

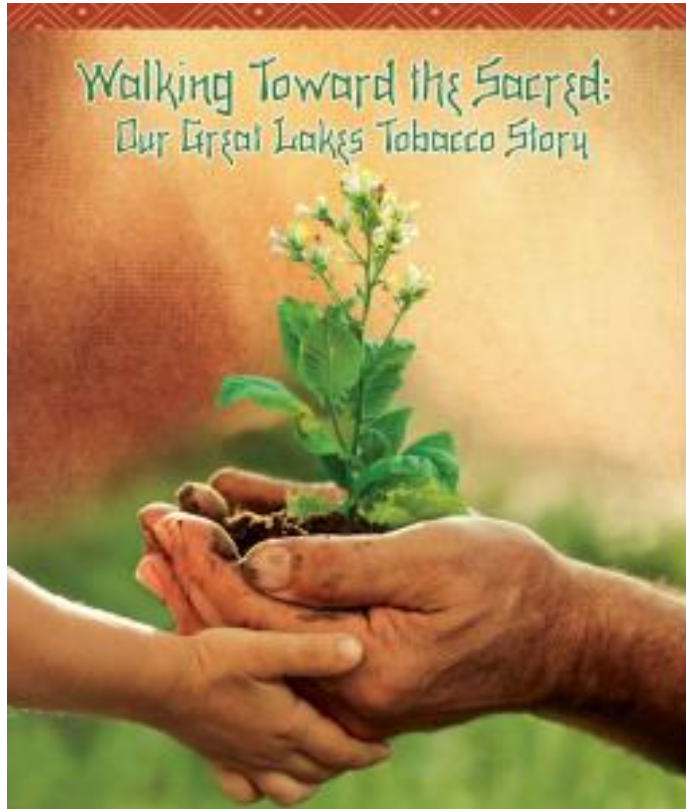


**COMPREHENSIVE PLANS, ZONING,
AND THE INTERSECTION WITH
COMMERCIAL TOBACCO REGULATION**

THE PUBLIC HEALTH LAW CENTER



COMMERCIAL TOBACCO IS NOT TRADITIONAL TOBACCO









[Available at this link](#)



Nicotiana rustica, Solanaceae, Mapacho, flower. Botanical Garden KIT, Karlsruhe, Germany. Wikimedia Commons.

LEGAL TECHNICAL ASSISTANCE

-  Legal Research
-  Policy Development, Implementation, Defense
-  Publications
-  Trainings
-  Direct Representation
-  Lobby

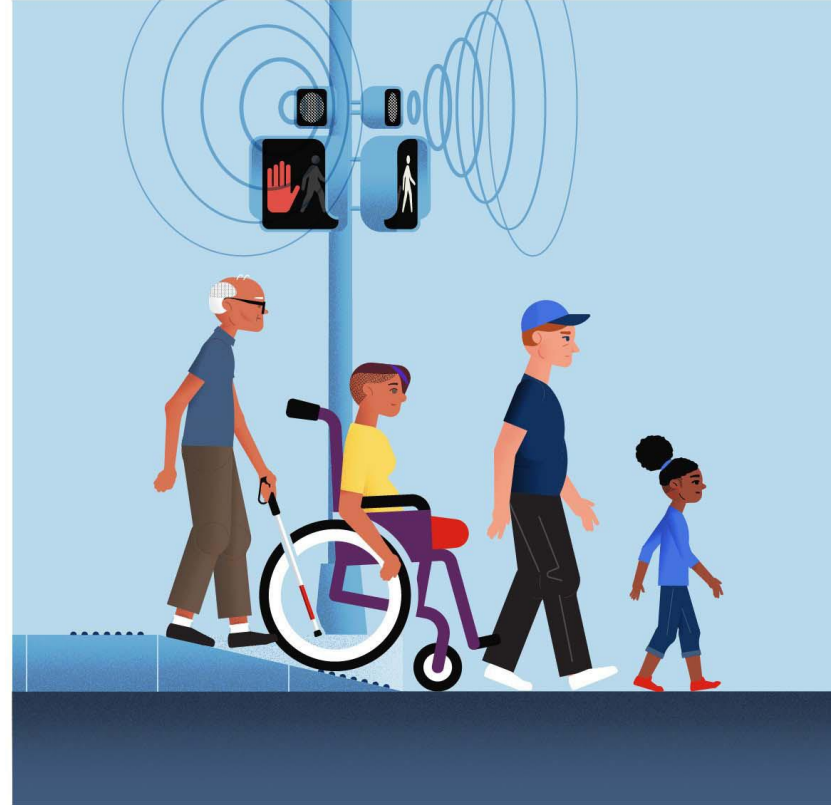
EQUALITY:

Everyone gets the same – regardless if it's needed or right for them.



