1. All persons desiring a tobacco shop permit shall file a written application on the required form available at the city's planning department. The application, to be signed under penalty of perjury, shall be accompanied by the appropriate filing fee established by resolution of the city council. The applicant must be at least twenty-one (21) years of age at the time of application. The application shall be completed and signed by the operator of the proposed tobacco shop, if a sole proprietorship; one general partner, if the operator is a partnership; one officer or one director, if the operator is a corporation; and one participant, if the operator is a joint venture. The application for a tobacco shop permit does not authorize operation of a tobacco shop unless and until such permit has been properly granted. The application shall contain or be accompanied by the following information:
 - a. The type of ownership of the business; for example, whether an individual, partnership, or corporation. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation and the names and residence addresses of each of its current officers and directors, and of each stockholder holding more than five percent of the stock of that corporation. If the applicant is a partnership, the application shall set forth the name and residence of each of the partners, including limited partners. If the business is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the Secretary of State. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply;
 - b. The precise name under which the tobacco shop is to be conducted;
 - c. The complete address, all telephone numbers, and email address of the tobacco shop;
 - d. The following personal information concerning the applicant:
 - i. Full complete name and all aliases used by the applicant,
 - ii. Current address and all previous residential addresses for eight years immediately preceding the present address of the applicant,
 - iii. Acceptable proof that the applicant is at least twenty-one (21) years of age,
 - iv. Proof of legal residency and/or the ability to legally work in the United States,
 - v. The applicant's complete business, occupation and employment history for eight years preceding the date of application, including, but not limited to, the tobacco shop or similar business history and experience of the applicant,

- vi. The complete tobacco shop license history of the applicant, whether such person has ever had any permit, license, or certification to conduct sales of tobacco products issued or denied by any governmental authority; the date of issuance of such a permit or license, whether the permit or license was denied, revoked or suspended; and the reason therefor,
- vii. Whether the applicant has ever had a tobacco retailers license, tobacco shop permit, or any permit/license required for the operation of a tobacco shop denied, revoked or suspended by any government authority, and the reason therefor,
- viii. All criminal convictions occurring in any state or country, including convictions resulting from any plea of nolo contendere (no contest), within the last ten years, including those dismissed or expunged pursuant to Penal Code Section 1203.4, but excluding infraction traffic violations, and the date and place of each such conviction and reason therefor,
- ix. Information regarding any pending criminal charges against the applicant, and
- x. A complete set of fingerprints taken by the police department.
- e. The name and address of the owner and lessor of the premises upon or in which the tobacco shop is to be located. In the event the applicant is not the legal owner of the premises, the application must be accompanied by a copy of the lease and a notarized acknowledgment from the owner of the premises that a tobacco shop will be located on the premises, and that the tobacco shop must operate in compliance with the requirements of this chapter;
- f. Such other identification and information as the chief of police may require in order to discover the truth of the matters required to be set forth in the application;
- g. A statement in writing and dated by the applicant that he or she certifies under penalty of perjury that all information contained in the application is true and correct;
- h. Statements in writing and dated by the applicant and the applicant's designated manager(s) certifying under penalty of perjury that they:
 - i. Have reviewed Chapter 5.24 and Chapter 8.56 of the Temecula Municipal Code,
 - ii. Understand its contents,
 - iii. Understand the duties of a manager,
 - iv. Will only employ persons of legal age to sell tobacco products,
 - v. Authorize the chief of police to investigate the truth of the information contained in the application, and
 - vi. Will be responsible for the conduct of all tobacco shop operators, employees, agents, independent contractors, or other representatives while such persons are on the premises of the tobacco shop, and that failure to comply with the provisions of this chapter and any federal, state, or local law, may result in the revocation of the tobacco shop permit.
- i. If, during the term of a tobacco shop permit, the permit holder has any change in information submitted on the original or renewal application, the permit holder shall notify the police department of such change, within ten (10) business days thereafter, in writing; and

- j. A floor plan of the proposed tobacco shop showing all interior areas, including areas where tobacco products are stored or sold, all doors, display cases, restrooms, plumbing, and any other physical features required by the chief of police.
- k. The applicant, if a corporation or partnership, shall designate one or more of its officers or partners to act as manager during business hours. If the applicant is an individual, then that individual, or designee thereof shall act as manager. Each person who shall serve as manager shall complete and sign all application forms required of an individual applicant for a tobacco shop permit.
- l. Notwithstanding the fact that an application filed under this section may be a “public record” under Government Code Section 6250, et seq., certain portions of such application contain information vital to the effective administration and enforcement of the licensing and/or permit scheme established herein which is personal, private, confidential, or the disclosure of which could expose the applicant to a risk of harm. Those portions of the application which are not subject to disclosure are: the applicant’s residence address and telephone number, the applicant’s date of birth and/or age, the applicant’s driver’s permit and/or social security number, and/or personal financial data. The city council in adopting the application or permitting system set forth herein has determined in accordance with Government Code Section 6255 that the public interest in disclosure of the information set forth above is outweighed by the public interest in achieving compliance with this chapter by ensuring that the applicant’s privacy, confidentiality or security interests are protected. The city clerk shall cause to be redacted from any copy of a completed permit application made available to any member of the public, the information set forth above.

