

Prepared by: Eric Goers, City Attorney, 410 E. Washington Street, Iowa City, IA 52240; 319-356-5030

Ordinance Number 24-4941

Ordinance amending Title 14, entitled "Zoning Code", to address Tobacco Sales Oriented Retail Uses. (REZ24-0006).

Whereas, Iowa City has seen within its borders an increased presence of retail outlets primarily focused on retail sales of tobacco, tobacco products, alternative nicotine products, and vapor products; and

Whereas, there are significant health concerns related to public consumption of tobacco, tobacco products, alternative nicotine products, and vapor products; and

Whereas, the Center for Disease Control (CDC) reports that smoking tobacco causes cancer, heart disease, stroke, lung diseases, diabetes, and chronic obstructive pulmonary disease (COPD), which includes emphysema and chronic bronchitis; and

Whereas, according to the CDC, nearly 9 out of 10 adults who smoke cigarettes daily first tried smoking by age 18; and

Whereas, according to the CDC, smokeless tobacco products can cause mouth cancer, gum disease, and tooth loss; and

Whereas, according to the CDC, 1.5% of high school students in 2023 were current users of smokeless tobacco products; and

Whereas, in Ordinance No. 15-4634 (codified at Section 6-10-2), the City Council found that the use of e-cigarettes presents a serious and unknown public health threat and that in the interests of protecting the health of the public and providing a healthy work-place environment for its employees the City of Iowa City and prohibited the use of electronic cigarettes in all areas where it is illegal to smoke tobacco products; and

Whereas, according to the CDC, in 2023, 2.13 million U.S. middle and high school students had used e-cigarettes in the past 30 days, including 4.6% of middle school students and 10.0% of high school students; and

Whereas, Chapter 142D of the Iowa Code, the Iowa Smokefree Air Act, prohibits smoking tobacco products in certain public spaces, places of employment and outdoor areas, including enclosed City buildings and vehicles operated by the City, the public grounds immediately adjacent to City buildings and bus shelters; and

Whereas, as a result of these public health risks, the City has declared additional areas to be smoke free places including the municipal parking ramps, airport, City Plaza except for alleys and certain areas within Iowa City parks (see Chapter 10 of Title 6, "Public Health and Safety"); and

Whereas, greater access and availability of tobacco, tobacco products, alternative nicotine products, and vapor products leads to greater use of those products, and thus greater public harm; and

Whereas, Iowa Code Chapter 453A governs the sale of tobacco, tobacco products, alternative nicotine products, and vapor products within the state of Iowa, all of which are covered by retail tobacco permits; and

Whereas, Chapter 453A grants cities the authority to issue retail tobacco permits located within their city limits; and

Whereas, Chapter 453A further grants cities the discretion to issue, or not issue, tobacco permits within their city limits, pursuant to the city’s own policies; and

Whereas, it is in the best interest of the City to amend the ordinance to create a new “Tobacco Retailer Uses” category, and to regulate their locations within the City.

Now, therefore, be it ordained by the City Council of the City of Iowa City, Iowa:

Section I. Amendments

1. Title 14, entitled "Zoning Code", Chapter 2 entitled "Base Zones", Article C entitled "Commercial Zones", Table 2C-1, entitled "Principal Uses Allowed in Commercial Zones", is amended by adding the following bolded text to the “Retail uses” use category:

Table 2C-1: Principal Uses Allowed in Commercial Zones

Use Categories	Subgroups	CO-1	CN-1	CH-1	CI-1	CC-2	CB-2	CB-5	CB-10	MU
...										
Retail uses <sup>1</sup>	Alcohol sales oriented retail		PR	PR	P	P	PR	PR	PR	PR
	Delayed deposit service uses					PR				
	Hospitality oriented retail	PR	PR	P	P	P	P	P	P	PR
	Outdoor storage and display oriented				P	PR				
	Personal service oriented	P	PR		P	P	P	P	P	PR
	Repair oriented				P	P	P	P	P	
	Sales oriented		PR	PR	P	P	P	P	P	PR
	<b>Tobacco sales oriented</b>		<b>PR</b>	<b>PR</b>	<b>PR</b>	<b>PR</b>	<b>PR</b>	<b>PR</b>	<b>PR</b>	<b>PR</b>
...										

