



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

25 West Fourth Street
Saint Paul, MN 55102

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March 4, 2011

Mayor Christopher B. Coleman
Room 390 City Hall
15 W. Kellogg Blvd.
Saint Paul, MN 55102

Kathy Lantry, President
Members of the City Council
310 City Hall
15 W. Kellogg Blvd.
Saint Paul, MN 55102

Dear Mayor Coleman and Council President Lantry,

RE: Tobacco Shop Zoning Study

Attached please find the Planning Commission resolution and report regarding proposed zoning regulations for tobacco shops. This study responds to City Council resolution 10-496 and ordinance 10-777, which established a moratorium on the issuance of permits or approvals for tobacco shops for a period of one year ending May 12, 2011.

The Planning Commission recommendation proposes that a definition of "tobacco products shop" be added to the zoning code and that the use be permitted in the TN2, TN3, BC, B2-B5, and Industrial districts. Establishments larger than 2500 sq. ft would require a conditional use permit in the TN2 and BC districts.

The Planning Commission's recommendation differs from the earlier staff proposal in that it deletes reference in the definition of the use to entrances *onto a public right-of-way* and deletes the ½ mile distance requirement between these uses in the standards and conditions for the use. The Commission preferred to keep the definition the same as that in the state statute and determined that the distance requirement would affect any business that met the definition of a tobacco products shop even if sampling was not offered by that business.

Feel free to contact me or Patricia James if you have any questions. Patricia can be reached at 651-266-6639.

Sincerely,

Donna Drummond
Planning Director

city of saint paul
planning commission resolution
file number 11-13
date March 4, 2011

WHEREAS, On May 12, 2010, the City Council adopted Resolution 10-496, enacting a moratorium on the issuance of zoning permits or approvals, building permits, and occupancy certificates for any tobacco shop, and directed the Planning Commission to study the present zoning regulation of tobacco shops and, if needed, recommend amendments to the present zoning regulations and official controls and adopted follow-up interim ordinance 10-777 on August 11, 2010; and

WHEREAS, Minnesota Statutes prohibit smoking in most indoor places, with an exception for sampling of tobacco products in a *tobacco products shop*, which is defined; and

WHEREAS, Saint Paul's zoning code permits a "tobacco shop" as a retail sales and service use in all mixed use, commercial and industrial districts except the OS Office-Service and the TN1 Traditional Neighborhood districts but does not include a land use definition of a "tobacco shop," or set standards and criteria for the use; and

WHEREAS, Amending the zoning code would enable the City of Saint Paul to differentiate between businesses whose primary purpose is to sell tobacco and tobacco-related products and that may offer product sampling and the majority of businesses that sell tobacco and tobacco-related products as only a portion of their more general commercial/retail business;

NOW, THEREFORE, BE IT RESOLVED, that the Saint Paul Planning Commission recommends that the City Council amend Chapter 65 to include a definition of *tobacco products shop* consistent with state statute and establish standards and conditions for the use that provide for planning commission review of larger facilities in the BC and TN2 zoning districts, consistent with the requirement for other types of uses as set forth in the attached proposed amendment.

moved by Wencl
seconded by _____
in favor Unanimous
against _____

Tobacco Product Shop Zoning Amendments

An ordinance amending the Legislative Code, Chapter 65, land use definitions and development standards, and Chapter 66, zoning district uses, pertaining to tobacco products shops.