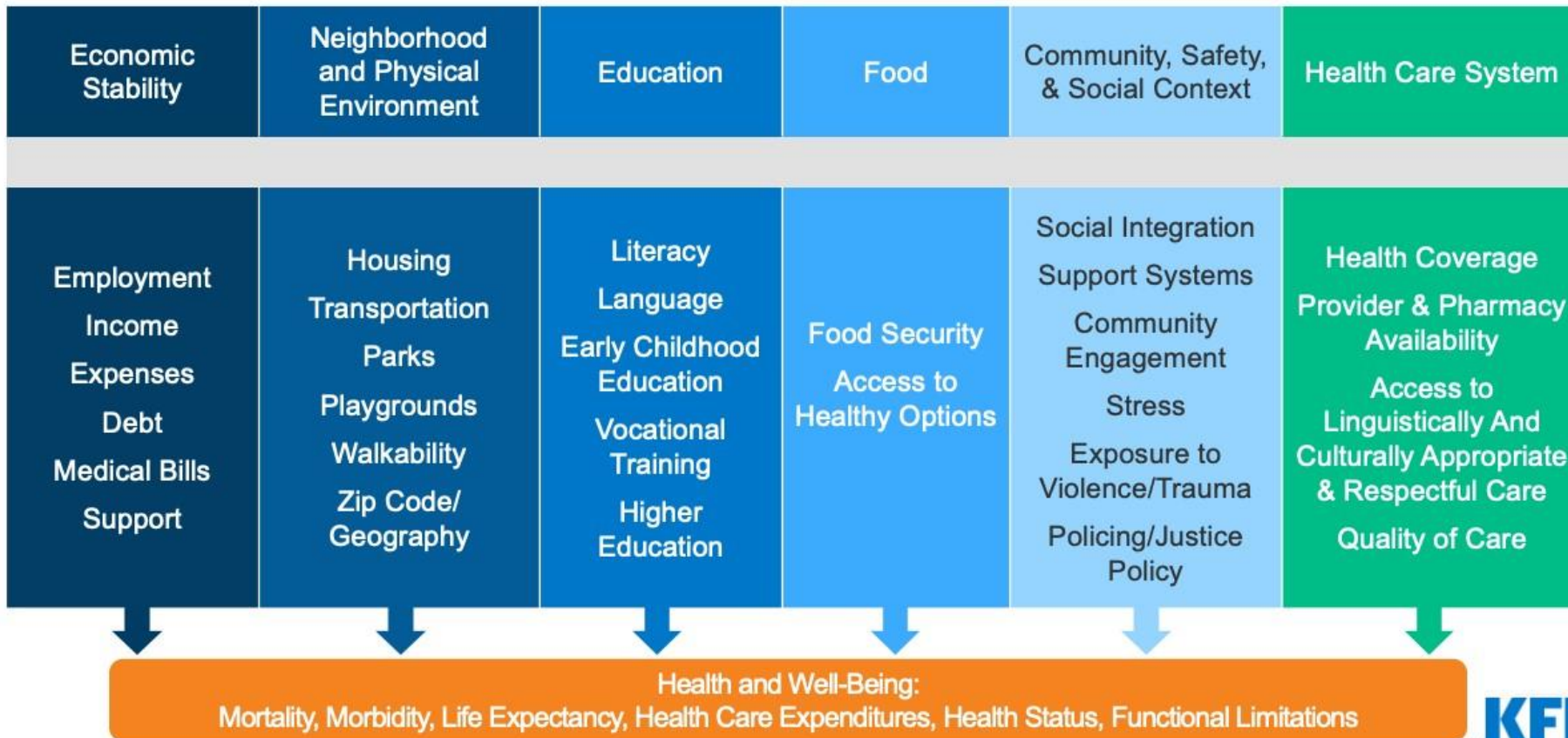
EQUITY:

Everyone gets what they need – understanding the barriers, circumstances, and conditions.