2. Title 14, entitled "Zoning Code", Chapter 2 entitled "Base Zones", Article D entitled "Industrial and Research Zones", Table 2D-1, entitled "Principal Uses Allowed in Industrial and Research Zones", is amended by adding the following bolded text to the “Retail” use category:

Table 2D-1: Principal Uses Allowed In Industrial And Research Zones

Use Categories	Subgroups	I-1	I-2	RDP	ORP
...					
Retail	Sales oriented				
	Personal service oriented				

	Alcohol sales oriented				
	Repair oriented				
	Hospitality oriented retail			S	S
	Outdoor storage and display oriented				
	<b>Tobacco sales oriented</b>				
...					

3. Title 14, entitled "Zoning Code", Chapter 2 entitled "Base Zones", Article H entitled "Form-based Zones and Standards", Table 14-2H-3B-1, entitled "Uses", is amended by adding the following bolded text to the "Retail" use category:

Table 14-2H-3B-1: Uses									
Use Categories	T3NE	T3NG	T3NG-O	T4NS	T4NS-O	T4NM	T4NM-O	T4MS	Specific Standards
...									
Retail Uses									
Sales Oriented	-	-	P <sup>1</sup>	-	P <sup>1</sup>	-	P <sup>1</sup>	P	
Personal Service Oriented	-	-	P <sup>1</sup>	-	P <sup>1</sup>	-	P <sup>1</sup>	P	
Alcohol Sales Oriented	-	-	-	-	S <sup>1</sup>	-	S <sup>1</sup>	S	14-4B-4B-15
Hospitality Oriented	PR	PR	PR	PR	PR	PR	PR	PR	14-4B-4B-18(CN-1)
<b>Tobacco Sales Oriented</b>	-	-	<b>PR<sup>1</sup></b>	-	<b>PR<sup>1</sup></b>	-	<b>PR<sup>1</sup></b>	<b>PR</b>	<b>14-4B-4B-24</b>
Indoor Commercial Recreational Uses	-	-	-	-	-	-	-	PR/S	14-4B-4B-7
General Animal Related Commercial Uses	-	-	-	-	S <sup>1</sup>	-	S <sup>1</sup>	PR	14-4B-4B-2(CN-1)
...									

4. Title 14, entitled "Zoning Code", Chapter 4 entitled "Use Regulations", Article A, entitled "Use Categories", Section 4, entitled "Commercial Use Categories", Subsection I, entitled "Retail Uses", is amended by adding the following Paragraph 2.(h.):

h. Tobacco Sales Oriented: Any retailer actively engaged in the sale of tobacco products, cigarettes, alternative nicotine products, or vapor products, all as defined in Iowa Code Chapter 453A, as amended, pursuant to a tobacco permit.

5. Title 14, entitled "Zoning Code", Chapter 9 entitled "Definitions", Article A, entitled "General Definitions", Section 1, entitled "Definitions" is amended by adding the following definition:

Tobacco Sales Oriented Use: See "Retail uses", "Tobacco Sales Oriented" as defined in chapter 4, Article A, "Use Categories", of this Title.

6. Title 14, entitled "Zoning Code", Chapter 4 entitled "Use Regulations", Article B, entitled "Minor Modifications, Variances, Special Exceptions, and Provisional Uses", Section 4, entitled "Specific Approval Criteria for Provisional Uses and Special Exceptions", Subsection B, entitled "Commercial Uses", is amended by adding the following Paragraph 24, entitled "Tobacco Sales Oriented Uses":

24. Tobacco Sales Oriented Uses: A tobacco sales oriented use, as defined in this title, must be separated by a minimum distance of five hundred feet (500') from any other tobacco sales oriented use, any general educational facility, and any college and university, as defined by this title. For purposes of the distance separation requirements within this Paragraph, "college and universities" shall include all property owned by the Iowa Board of Regents. Distance shall be measured along a straight line from the nearest property line (or nearest point of the leased building space) of the proposed use to the nearest property line (or nearest point of the leased building space) of any other tobacco sales oriented use, general educational facility, or any college or university. For example, in the case of a tobacco sales oriented use that is located on a lot with multiple leased building spaces, such as a shopping mall, the distance is measured from the nearest point of the leased building space occupied by a tobacco sales oriented use to the nearest property line or leased building space of any other tobacco sales oriented use, general educational facility, or college and university.