WHEREAS, On May 12, 2010, the City Council adopted Resolution 10-496, enacting a moratorium on the issuance of zoning permits or approvals, building permits, and occupancy certificates for any tobacco shop, and directed the Planning Commission to study the present zoning regulation of tobacco shops and, if needed, recommend amendments to the present zoning regulations and official controls; and

WHEREAS, Minnesota Statutes prohibit smoking in most indoor places, with an exception for sampling of tobacco products in a *tobacco products shop*, which is defined; and

WHEREAS, the zoning code permits *tobacco shop* as a retail sales and service use in all mixed use, commercial and industrial districts except the OS office-service and TN1 traditional neighborhood districts, but does not define *tobacco shop* or provide any special standards and criteria for the use; and

WHEREAS, amending the zoning code to define *tobacco products shop* consistent with state statutes would differentiate between businesses whose primary purpose is to sell tobacco products that may offer product sampling and the majority of businesses that sell tobacco and tobacco-related products as only a portion of their more general commercial/retail business; and

WHEREAS, the City Council conducted a public hearing on the proposed tobacco product shop amendments, at which all interested parties were given an opportunity to be heard, notice of which was published in the *Legal Leger* and was mailed to the City's Early Notification System;

THE COUNCIL OF THE CITY OF SAINT PAUL DOES HEREBY ORDAIN:

Section 1

That Legislative Code Chapter 65, Land Use Definitions and Development Standards, is hereby amended as follows:

Sec. 65.535. Tobacco products shop.

A retail establishment with a principal entrance door opening directly to the outside that derives more than ninety (90) percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

Standards and conditions:

In the BC community business (converted) and T2 traditional neighborhood districts, a conditional use permit is required for tobacco products shops with a floor area greater than two thousand five hundred (2,500) square feet.

Section 2

That Legislative Code Chapter 66, Zoning District uses, Density and Dimensional Standards, is hereby amended as follows:

Table 66.321. Principal Uses in Traditional Neighborhood Districts

Use	TN1	TN2	TN3	Development Standards
Tobacco products shop		P/C	P	✓

Table 66.421. Principal Uses in Business Districts

Use	OS	B1	BC	B2	B3	B4	B5	Development standards
Tobacco products shop		P	P/C	P	P	P	P	✓

Table 66.521. Principal Uses in Industrial Districts

Use	IR	I1	I2	I3	Development Standards
Tobacco products shop	P	P	P		✓

Section 3

This ordinance shall become effective thirty (30) days after its passage, approval and publication.



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

25 West Fourth Street
Saint Paul, MN 55102

Telephone: 651-266-6562
Facsimile: 651-228-3314

Date: February 23, 2011
To: Planning Commission
From: Neighborhood Planning Committee
RE: **Tobacco Shop Zoning Study**

Introduction

On May 12, 2010, the City Council adopted Resolution 10-496, enacting a moratorium on the issuance of zoning permits or approvals (including site plans, lot splits, or plats), building permits, and occupancy certificates for any tobacco shop, and directed the Planning Commission to study the present zoning regulation of tobacco shops and, if needed, recommend amendments to the present zoning regulations and official controls.

On August 11, 2010, follow-up interim ordinance 10-777 was adopted. It specifically referenced the growing number of businesses, called “hookah lounges,” “hookah bars,” “hookah cafés,” etc. that are being licensed as tobacco shops and offer “sampling” of tobacco products smoked in hookah pipes. The ordinance also noted that using a water pipe does not lessen the adverse health effects of smoking tobacco products.

Regulatory Background

The Minnesota Clean Indoor Air Act was adopted in 1975. It prohibited smoking in many indoor places. In 2007, the Freedom to Breathe Act expanded the previous act in order to more fully protect employees and the public from the health hazards of secondhand smoke, and it extended the smoking prohibition to nearly all indoor places (MN. Statutes Sec. 144.411-144.417).

MN Statutes Sec. 144.4167, Subd. 4 allows an exemption for “sampling” of tobacco products in tobacco products shops. While a definition of “tobacco products shop” is provided, the term “sampling” is not defined in the statute. However, it does permit local units of government to adopt more stringent regulations regarding exposure to secondhand smoke and to regulate outdoor smoking as well.