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Social Determinants of Health



Source: [Kaiser Family Foundation](https://www.kff.org/)

PRESENTATION ROADMAP

- Background on Comprehensive Plans
- Overview of Zoning
- Commercial Tobacco Regulations To Consider With Zoning



COMPREHENSIVE PLANS

WHAT IS A COMPREHENSIVE PLAN?

- It is the Blueprint for the future development and growth of the city.
- Provides a long-term framework for policy decisions.
- Outlines and anticipates a city's physical development and growth, and the possible impact the development has on economic and natural resources.

 PUBLIC HEALTH
LAW CENTER
at Mitchell Hamline School of Law

 American
Lung Association.
California

May 2021

Law and Policy Partnership to End the Commercial Tobacco Epidemic

GENERAL PLANS & TOBACCO CONTROL IN CALIFORNIA



Communities thinking about innovative and forward-looking ways to tackle the commercial tobacco epidemic may want to consider land-use planning as a potentially useful tool.

Cities and counties in California are required to do land-use planning, which takes the form of “general plan” development. Unlike ordinances that are often topic-driven, general plans can address tobacco control, health equity, and environmental justice in broad, forward-thinking ways.

What is a General Plan?

A general plan, at its core, is a community-growth process that enables a county or city to create a vision, outline its values, and declare the shape of its future. A forward-looking process, it provides jurisdictions an opportunity to articulate their goals and implementation plans for the future — particularly when

commercial tobacco policies are first considered and adopted. A general plan can also include a jurisdiction's plans to achieve a smoke and tobacco-free future for its residents.

General Plan Elements

California requires cities and counties to comply with a general planning framework that reflects statewide land use goals and policies. The general planning process addresses population growth and distribution, development, open space,

www.publichealthlawcenter.org/cal tobacco

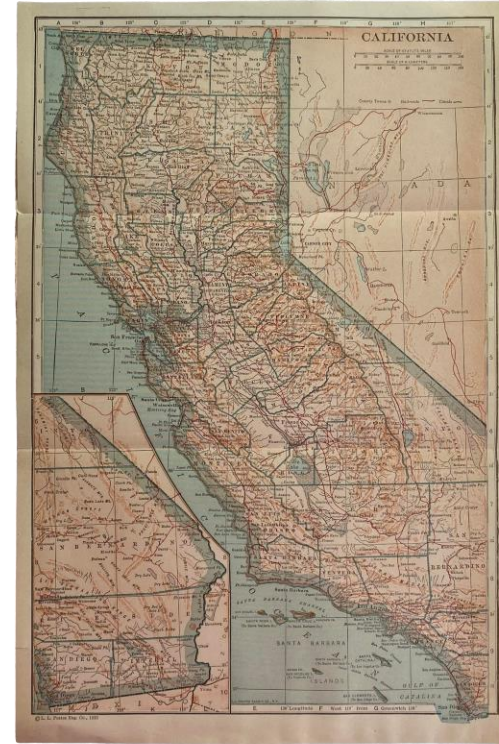
COMPREHENSIVE PLANS

- Look to the Statute!
 - Requirement?
 - Optional?
- Plan Requirements
 - Elements
 - Goals
 - Policies
 - Action Items/Implementation Items
 - Timeframe
 - Timing
 - Planning



CALIFORNIA

- Land Use
 - Circulation
 - Housing
 - Conservation
 - Open Space
 - Noise
 - Safety
 - Environmental Justice



OREGON

- Citizen Involvement
- Land Use
- Agricultural Lands
- Forest Lands
- Natural Resources, Scenic and Historic Areas, and Open Spaces
- Air, Water and Land Resources Quality
- Areas Subject to Natural Hazards
- Recreational Needs
- Economic Development
- Housing
- Public Facilities and Services
- Transportation
- Energy Conservation
- Urbanization
- Willamette River Greenway
- Estuarine Resources
- Coastal Shorelands
- Beaches and Dunes
- Ocean Resources

SOUTH CAROLINA

- Population
- Economic Development
- Natural Resources
- Cultural Resources
- Community Facilities
- Housing
- Land Use
- Transportation



- Priority Investment
- Resiliency

ZONING POWERS

“ . . . any zoning regulation is a valid exercise of the police power which is necessary to subserve the ends of which the police power exists, namely, the promotion of public health, safety, morals, and general welfare.”