D. Tobacco Shop Permit Issuance and Denial.

1. Upon receipt of a written application for a tobacco shop permit, the chief of police shall conduct an investigation to ascertain whether the applicant satisfies the requirements of this chapter. The chief of police shall, within thirty (30) days of receipt of an application, and on a first-come-first-served-basis, approve, conditionally approve or deny the application. The thirty-day (30) period may be extended for up to thirty (30) additional days, if necessary, to complete the investigation at the discretion of the chief of police or their designee.
2. The chief of police shall deny all tobacco shop permit application(s) if the maximum number of tobacco shops under section 5.24.120(B)(1) has been met.
3. The chief of police shall deny all tobacco shop permit application(s) if they make any of the following findings:
 - a. The applicant, if an individual, or any of the officers or directors of the corporation, if the applicant is a corporation; or a partner, if the applicant is a partnership, or any person directly engaged or employed in the tobacco shop, including if any of the above listed parties, has within ten (10) years preceding the date of application:
 - i. Been convicted of a violation of Health and Safety Code Section 11550 or any offense involving the illegal sale, distribution or possession of a controlled substance specified in Health and Safety Code Sections 11054, 11055, 11056, 11057 or 11058;

- ii. Engaged in conduct in another jurisdiction which, if it had occurred within the city, would constitute grounds for denial or revocation under this chapter;
- iii. Been subjected to a permanent injunction against the conducting or maintaining of a nuisance pursuant to Penal Code Sections 11225 through 11235 or any similar provisions of law in a jurisdiction outside the state of California;
- iv. Engaged in conduct in any state or country which would constitute an offense as described in subsection (3)(i) or (ii) of this section;
- v. The applicant has had a Tobacco Retailers License revoked from any jurisdiction authorized to issue such license(s);
- vi. The applicant or any of the applicant's proposed employees, after a full hearing by administrative proceeding or state court, has aided and abetted any of the offenses listed in this section;
- vii. The applicant has made a false, misleading or fraudulent statement or omission of fact to the city in the permit application;
- viii. The application does not contain all of the information required by this section;
- ix. The tobacco shop, as proposed by the applicant, does not comply with all applicable laws, including, but not limited to, health, zoning, fire and safety requirements, regulations and standards;
- x. The applicant has not satisfied the requirements of this chapter in the time specified;
- xi. The location of the proposed tobacco shop has within a twelve (12) month period prior to the submittal of the application:
 - (a) Been the site of a violation of this chapter, or any similar criminal or civil ordinance, law, rule, or regulation of the state of California or any other public agency related to the operation of a tobacco shop,
 - (b) Been the site of a tobacco shop that was closed due to criminal activity. For purposes of this subsection, closure due to criminal activity includes voluntary closure of a tobacco shop after there have been arrests at the location or other notices relating to criminal activity,
 - (c) Been the site of a tobacco shop where violations have not been addressed in the time specified in the notice of violation or administrative citation,
 - (d) Been the site of a tobacco shop that has been revoked pursuant to this chapter,
 - (e) Been the site of a tobacco shop that has received a notice of revocation or fine issued pursuant to the Temecula Municipal Code, while any appeal of the revocation or fine is pending, or
 - (f) Been the site of a tobacco shop that has outstanding fines issued pursuant to the Temecula Municipal Code that have not been paid.
- b. If the application is denied for failure to comply with this chapter, the applicant, owner and operator of the tobacco shop may not reapply for a period of one year from the date the application was denied.
- c. An appeal of the denial of a tobacco shop establishment permit shall be governed by procedures set forth in Section 5.24.120(J).

E. Tobacco Shop Requirements.

1. Facilities.

- a. Location. No tobacco shop shall be located within five hundred (500) feet of a sensitive receptor(s), as defined in Chapter 9.20.020 of this code or from another tobacco shop. This shall be measured in a straight line from any entrance of the tobacco shop to the property line of a sensitive receptor or another tobacco shop. A radius map package shall be required at the time of submittal when there is concern about the proposed tobacco shop location in relation to sensitive receptors, this shall be at the discretion of the chief of police or the director of community development.
- b. Structure. Tobacco shops shall be located in a zoning district which permits such use. No tobacco shop located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area, shall, during business hours, block visibility into the interior area through the use of curtains, closed blinds, or any other material that obstructs, blurs or darkens the view into the premises.
- c. Display of Permits. Tobacco shops shall at all times display in a conspicuous and prominent manner, visible upon entrance to the tobacco shop all permits, licenses, or any other approval required for the operation of a tobacco shop. Expired permits do not satisfy this requirement.
- d. Signs. All tobacco shop signs shall comply with all provisions of Chapter 17.28 (Sign Standards) or the appropriate Specific Plan or Planned Development Overlay (PDO). When there is a conflict between standards, the more restrictive standard shall be followed. Tobacco shops shall not have signage on doors, windows or storefronts except as provided for in Chapter 17.28.050(I)&(J). No signs shall be closer than eighteen (18) inches from all exterior doors, windows and storefront. No signs depicting tobacco use shall be able to be seen from the public right of way. Each sign violating this section shall be counted as a violation.
- e. Lighting. Tobacco shops shall be internally illuminated with white or soft white lights only. No lighting for any purpose shall be placed around or on windows or doors, to include frames.
- f. Accessory Uses. Lounge, arcade, and similar accessory activities prohibited. No tobacco shop shall allow or provide an area either indoor or outdoor that is for a customer lounge, arcade, or similar use(s).
- g. Bathroom Facilities. Customers shall be prohibited from utilizing any bathroom facilities on site.