Sec. 144.4167 PERMITTED SMOKING. Subd. 4. Tobacco products shop states:
Sections [144.414](#) to [144.417](#) do not prohibit the lighting of tobacco in a tobacco products shop by a customer or potential customer for the specific purpose of sampling tobacco products.
For the purposes of this subdivision, a tobacco products shop is a retail establishment with an entrance door opening directly to the outside that derives more than 90 percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a

tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license. [Emphasis added]

Saint Paul's zoning code permits a "tobacco shop" as a retail sales and service use in all mixed use, commercial and industrial districts except the OS Office-Service and the TN1 Traditional Neighborhood districts. The code does not include a land use definition of a "tobacco shop," nor are there any standards and criteria for the use.

Tobacco shops are also required to obtain a City tobacco sales license and are regulated under Chapter 324. In most cases, businesses with a retail tobacco sales license either have another primary purpose and sale of tobacco products and related goods is accessory to the principal use, or the sales are for purely off-premises consumption.

Amending the zoning code would enable the City of Saint Paul to differentiate between businesses whose primary purpose is to sell tobacco and tobacco-related products and that may offer product sampling and the majority of businesses that sell tobacco and tobacco-related products as only a portion of their more general commercial/retail business (e.g. grocery stores, convenience stores, bars and restaurants, etc.). The Department of Safety and Inspections is also reviewing the license regulations relative to the operation of these businesses and will be proposing amendments to Chapter 324 as needed.

Committee Recommendation

1. Amend Chapter 65 to include a definition of *tobacco products shop* consistent with state statute and to distinguish these shops from other businesses where tobacco sales are not the primary use.
2. Establish standards and conditions for the use that provides for planning commission review of larger facilities in the BC and TN2 zoning districts, consistent with the requirement for other types of uses.

Proposed Zoning Text Amendments

Sec. 65.535. Tobacco products shop.

A retail establishment with a principal entrance door opening directly to the outside that derives more than 90 percent of its gross revenue from the sale of loose tobacco, plants, or herbs and cigars, cigarettes, pipes, and other smoking devices for burning tobacco and related smoking accessories and in which the sale of other products is merely incidental. "Tobacco products shop" does not include a tobacco department or section of any individual business establishment with any type of liquor, food, or restaurant license.

[The new definition is the same as that in Minnesota Statutes and will maintain consistency with state and local regulation.]

Standards and conditions:

In the BC community business (converted) and TN2 traditional neighborhood districts, a conditional use permit is required for tobacco products shops with a floor area greater than 2,500 square feet.

[These uses are called out as potential exceptions to the general indoor smoking ban in Minnesota and are therefore likely to draw customers from a larger area than other types of neighborhood-oriented businesses.]

Tobacco Shop Zoning Study

Requiring a conditional use permit for larger tobacco products shops is consistent with the intent of the BC district to “permit the operation of businesses which do not generate large amounts of traffic...”and the TN2 district to “foster compact, pedestrian-oriented commercial...development” and encourage a variety of uses. No existing business would be affected by this requirement.]

Table 66.321. Principal Uses in Traditional Neighborhood Districts

Use	TN1	TN2	TN3	Development Standards
Tobacco <u>products</u> shop		P/C	P	✓ <input type="checkbox"/>

Table 66.421. Principal Uses in Business Districts

Use	OS	B1	BC	B2	B3	B4	B5	Development standards
Tobacco <u>products</u> shop		P	P/C	P	P	P	P	✓ <input type="checkbox"/>

Table 66.521. Principal Uses in Industrial Districts

Use	IR	I1	I2	I3	Development Standards
Tobacco <u>products</u> shop	P	P	P		✓ <input type="checkbox"/>

[These uses are called out as potential exceptions to the general indoor smoking ban in Minnesota and are therefore likely to draw customers from a larger area. Permitting them in commercial and industrial districts that are intended to draw from a larger area than the immediate neighborhood limits potential traffic impacts on the B1 district, which is intended to serve “the convenience shopping or service needs of persons residing in nearby residential areas.”]