



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Vice Mayor Madison Nguyen
Councilmember Sam Liccardo

SUBJECT: SEE BELOW

DATE: August 2, 2012

Approved

Date

8/2/2012

**SUBJECT: AMENDMENT OF CHAPTER 20 OF THE SAN JOSE MUNICIPAL CODE,
COMMONLY KNOWN AS THE ZONING CODE**

RECOMMENDATION:

1. Direct staff to Draft an amendment to Chapter 20 of the San Jose Municipal Code, commonly known as the Zoning Code to directly address the following:
 - a. Businesses, retailers, or shops selling paraphernalia that can be used to consume and/or smoke tobacco or any substance which can reasonably be converted for smoking purposes, adult book stores and other adult uses and tattoo parlors would be prohibited from operating within 1,000 feet of a public or private elementary school, secondary school, community center, library, city park, licensed child care facility, or other areas which tend to be populated by youth.
 - b. In the event that one of the business types mentioned above were legally established before the proposed ordinance goes into effect, the ordinance should also include provisions that would not allow a replacement business (one of the types mentioned above) to benefit from a prior business's legal non-conforming status. In other words, immediately upon termination of a legal non-conforming business, the legal non-conforming status is eliminated for these particular uses.
2. Recommend that the Council include the following proposed Zoning Code change in the next Priority Setting Session.

BACKGROUND:

Chapter 20 of the San Jose Municipal Code (SJMC), also known as the Zoning Code currently only restricts the location of bail bonds, adult uses, and off-sale alcohol retailers with a conditional permit requiring that they maintain a distance of 500 feet from primary and secondary schools.

Parents and community members have expressed their concern that there are no explicit city zoning provisions to protect the areas surrounding schools, community centers and parks from the influence and patronage of businesses seeking purely adult audiences, such as smoke shops

and tattoo parlors. These businesses have posed serious threats to the health, safety and wellbeing of our youth. An example is the small shopping center directly across from Bridges Academy on McLaughlin and Phelan Avenue, where there is a liquor store, tattoo and smoke shop. This has elicited concern from parents, school administrators and the Franklin-McKinley Children's Initiative. Due to the proximity of the school, youth have easy access to mini bottles of liquor and smoking paraphernalia, often disguised as highlighters so they can bring and use at school. A similar situation is taking shape at the corner of South 2nd and Williams Street, a few hundred feet from Notre Dame High School. A new smoke shop will soon open that will sell paraphernalia that can be used to consume and/or smoke tobacco or any substance which can reasonably be converted for smoking purposes. Furthermore, this new business is across the street from a VTA bus stop that has been the subject of multiple drug arrests and is the cause of many concerns from school administrators, parents and SOFA area merchants. Parents should be confident that children are free from negative influences as they travel to and from their schools and activity centers.

The City of San Jose continually makes significant strides in promoting the public health and safety of its youth. From building parks and trails in conformance with the City's Green Vision, banning smoking in public parks and sports arenas, requiring a high percentage of healthy snacks to be sold in vending machines in public buildings, prohibiting alcohol inside city parks, to the adoption of the Tobacco Retail License in 2010, San Jose recognizes the health of its youth as a priority.

An amendment to the City's Zoning Code to prohibit adult use businesses that sell paraphernalia that can be used with tobacco and other substances and tattoo parlors from operating within 1,000 feet of a public or private elementary school, secondary school, community center, library, city park or other sensitive use facilities such as licensed child care centers is a necessary step in order to promote a healthier future for our youth, their families and the communities in which they reside.

We look forward to the City Council's support of this important step in keeping our youth safe and healthy.

cc: Dennis Hawkins
City Clerk