~Miller v. Board of Public Works of City of Los Angeles,
195 Cal. 477, 487 (Cal. 1925)

ZONING POWERS

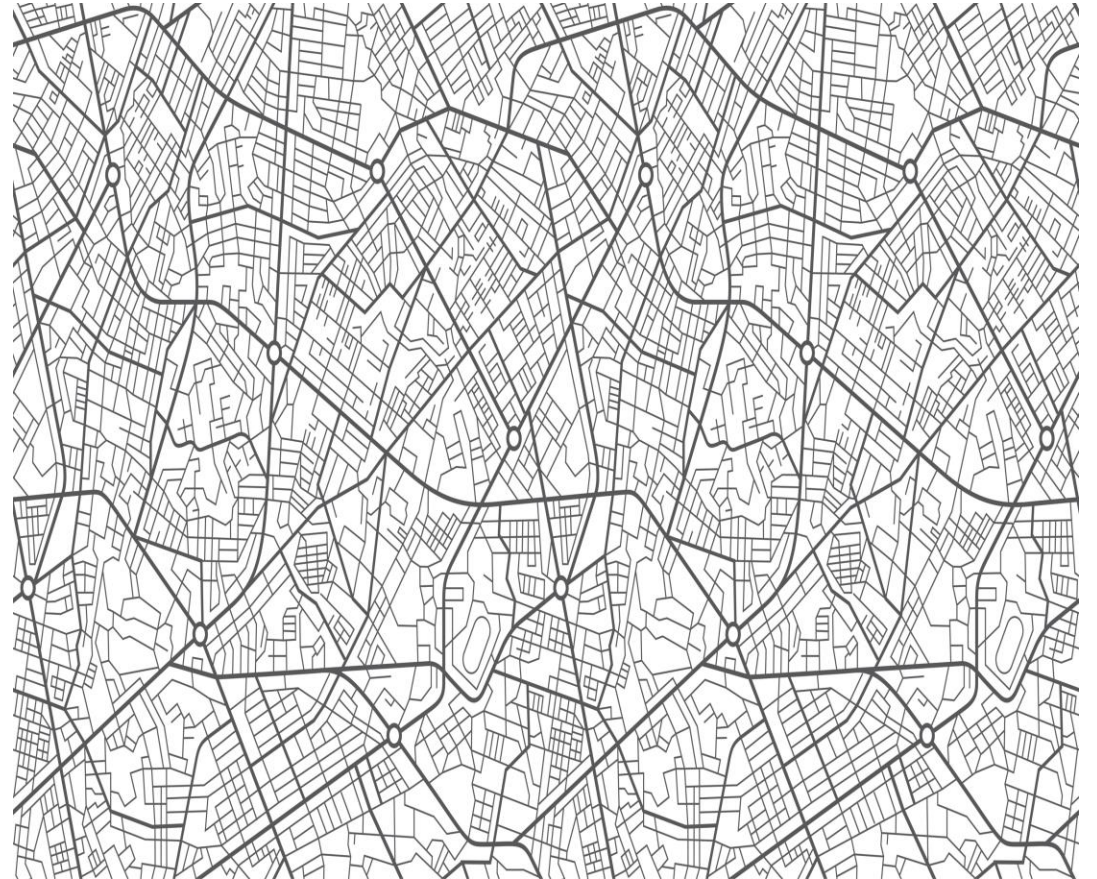
“Zoning ordinances must be for the general purposes of guiding development in accordance with existing and future needs and promoting the public health, safety, morals, convenience, order, appearance, prosperity, and general welfare.”

S.C. Code § 6-29-710.

ZONING

WHAT IS IT?

Zoning is when a governmental entity designates certain areas of land for a specific manner of use. In other words, it's a way to control how land in a community is used and the density in which it is developed. The purpose of zoning is to balance private property right interests with community interests in order to create and maintain a well-organized, safe, and healthy environment for all.