2. Operations.

- a. Business License. Each tobacco shop shall hold a valid business license issued by the City of Temecula.
- b. State Tobacco Retailers License. Each tobacco shop shall hold a valid California Cigarette and Tobacco Products Retailer's License issued by the State Board of Equalization, in accordance with State law.
- c. City Tobacco Retailers License. Each tobacco shop shall hold a valid Tobacco Retailers License issued by the City of Temecula.
- d. Tobacco Shop Permit. Each tobacco shop shall hold a valid Tobacco Shop Permit (TSP) issued by the City of Temecula.

- e. Hours of Operation. The owner must advise the city, in writing, at the time of application for a permit of the business hours, and any change in hours occurring thereafter. No person shall operate a tobacco shop between the hours of nine p.m. and seven a.m.
- f. Employee Age. No person under the age of twenty-one (21) years, at the time of application, shall operate or be employed by a tobacco shop.
- g. Living Prohibited. No person or persons shall be allowed to live inside the tobacco shop at any time. Beds, mattresses, waterbeds, futons, sofa beds, or any type of portable or convertible beds are not permitted on the premises.
- h. Alcoholic Beverages/Drugs – Prohibited Materials. No person shall enter, be in or remain in any part of a tobacco shop while in possession of, consuming, using or under the influence of any alcoholic beverage, recreational drugs (including cannabis) or a controlled substance. The operator and on-duty manager shall be responsible to ensure that no such person shall enter or remain upon the tobacco shop. Service of alcoholic beverages or recreational drugs shall not be allowed to include all substances located in Chapter 8.56 (Psychoactive Bath Salts, Psychoactive Herbal Incense, and other Synthetic Drugs). A tobacco shop is not permitted to sell, store, distribute, trade or give for no charge alcohol.
- i. Tobacco Use. There shall be no tobacco use or consumption (including “tastings”) at any tobacco shop.
- j. Samples. Tobacco shops are prohibited from providing samples or tastings of any tobacco product or accessory whether free or for charge.
- k. Entrances. Tobacco shops cater specifically to adult customers over the age of twenty-one (21) to purchase tobacco products, accessories, etc. not the general public. As such, entrances/exits shall remain closed, not locked, during the hours of operation and employees shall not congregate, gather, or loiter in such areas.
- l. Tobacco Products, and Paraphernalia. Tobacco Products, and tobacco paraphernalia shall not be kept within ten (10) linear feet from any building entrance or check-out counter. This prohibition shall not apply if the display is not physically accessible to customers.
- m. Tobacco Flavors. A tobacco shop, or any of the tobacco shop’s agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer as defined in Health and Safety Code §104559.5. This includes the storage of flavored tobacco products.
- n. Single Cigarettes. No tobacco shop shall sell single or individual cigarettes sometimes referred to as “loosies.”
- o. Self-Service Displays Prohibited. No person shall display tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display. A tobacco retailer who chooses to display tobacco products or tobacco paraphernalia in a locked cabinet, case or similar structure must post a clear and conspicuous sign on or within five feet of the display stating that the cabinet, case or structure is locked at all times.
- p. Compliance With All Laws. Each operator or manager shall at all times comply with all provisions of this chapter and all other applicable provisions of the Temecula

Municipal Code, all conditions of any required zoning approvals, conditions imposed by the chief of police, and all state and federal laws, statutes and regulations, and shall provide proof of compliance upon request by the police department.