7. Title 14, entitled "Zoning Code", Chapter 4 entitled "Use Regulations", Article E, entitled "Nonconforming Situations", Section 5, entitled "Regulation of Nonconforming Uses", is amended to add the following Subsection H, entitled "Nonconforming Tobacco Sales Oriented Uses":

H. Nonconforming Tobacco Sales Oriented Uses: In addition to the other provisions in this section, the following provisions apply to nonconforming tobacco sales oriented uses:

1. Any "tobacco sales oriented uses", as defined in this title, that was legally established prior to the effective date hereof and that is nonconforming with regard to separation distances required under this title, may continue unless any of the following conditions occur. If any of these conditions occur, then nonconforming rights cease and the use must convert to a conforming use:

- a. The tobacco permit is revoked; or
- b. The tobacco permit lapses or is discontinued for a period of sixty (60) days or more; or
- c. The tobacco sales oriented use ceases for a period of ninety (90) days or more; or
- d. There has been a change of use as defined in Section 14-4E-5B.

8. Title 14, entitled "Zoning Code", Chapter 4 entitled "Use Regulations", Article E, entitled "Nonconforming Situations", Section 5, entitled "Regulation of Nonconforming Uses", Subsection F is amended by adding the underlined text and deleting the strikethrough text, as follows:

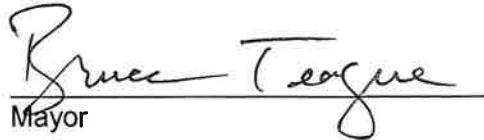
F. Discontinuance Of Nonconforming Use: Except as allowed in subsection E, ~~and G, and H~~ of this section, a nonconforming use that is discontinued for a period of one year must revert to a conforming use or, in qualifying situations, a special exception may be applied for according to the provisions of subsection B of this section.

Section II. Repealer. All ordinances and parts of ordinances in conflict with the provision of this Ordinance are hereby repealed.

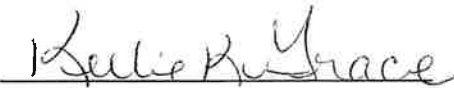
Section III. Severability. If any section, provision or part of the Ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Section IV. Effective Date. This Ordinance shall be in effect after its final passage, approval and publication, as provided by law.

Passed and approved this 10<sup>th</sup> day of December, 2024.

  
\_\_\_\_\_  
Mayor

Approved by

Attest:   
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
City Attorney's Office – 10/31/2024

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Moved by Moe, seconded by Bergus, that the Ordinance as read be adopted, and upon roll call there were:

Ayes:	Nays:	Absent:	
<u>X</u>	<u>      </u>	<u>X</u>	Alter
<u>X</u>	<u>      </u>	<u>      </u>	Bergus
<u>X</u>	<u>      </u>	<u>      </u>	Dunn
<u>X</u>	<u>      </u>	<u>      </u>	Harmsen
<u>X</u>	<u>      </u>	<u>      </u>	Moe
<u>X</u>	<u>      </u>	<u>      </u>	Salih
<u>X</u>	<u>      </u>	<u>      </u>	Teague

First Consideration: November 4, 2024

Vote for Passage: Ayes: Alter, Bergus, Dunn, Harmsen, Moe, Salih, Teague

Nays: None

Absent: None

Second Consideration: November 19, 2024

Vote for Passage: Ayes: Alter, Bergus, Dunn, Harmsen, Moe, Salih, Teague

Nays: None

Absent: None

Date Published: December 19, 2024