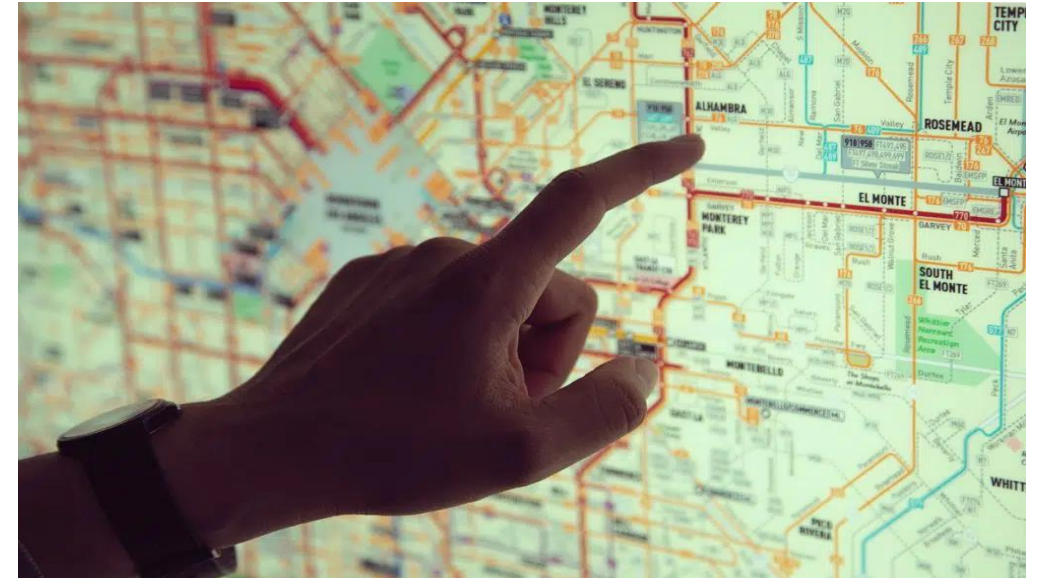
ZONING HEARING BODIES



- Planning Commission
- Zoning Adjustment Board
- Architectural Review or Design Review Board

ZONING RATIONALE

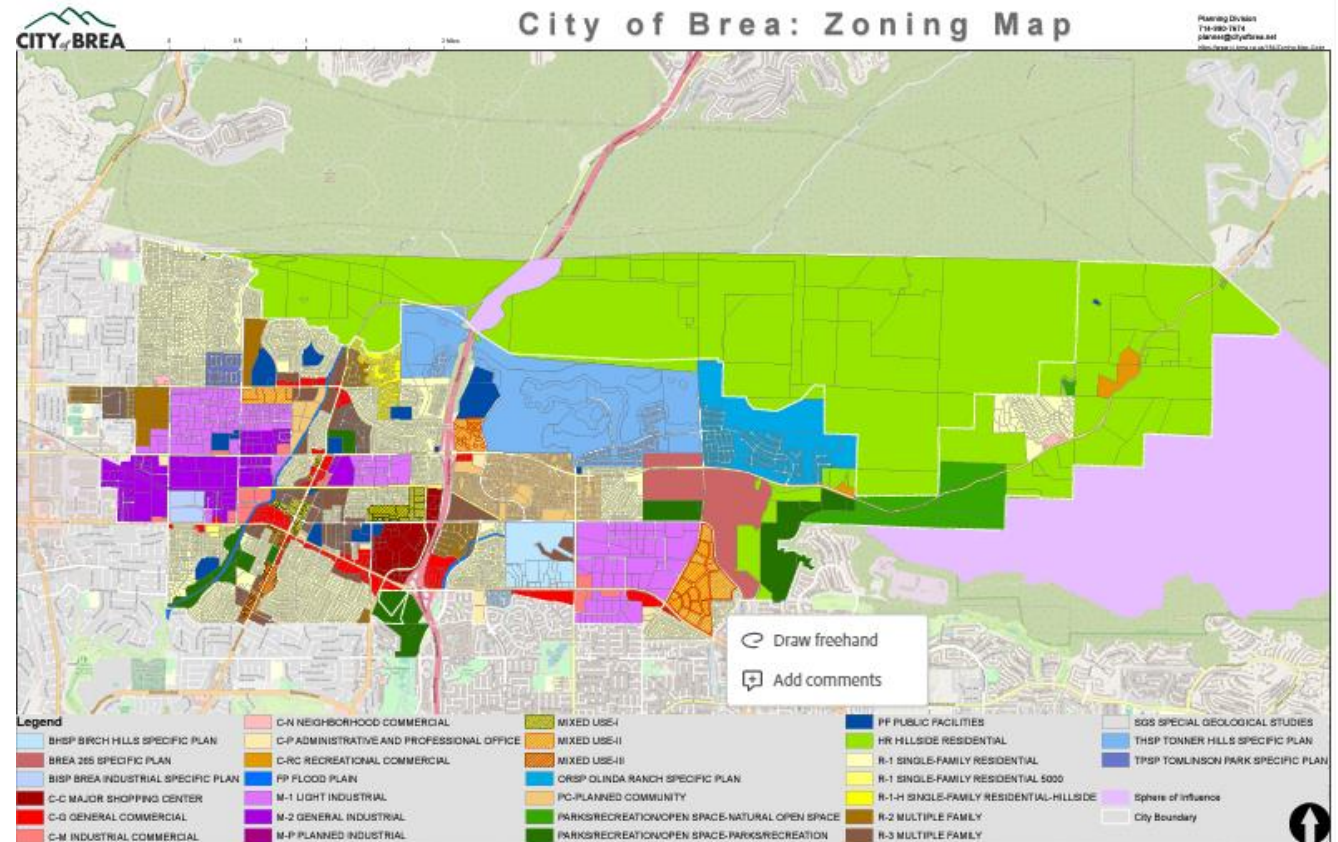
- Separate incompatible uses
- Maintain aesthetics and community character
- Protect community resources (e.g. groundwater, surface water, forest, historic and/or cultural resources)
- Implement a general plan for the city, county, municipality
- Protect public and private investments
- Provide healthy surroundings for family life
- Promote and maintain advantageous development patterns