3. Inspections.
 - a. A tobacco shop may be inspected twice a year for the purpose of determining that the provisions of this chapter are met. Such inspections may be made by the police department, persons employed by the city whose job descriptions require the person to enforce the provisions of this code, including, but not limited to, code enforcement officers, and such other enforcement officials as described in Sections 1.16.020 and 1.21.020 of the Temecula Municipal Code or its successor sections.
 - b. Complaints or violations related to this chapter reported to the City may result in additional inspections at the discretion of the chief of police.
- F. Transfer and Changes of Business.
 1. No tobacco shop permit may be sold, transferred or assigned by a permit holder, or by operation of law, to any other person or persons. Any such sale, transfer or assignment, or attempted sale, transfer or assignment, shall be deemed to constitute a voluntary surrender of such permit and such permit shall thereafter be null and void; provided and excepting, however, that if the permit holder is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of such permit, and in such case, the permit, upon notification to the chief of police, shall be placed in the name of the surviving partners.
- G. Fees.
 1. The city council shall establish by resolution, and from time to time may amend, the fees for the administration of this chapter. Fees required by this chapter shall be in addition to any required under any other chapter of this code.
- H. Duration and Renewal of Permits.
 1. Tobacco shop permits may be renewed on the first business day in February 2024, and on a year-to-year basis thereafter on the first business day in February, provided the permit holder continues to meet the requirements of this chapter. "Business day" as used in this subsection shall mean the days that Temecula City Hall is open for business.
 2. No permit granted herein shall confer any vested right to any person for more than the permit period.
 3. Applications for a permit renewal shall be filed with the chief of police at least sixty (60) days prior to expiration of the existing permit, otherwise the permit will lapse. At the discretion of the chief of police, a conditional permit pending satisfactory completion of the renewal application process may be issued to renewal applicants who have no permit revocation proceedings pending at the time of filing of the renewal application.
 4. Renewal applications shall set forth such information as may be required by the chief of police to update and verify the information contained in the original permit application. The applicant shall pay an application fee when applying for renewal.
 5. If an application for renewal of permit and all required information is not timely received and the permit expires, no right or privilege to operate a tobacco shop shall exist.

I. Violation and Penalty.

1. Violations of this Section are broken down into two levels of severity as they relate to the Tobacco Shop Permit (TSP):
 - a. Level 1 Violations are violations of such significance that a single violation of such provisions would cause the immediate revocation of the tobacco shop permit (TSP).
 - b. Level 2 Violations are violations of this chapter that do not rise to the severity of Level 1 Violations. Any three (3) Level 2 violations in a twelve (12) month period is grounds for revocation of the TSP by the chief of police.
2. Table 5.24.120 – Violation Summary Table

<u>Table 5.24.120 - Violation Summary¹</u>	
<u>Level 1 VIOLATIONS</u>	
<u>Code Section</u>	<u>Per TMC 5.24.120.H(D)(1)(a) - Any violation of the provisions below are grounds to revoke a Tobacco Shop Permit</u>
<u>5.24.120.E(1)(a)</u>	<u>No tobacco shop shall be located within one-thousand (1,000) feet of a sensitive receptor(s), as defined in Chapter 9.20.020 of this code or from another tobacco shop. This shall be measured in a straight line from any entrance of the facility to the property line of a sensitive receptor or another tobacco shop.</u>
<u>5.24.120.E(1)(b)</u>	<u>Tobacco shops shall be located in a zoning district which permits such use. No tobacco shop located in a building or structure with exterior windows fronting a public street, highway, walkway, or parking area, shall, during business hours, block visibility into the interior area through the use of curtains, closed blinds, or any other material that obstructs, blurs or darkens the view into the premises.</u>
<u>5.24.120.E(1)(f)</u>	<u>Lounge, arcade and similar accessory activities prohibited. No tobacco shop shall allow or provide an area either indoor or outdoor that is for customer lounge, arcade or similar use(s).</u>
<u>5.24.120.E(2)(a)</u>	<u>Each tobacco shop shall hold a valid business license issued by the City of Temecula.</u>
<u>5.24.120.E(2)(b)</u>	<u>Each tobacco shop shall hold a valid California Cigarette and Tobacco Products Retailer’s License issued by the State Board of Equalization, in accordance with State law.</u>
<u>5.24.120.E(2)(c)</u>	<u>Each tobacco shop shall hold a valid Tobacco Retailers License issued by the City of Temecula.</u>
<u>5.24.120.E(2)(d)</u>	<u>Each tobacco shop shall hold a valid Tobacco Shop Permit issued by the City of Temecula.</u>
<u>5.24.120.E(2)(g)</u>	<u>No person or persons shall be allowed to live inside the tobacco shop at any time. Beds, mattresses, waterbeds, futons, sofa beds, or any type of portable or convertible beds are not permitted on the premises.</u>
<u>5.24.120.E(2)(h)</u>	<u>No person shall enter, be in or remain in any part of a tobacco shop while in possession of, consuming, using or under the influence of any alcoholic beverage, recreational drugs or controlled substance. The operator and on-duty manager shall be responsible to ensure that no such person shall enter</u>

	<p>or remain upon the tobacco shop. Service of alcoholic beverages or recreational drugs shall not be allowed to include all substances located in Chapter 8.56 (Psychoactive Bath Salts, Psychoactive Herbal Incense, and other Synthetic Drugs). A tobacco shop is not permitted to sell, store, distribute, trade or give for no charge alcohol.</p>
<p><u>Level 2 VIOLATIONS</u></p>	
<p>Code Section</p>	<p><u>Per TMC 5.24.120.H(I)(1)(b) - Any three violations in a 12 month period of the provisions below are grounds to revoke a Tobacco Shop Permit</u></p>
<p><u>5.24.120.E(1)(c)</u></p>	<p><u>Tobacco shops shall at all times display in a conspicuous and prominent manner, visible upon entrance to the tobacco shop all permits, licenses, or any other approval required for the operation of a tobacco shop. Expired permits do not satisfy this requirement.</u></p>
<p><u>5.24.120.E(1)(d)</u></p>	<p><u>All tobacco shop signs shall comply with all provisions of Chapter 17.28 (Sign Standards) or the appropriate Specific Plan or Planned Development Overlay (PDO). When there is a conflict between standards, the more restrictive standard shall be followed. Tobacco shops shall not have signage on doors, windows or storefronts except as provided for in Chapter 17.28.050(I)&(J). No signs shall be closer than eighteen (18) inches from all exterior doors, windows and storefront. No signs depicting tobacco use shall be able to be seen from the public right of way. Each sign violating this section shall be counted as a violation.</u></p>
<p><u>5.24.120.E(1)(e)</u></p>	<p><u>Tobacco shops shall be internally illuminated with white or soft white lights only. No lighting for any purpose shall be placed around or on windows or doors, to include frames.</u></p>
<p><u>5.24.120.E(1)(g)</u></p>	<p><u>Customers shall be prohibited from utilizing any bathroom facilities on site.</u></p>
<p><u>5.24.120.E(2)(e)</u></p>	<p><u>The owner must advise the city, in writing, at the time of application for a permit of the business hours, and any change in hours occurring thereafter. No person shall operate a tobacco shop between the hours of nine p.m. and seven a.m.</u></p>
<p><u>5.24.120.E(2)(f)</u></p>	<p><u>No person under the age of twenty-one (21) years, at the time of application, shall operate or be employed by a tobacco shop.</u></p>
<p><u>5.24.120.E(2)(i)</u></p>	<p><u>There shall be no tobacco use or consumption at any tobacco shop.</u></p>
<p><u>5.24.120.E(2)(j)</u></p>	<p><u>Tobacco shops are prohibited from providing samples of any tobacco product or accessory whether free or for charge.</u></p>
<p><u>5.24.120.E(2)(k)</u></p>	<p><u>Tobacco shops cater specifically to adult customers over the age of twenty-one (21) to purchase tobacco products, accessories, etc. not the general public. As such, entrances/exits shall remain closed, not locked, during the hours of operation and employees shall not congregate, gather or loiter in such areas.</u></p>
<p><u>5.24.120.E(2)(l)</u></p>	<p><u>Tobacco Products, and Paraphernalia shall not be kept within ten (10) linear feet from any building entrance or check-out counter. This prohibition shall not apply if the display is not physically accessible to customers.</u></p>

5.24.120.E(2)(m)	A tobacco shop, or any of the tobacco shops agents or employees, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a flavored tobacco product or a tobacco product flavor enhancer as defined in Health and Safety Code §104559.5. This includes the storage of flavored tobacco products.
5.24.120.E(2)(n)	No tobacco shop shall sell single or individual cigarettes sometimes referred to as “loosies.”
5.24.120.E(2)(o)	No person shall display tobacco products or tobacco paraphernalia by means of a self-service display or to engage in tobacco retailing by means of a self-service display. A tobacco retailer who chooses to display tobacco products or tobacco paraphernalia in a locked cabinet, case or similar structure must post a clear and conspicuous sign on or within five feet of the display stating that the cabinet, case or structure is locked at all times.
<p><u>¹ This is a summary of violations only. Please see the referenced code sections for complete details. An omission from this table does not remove the burden of compliance.</u></p>	

3. Violations that are not specifically identified in this section such as 5.24.120(E)(2)(q) shall be classified at the sole discretion of the chief of police on a case-by-case basis.

J. Revocation, Permit Denial and Appeal.

1. Violation and Noncompliance. The chief of police may refuse to issue a permit, renew a permit, or may revoke an existing permit, on the grounds that the applicant or permit holder has failed to comply with the permit conditions or other requirements of this chapter, or any requirement of state law. In any such case, the applicant or permit holder shall have the right to appeal in the time and manner set forth in this section.

For purposes of this section, if an administrative citation is contested, and is held to be invalid or rescinded by an independent hearing officer appointed pursuant to this chapter, or by any court of law, the violations identified in the administrative citation shall not form the basis for revoking or refusing to renew a tobacco shop permit. If any administrative citation is contested, and is upheld by an independent hearing officer appointed pursuant to this chapter, or by any court of law, that administrative citation can form the basis for the revocation or refusal to renew a tobacco shop permit.

2. Notice. When the chief of police concludes that grounds for denial of a new permit or permit renewal, or permit revocation exist, the chief of police shall serve the applicant or permit holder, either personally or by certified mail, addressed to the business or residence address of applicant or permit holder, with a notice of denial of permit, or notice of intent to revoke or deny renewal. This notice shall state the reasons for the decision, the effective date of the decision, the right of the applicant or permit holder to appeal the decision to a hearing officer, and that the decision will be final if no written appeal is filed within the time permitted.