- Protect public health, safety, & convenience and general welfare

LAND USE ZONING

- Zoning Ordinance consists of a map and text
- Divided Geographical Areas (zones)



LAND USE ZONING

- Zones Classified into Categories dictating Use
 - Permitted Uses
 - Conditional Uses
 - Non-conforming Use
 - Prohibited Use



ZONING - FORMS

Functional Zoning



- A zone for each type of land use.
- Land use zones subject to different regulations.

-
- Commercial
 - Administrative
 - Residential
 - Industrial
 - Green space

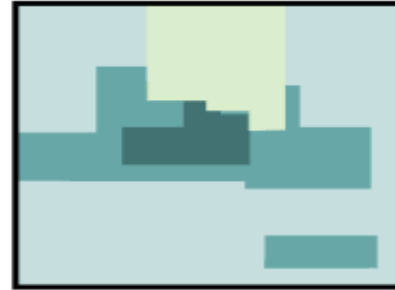
Form-Based Zoning



- Focuses on physical characteristics.
- Defined as a form of urban identity.

-
- Downtown
 - Uptown
 - East Side
 - Historical district
 - Manufacturing district

Intensity Zoning



- Sets land use intensity restrictions.
- Flexibility in forms and functions of land use developments.

-
- High density
 - Average density
 - Low density
 - No development

Incentive Zoning



- Rewards for development in defined areas.
- Incite the provision of amenities.

-
- Incentives
 - No incentives

© GTS

HOW DOES ZONING INTERSECT WITH THE GENERAL PLAN?



ZONING

COMMERCIAL TOBACCO REGULATIONS TO CONSIDER WITH ZONING

- Prohibited Use
 - Vending Machines
 - Mobile Vendors
 - Pharmacies Selling Commercial Tobacco
- Conditional Use Permit
 - Capping
 - Sampling
 - Compliance with Laws



ZONING COMMERCIAL TOBACCO REGULATIONS TO CONSIDER WITH ZONING



- Proximity to Other Retailers
- Proximity to Youth-Oriented Facilities
- Proximity to Residential Zones