3. Appeal.

- a. The right to file a written appeal of a revocation or denial of new permit or renewal of a permit shall terminate upon the expiration of fifteen (15) days of the date of mailing by the chief of police of the notice specified in subsection J(2) of this section. The written appeal shall be filed with the city clerk of the city of Temecula and shall be accompanied by an appeal fee in an amount as set by city council resolution, and the city clerk shall promptly forward a copy of the appeal to the chief of police.
- b. In the event an appeal is timely filed, the denial of the permit, or renewal or revocation of the permit, shall not be effective until a final decision has been made on the appeal. Notwithstanding the foregoing, if the chief of police finds and determines that permitting a tobacco shop to continue to operate, pending the appeal hearing, would present an unreasonable and immediate risk to the public health and safety, the denial of renewal or revocation may take effect immediately. If no timely appeal is filed, the denial of renewal or revocation shall become effective upon expiration of the period for filing appeals.
- c. Upon receipt of a timely appeal, the city clerk shall refer the appeal to the California Office of Administrative Hearings (“OAH”) for the assignment of an administrative law judge to serve as the hearing officer.
 - i. Not less than fifteen (15) days prior to the appeal hearing, the city clerk shall notify the chief of police and the appellant of the names of three qualified attorneys or retired Superior Court or Appellate Court judges submitted to the city clerk by a reputable firm providing mediators and arbitrators to serve as a panel from which the hearing officer will be selected.
 - ii. Within five days of the date of mailing the notice of the available panel, the chief of police and the appellant may notify the city clerk in writing that he or she elects to remove one of the three potential hearing officers.
 - iii. The city clerk shall then request the mediation and arbitration firm to select one of the remaining names on the list as the designated hearing officer for the appeal hearing.
 - iv. The hearing officer shall be fair and impartial and shall have no bias for or against the chief of police or the appellant.
- d. At the appeal hearing, the hearing officer shall receive oral and written evidence from the chief of police and the appellant. The hearing officer shall have authority to administer oaths to those persons who will provide oral testimony. The evidence presented need not comply with the strict rules of evidence set forth in the California Evidence Code, but shall be the type of evidence upon which reasonable and prudent people rely upon in the conduct of serious affairs. The hearing officer shall have broad authority to control the proceedings and to provide for cross examination of witness in a fair and impartial manner. The chief of police shall have the burden of proof to establish by clear and convincing evidence the facts upon which his or her decision is based. The appeal hearing shall be recorded by audio recording. Any party may, at its sole cost and expense, utilize the services of a certified court reporter to prepare the verbatim record of the hearing. If a court reporter is used, the transcript prepared shall be made available for purchase to both parties. The hearing officer may continue the

appeal hearing from time to time, but only upon written motion of a party showing good cause for the continuance.

- e. The hearing officer may uphold, modify or reverse the decision of the chief of police. Within thirty (30) days or as otherwise determined by OAH, of the conclusion of the appeal hearing, the hearing officer shall render his or her decision and make written findings supporting the decision. He or she shall send the decision to the city clerk. Upon receipt of the hearing officer's decision, the city clerk shall send a copy of it to the chief of police and the appellant, along with a proof of mailing.
- f. Within ten (10) days from date of the city clerk's mailing of the decision, either party may appeal the decision to the city manager. The appeal shall be in writing and filed with the city clerk, and shall state the grounds of the appeal and specify the errors in the hearing officer's decision. Upon receipt of the appeal, the city clerk shall schedule the appeal for review by the city manager to occur within thirty days.
- g. The city manager's review of the appeal shall be limited to determining whether the evidence received at the appeal hearing supports the findings and decision of the hearing officer. The city manager shall be limited to considering the evidence presented at the appeal hearing. No public hearing shall be required and no new evidence shall be taken by the city manager. The city manager's decision on the appeal shall be set forth in a written opinion. The city clerk shall mail a copy of the city manager's opinion to the chief of police and the appellant along with a proof of service. Any legal action challenging the city manager's decision shall be filed within ninety (90) days of the date of the proof of service of mailing of the city manager's opinion, pursuant to Section 1094.5, et seq., of the California Code of Civil Procedure. The city manager's decision shall be final and effective upon mailing of the opinion. If the appellant prevails following a final decision, the appeal fee shall be returned.

K. Application to Existing Businesses.

- 1. All requirements set forth in this chapter are deemed to be necessary for the protection of the public health, safety, and welfare and shall be applicable to and govern all existing and proposed tobacco shops immediately upon the date the ordinance is codified in this chapter, and shall become effective.

Section 13. Section 5.24.030 (Definitions) of Chapter 5.24 (Licensure of Tobacco Retailers) of Title 5 (Business Licenses and Regulations) of the Temecula Municipal Code is hereby amended to add a definition for "chief of police" to read as follows with all other provisions of Section 5.24.030 remaining unchanged:

"Chief of police" means the head of the agency or division which at the time involved has responsibility for performing the police function for, or within, the city, or his or her designee.