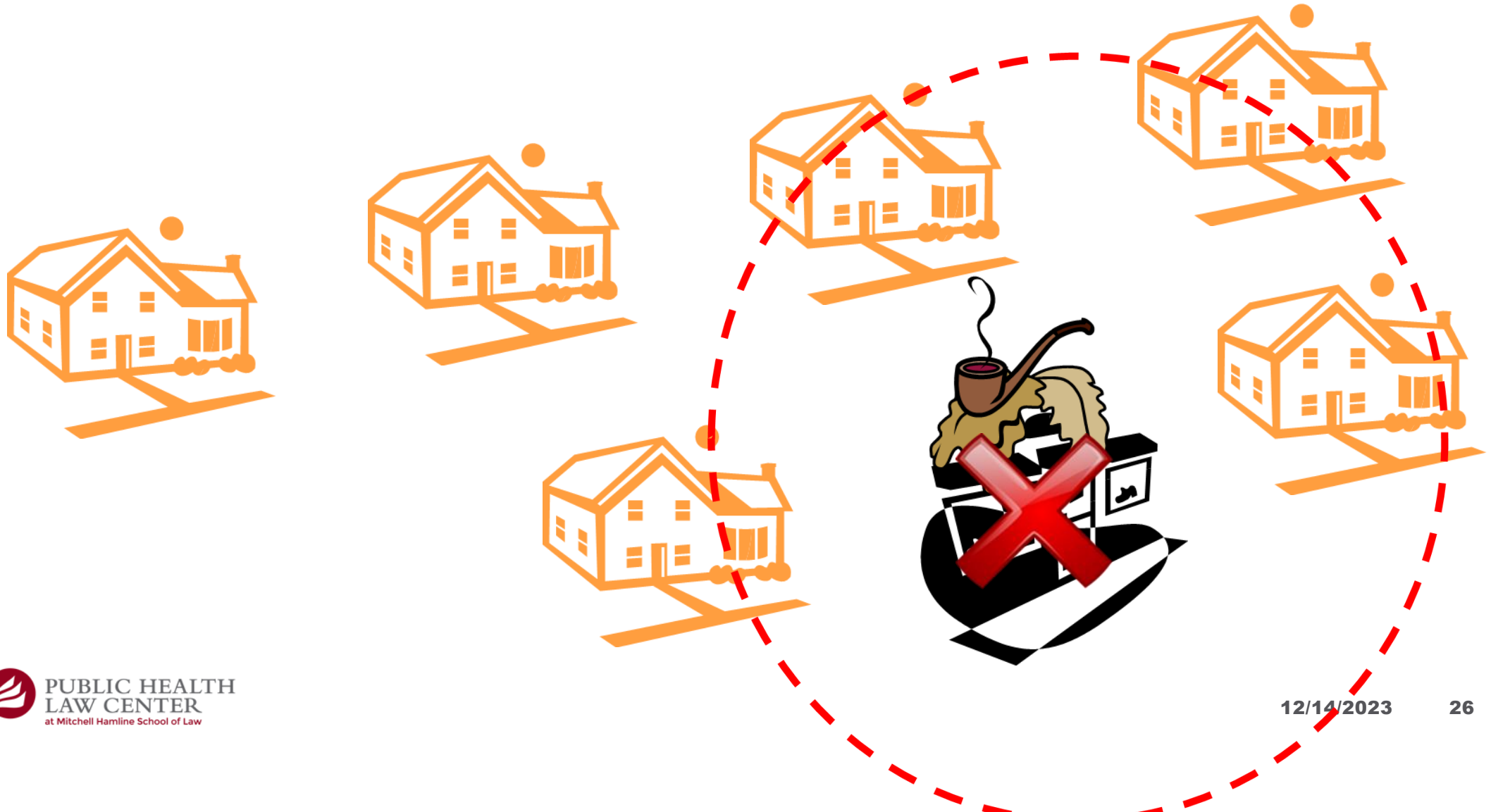
PROXIMITY TO OTHER RETAILERS



PROXIMITY TO YOUTH-ORIENTED FACILITIES



PROXIMITY TO RESIDENTIAL ZONES



ZONING LEGAL CONSIDERATIONS



- Political and Administrative Realities
- Existing Businesses
- Constitutional Challenges: Takings, Equal Protection, 1st Amendment, Due Process