Section 14. Subsection E of Section 5.24.040 (Tobacco license prerequisite – Application process) of Chapter 5.24 (Licensure of Tobacco Retailers) of Title 5 (Business Licenses and Regulations) of the Temecula Municipal Code is hereby amended to read as follows (with deletions appearing in strikethrough text and additions appearing in underlined text) with all other provisions of Section 5.24.040 remaining unchanged:

E. All applications shall be submitted on a form supplied by the ~~city manager~~ chief of police and shall contain the following information:

1. The name, address, email, website, and telephone number of each proprietor;
2. The business name, address, email, website, and telephone number of the single fixed location for which tobacco retailer's license is sought;
3. The name and mailing address authorized by each proprietor to receive all license-related communications and notices (the "authorized address"). If an authorized address is not supplied, each proprietor shall be understood to consent to the provision of notice at the business address specified in subsection (E)(2) of this section;
4. Proof that the location for which a tobacco retailer's license is sought has been issued a valid state tobacco retailer's license by the California Board of Equalization;
5. Whether or not any proprietor is a person who has been determined to have violated this chapter or has been a proprietor at a location that has been determined to have violated this chapter and, if so, the dates and locations of all such violations;
6. Such other information as the ~~city manager~~ chief of police deems necessary for the administration or enforcement of this chapter;

Section 15. Subsection B of Section 5.24.050 (License Issuance – Standards) of Chapter 5.24 (Licensure of Tobacco Retailers) of Title 5 (Business Licenses and Regulations) of the Temecula Municipal Code is hereby amended to read as follows (with deletions appearing in strikethrough text and additions appearing in underlined text) with all other provisions of Section 5.24.050 remaining unchanged:

B. Upon the receipt of an application for a tobacco retailer's license and the license fee, the ~~city manager~~ chief of police shall issue a license unless substantial record evidence demonstrates that one of the following bases for denial exists:

1. The application is incomplete or inaccurate.
2. The application seeks authorization for tobacco retailing at a location for which a prohibition on issuing licenses is in effect pursuant to Section 5.24.100(B) of this chapter. However, this subsection shall not constitute a basis for denial of a license if the applicant provides the city with documentation demonstrating by clear and convincing evidence that the applicant has acquired or is acquiring the location or business in an arm's length transaction.
3. The application seeks authorization for tobacco retailing for a proprietor for which a prohibition on issuing licenses is in effect pursuant to Section 5.24.100(B) of this chapter.
4. The application seeks authorization for tobacco retailing that is prohibited pursuant to subsection A of this section, that is unlawful pursuant to any other city chapter, or that is unlawful pursuant to any other local, state, or federal law.

Section 16. Item 1 of Subsection B of Section 5.24.090 (License Violation) of Chapter 5.24 (Licensure of Tobacco Retailers) of Title 5 (Business License and Regulations) of the Temecula Municipal Code is hereby amended to read as follows (with deletions appearing in

strikethrough text and additions appearing in underlined text) with all other provisions of Section 5.24.090 remaining unchanged:

B. License Compliance Monitoring.

1. Compliance with this chapter shall be monitored by the ~~city manager~~ chief of police. Any peace officer may enforce the provisions of this chapter.

Section 17. Subsection C of Section 8.36.030 (Prohibition of smoking in public places, places of employment and other areas.) of Chapter 8.36 (Smoking in Public Places of Title 8 (Health and Safety) of the Temecula Municipal Code is hereby amended to read as follows (with deletions appearing in strikethrough text and additions appearing in underlined text):

C. Unless otherwise prohibited by law, smoking is permitted in the following locations:

~~1. Significant tobacco retailers, if minors are prohibited at all times from entering the store;~~

12. By performers during theatrical productions, if smoking is a part of the theatrical production;

23. Private residential property, except when designated as nonsmoking under Chapter 17.30 of this code or used as a childcare or health care facility subject to licensing requirements and children, patients, or employees are present;

34. Up to twenty-five (20) percent of hotel and motel guest rooms, if the hotel or motel permanently designates particular guest rooms as nonsmoking rooms such that eighty ~~seventy-five~~ (80) or more of its guest rooms are nonsmoking and ashtrays and matches are permanently removed from such nonsmoking rooms. Permanent “no smoking” signage shall be posted in nonsmoking rooms;

45. Outdoor dining areas of businesses operating under an on-sale license for public premises issued by the California Department of Alcoholic Beverage Control.

Section 18. Table 17.08.030 (Schedule of Permitted Uses Commercial/Office/Industrial Districts) of Section 17.08.030 (Use Regulations) of Chapter 17.08 (Use Regulations) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to read as follows (with additions appearing in underlined text):

Table 17.08.030 Schedule of Permitted Uses Commercial/Office/Industrial Districts							
Description of Use	NC	CC	HT	SC	PO	BP	LI
T							
Tailor shop	P	P	-	-	P	-	-
Taxi or limousine service	-	P	P	P	-	-	C
Tile sales	-	P	-	P	-	-	-
Tobacco shop ¹³	<u>C</u>	<u>P¹³</u>	<u>P¹³</u>	<u>P¹³</u>	-	-	-
Notes:							
<u>13. Subject to the requirements contained in Section 5.24.120 of this code.</u>							

Section 19. Table 17.22.106 (Schedule of Permitted Uses Pala Road Planned Development Overlay District -1) of Section 17.22.106 (Use Regulations) of Article 2. (Pala Road Planned Development Overlay District-1) of Chapter 17.22 (Planned Development Overlay Zoning District (PDO-)) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to read as follows (with additions appearing in underlined text):

Table 17.22.106 Schedule of Permitted Uses Pala Road Planned Development Overlay District-1	
Description of Use	PDO-1
T	
Tailor shop	P
Taxi or limousine service	P
Tile sales	P
Tobacco shop ⁶	P
Tool and die casting	-
Transfer, moving and storage	-
Transportation terminals and stations	-
Truck rentals (no sales or/service)	C ⁵
TV/VCR repair	P
Notes:	
1. The CUP will be subject to Section 17.10.020(B), special standards for the sale of alcoholic beverages.	
2. Subject to citywide antenna standards.	
3. See Section 17.10.020(L), special standards for indoor swap meets.	
4. See Section 17.10.020(N), special standards for self-storage or mini-warehouse facilities.	
5. Subject to the special setback provisions contained in Section 17.22.108.	
6. Subject to the requirements of Section 5.24.120	

Section 20. Table 17.22.136B (Schedule of Permitted Uses Temecula Creek Village Planned Development Overlay District -4) of Section 17.22.136 (Use Regulations) of Article V. (Temecula Creek Village Planned Development Overlay District-4) of Chapter 17.22 (Planned Development Overlay Zoning District (PDO-)) of Title 17 (Zoning) of the Temecula Municipal Code is hereby amended to read as follows (with additions appearing in underlined text):

Table 17.22.136B Schedule of Permitted Uses Temecula Creek Village Planned Development Overlay District-4		
Description of Use	PDO-4R	PDO-4V⁶
T		
Tailor shop	P	P
Taxi or limousine service	P	-
Tile sales	P	-
Tobacco shop ⁷	P ⁷	-
Tool and die casting	-	-
Transfer, moving and storage	-	-

Table 17.22.136B Schedule of Permitted Uses Temecula Creek Village Planned Development Overlay District-4		
Description of Use	PDO-4R	PDO-4V⁶
Transportation terminals and stations	-	-
Truck rentals (no sales or service)	-	-
TV/VCR repair	P	P ⁴
Notes:		
<ol style="list-style-type: none"> 1. The CUP will be subject to Section 17.10.020(B) special standards for the sale of alcoholic beverages. 2. Subject to the requirements of Chapter 17.40 of the Temecula Municipal Code. 3. In PDO-4, all senior housing residential projects shall use the development and performance standards for the high density residential zone and the provisions contained in Section 17.06.050(H). 4. The size of the use or activity is limited to 5,000 square feet. 5. Outdoor entertainment in conjunction with an eating establishment is permitted provided that the outside noise levels do not interfere with off-site conversation. 6. Drive through facilities are not allowed in the village planning area. <ul style="list-style-type: none"> Retail/support commercial planning area is identified as PDO-4R. Village commercial planning area is identified as PDO-4V. Multifamily planning areas A and B use the high density column in Table 17.06.030. 7. <u>Subject to the requirements of Section 5.24.120</u> 		

Section 21. Severability. If any section or provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, or contravened by reason of any preemptive legislation, the remaining sections and/or provisions of this Ordinance shall remain valid. The City Council hereby declares that it would have adopted this Ordinance, and each section or provision thereof, regardless of the fact that any one or more section(s) or provision(s) may be declared invalid or unconstitutional or contravened via legislation.

Section 22. Certification. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same or a summary thereof to be published and posted in the manner required by law.

Section 23. Effective Date. This Ordinance shall take effect thirty (30) days after passage.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Temecula
this 12th day of September, 2023.



Zak Schwank, Mayor

ATTEST:



Randi Johl, City Clerk

[SEAL]

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss
CITY OF TEMECULA)

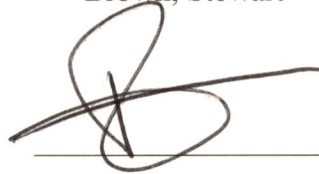
I, Randi Johl, City Clerk of the City of Temecula, do hereby certify that the foregoing Ordinance No. 2023-07 was duly introduced and placed upon its first reading at a meeting of the City Council of the City of Temecula on the 22nd day of August, 2023, and that thereafter, said Ordinance was duly adopted by the City Council of the City of Temecula at a meeting thereof held on the 12th day of September, 2023, by the following vote:

AYES: 3 COUNCIL MEMBERS: Alexander, Kalfus, Schwank

NOES: 0 COUNCIL MEMBERS: None

ABSTAIN: 0 COUNCIL MEMBERS: None

ABSENT: 2 COUNCIL MEMBERS: Brown, Stewart



Randi Johl, City Clerk