ZONING CONSIDERATIONS FOR EXISTING RETAILERS

- Legal Non-Conforming Use (allowances for existing retailers)
- Reduce Existing Retailers through:
 - Attrition
 - Amortization
 - Buy Out

ZONING – LA VERNE, CA

18.90.010 Purpose.

The city council finds that smoking and vaping uses have been associated with increases in noise, loitering, odors, public nuisance, and disturbances of the peace. The city council also finds that smoking and vaping uses expose minors to secondhand byproducts and increase the potential for minors to associate smoking and vaping with a normative or healthy lifestyle. The purpose of this chapter is to mitigate the negative impacts associated with smoking and vaping uses in order to serve the public health, safety, and welfare of residents and businesses within the city. (Ord. 1071 § 7, 2016)

18.90.050 Amortization and discontinuance of nonconforming smoking and vaping establishments.

Notwithstanding any other provision of this code to the contrary, the following shall apply with respect to smoking and vaping establishments legally existing as of January 20, 2017.

A. All smoking/vaping establishments shall be required to obtain a conditional use permit no later than January 20, 2020.

1. Any smoking/vaping establishment which had obtained a conditional use permit under the prior regulations need not obtain a new conditional use permit. The provisions of this chapter shall take precedence over any conditions of the conditional use permit to the contrary.

2. Any smoking/vaping establishment that is located in a zone in which smoking and vaping establishments are not allowed must cease operations at that location no later than January 20, 2020.

3. Any smoking/vaping establishment that is currently located within one thousand feet of a sensitive or similar use as outlined in Section 18.90.030(A) and (B) must cease operations at that location no later than January 20, 2020.

ZONING – COSTA MESA, CA

13-200.81. Permitted and conditionally permitted uses.

- (a) Smoking lounges and smoking/vaping retailers are subject to the review and approval procedures shown in Table 13-30 City of Costa Mesa Land Use Matrix and the operational and development standards contained in this article.
- (b) Establishment of a smoking/vaping retail business within one thousand (1,000 feet) of a public or private primary or secondary educational school facility is strictly prohibited.

Notwithstanding the foregoing, the existing smoking/vaping retailers located at 891 W. Baker Street, Suite B-11 and 1175 Baker Street, Suite 10-D are legally nonconforming uses in accordance with Title 13, Chapter X of the Costa Mesa Municipal Code.

- (c) Establishment of a smoking lounge business in the C1-S, PDC, and MP zones within one thousand five hundred (1,500) feet from another approved smoking lounge is strictly prohibited.

Notwithstanding the foregoing, the existing smoking lounges located at 2470 Newport Boulevard and 698 W. 19th Street are legally nonconforming uses in accordance with Title 13, Chapter X of the Costa Mesa Municipal Code. As legally nonconforming, the existing use may operate between the hours of 12:00 p.m. (noon) to 11:00 p.m. daily (within 500 feet of a residential zone). (Ord. No. 15-10, § 2D, 9-15-15)

ZONING – HISTORICAL OVERLAY – MYRTLE BEACH, SC

- Entertainment Overlay Zone.
 - Established purpose and intent of ordinance was to safeguard tourism, reduce unseemliness, promote a family friendly environment, and reduce sales to minors.
 - Established that all tobacco product retailers, cannabis retailers, smoke shops, CBD consumable stores and smoking lounges were prohibited within the overlay zone.
 - Amortization of existing businesses and that they cease operations of the nonconforming portion of their store December 31, 2018.



ZONING – HISTORICAL OVERLAY – MYRTLE BEACH, SC



- What Myrtle Beach Did Well:
 - CLEAR PURPOSE AND INTENT
 - Safeguard tourism
 - Reduce unseemliness
 - Promote a family friendly environment
 - Reduce sales to minors.
 - TREATED ALL SIMILARLY SITUATED BUSINESSES EQUALLY
 - All tobacco product retailers, cannabis retailers, smoke shops, CBD consumable stores and smoking lounges were prohibited within the overlay zone.
 - NOTICE
 - Amortization of existing businesses and that they cease operations of the nonconforming portion of their store December 31, 2018.

QUESTIONS & DISCUSSION



CONTACT US



651.290.7506



publichealthlawcenter@mitchellhamline.edu



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