



336 Pacific Avenue, Shafter, CA 93263
Meeting Held In-Person and Via Zoom and Livestream on YouTube.

**AGENDA
SPECIAL MEETING
SHAFTER CITY COUNCIL
TUESDAY, JULY 30, 2024**

NOTICE TO THE PUBLIC:

Any documents produced by the City and distributed to a majority of the City Council regarding any item on this agenda will be made available in the City Clerk's Office during normal business hours at City Hall located at 336 Pacific Avenue, Shafter CA. In addition, such documents will be posted on the City's website at www.shafter.com.

CALL TO ORDER: 6:00 PM

ROLL CALL: Mayor Givens
Mayor Pro Tem Prout
Council Member Alvarado
Council Member Espinoza
Council Member Olvera

APPROVAL OF AGENDA:

PUBLIC COMMENT:

Those persons wishing to speak on any item included on the agenda, or on any matter within the subject matter jurisdiction of the City Council, are invited to speak from the podium and address the City Council. Speakers are limited to five minutes unless additional time is needed for translation. Please state your name and address for the record before making your presentation.

PUBLIC HEARINGS:

Should anyone challenge any proposed action which is the subject of a public hearing listed on this agenda, that person challenging any action taken after the public hearing may be limited to raising only those issues addressed at the public hearing described in this notice, or in written correspondence delivered to the City Council at or prior to this public hearing.

- 1. ADOPT URGENCY ORDINANCE NO. 757 THAT ESTABLISHES A 10-MONTH AND 15-DAY MORATORIUM TEMPORARILY PROHIBITING THE ESTABLISHMENT OF SMOKE SHOP BUSINESSES, HOOKAH LOUNGES, AND TOBACCO STORES:** Council find the action is exempt from the California Environmental Quality Act; conduct a public hearing; and adopt Urgency Ordinance

No. 757, an Ordinance of the City Council of the City of Shafter, California, enacted Pursuant to California Government Code Section 65858 prohibiting the establishment of Smoke Shops, Hookah Lounges, and Tobacco Stores in the City of Shafter for Ten (10) Months and Fifteen (15) Days pending study and adoption of Regulatory and Zoning Standards. (City Manager Gabriel A. Gonzalez)

ROLL CALL

ADJOURNMENT:

Pursuant to the Americans with Disabilities Act, if you need special assistance to participate in a City Council Meeting, please contact the City Clerk at (661) 746-5000 at least three (3) days prior to the meeting or time the special services are needed to allow City staff in making reasonable arrangements to provide you with access to the meeting. Any public record, relating to an open session agenda item, that is distributed within 72 hours prior to the meeting is available for public inspection in the City Clerk's Office at Shafter City Hall, 336 Pacific Ave., Shafter, CA 93263. This is to certify that this Agenda notice was posted at City Hall and Police Dept. by 5:00 p.m., July 23, 2024. Yazmina Pallares, S/S, City Clerk

REMOTE PUBLIC PARTICIPATION IS ALLOWED IN THE FOLLOWING WAYS, SEE BELOW FOR INSTRUCTIONS.

1. You are strongly encouraged to observe the City Council meetings live via YouTube <https://www.youtube.com/user/CityofShafter/>
2. If you wish to make a comment on a specific agenda item or public comment, please submit your comment via email by **6:00 PM on July 30, 2024** to the City Clerk at CityClerk@shafter.com
3. If you wish to make a written comment to the City Clerk, 336 Pacific Avenue, Shafter, CA 93263.
4. If you wish to make a comment during the live meeting, callers must first register with the City Clerk at 661-746-5012 before the meeting begins to receive instructions and the call- in number and code. Please call by 5:00pm on the Monday prior to the City Council meeting to allow ample time for sign up. You will need to provide your name, phone number and the item number you wish to address.
5. All public comments are provided to the City Council and applicable Staff, for review and consideration by the Board prior to taking action on any matters listed on the agenda and are incorporated into the official record of the City Council meeting.



336 Pacific Avenue, Shafter, CA 93263
Meeting Held In-Person and Via Zoom and Livestream on YouTube.

**NOTICE OF
SPECIAL MEETING OF THE SHAFTER CITY COUNCIL**

NOTICE IS HEREBY GIVEN that a special meeting of the City Council of the City of Shafter will be held on **July 30, 2024**. The meeting will convene at **6:00 PM**, in the Council Chamber at Shafter City Hall, 336 Pacific Avenue, Shafter, California and via teleconference and Livestream on YouTube. Said special meeting shall be for the following purpose:

PUBLIC HEARINGS:

- 1. ADOPT URGENCY ORDINANCE NO. 757 THAT ESTABLISHES A 10-MONTH AND 15-DAY MORATORIUM TEMPORARILY PROHIBITING THE ESTABLISHMENT OF SMOKE SHOP BUSINESSES, HOOKAH LOUNGES, AND TABACCO STORES:** Council find the action is exempt from the California Environmental Quality Act; conduct a public hearing; and adopt Urgency Ordinance No. 757, an Ordinance of the City Council of the City of Shafter, California, enacted Pursuant to California Government Code Section 65858 prohibiting the establishment of Smoke Shops, Hookah Lounges, and Tobacco Stores in the City of Shafter for Ten (10) Months and Fifteen (15) Days pending study and adoption of Regulatory and Zoning Standards.

Yazmina Pallares, City Clerk

Affidavit of Posting Special Meeting Notice

This is to certify that this Special Meeting Notice was posted at City Hall and the Police Department by 5:00 p.m., July 23, 2024. Further information regarding this Agenda Notice is available at City Hall, 336 Pacific Ave., Shafter, CA.

Yazmina Pallares, S/S, City Clerk

Dated: July 23, 2024



CITY OF SHAFTER CITY COUNCIL REPORT

MEETING DATE: July 30, 2024

FROM: Gabriel A. Gonzalez, City Manager

PREPARED BY: Marco Martinez, City Attorney

SUBJECT: ADOPT URGENCY ORDINANCE NO. 757 THAT ESTABLISHES A 10-MONTH AND 15-DAY MORATORIUM TEMPORARILY PROHIBITING THE ESTABLISHMENT OF SMOKE SHOP BUSINESSES, HOOKAH LOUNGES, AND TOBACCO STORES

RECOMMENDATION

Council find the action is exempt from the California Environmental Quality Act; conduct a public hearing; and adopt Urgency Ordinance No. 757, an Ordinance of the City Council of the City of Shafter, California, enacted Pursuant to California Government Code Section 65858 prohibiting the establishment of Smoke Shops, Hookah Lounges, and Tobacco Stores in the City of Shafter for Ten (10) Months and Fifteen (15) Days pending study and adoption of Regulatory and Zoning Standards.

BACKGROUND

In recent years, e-cigarettes and other vape pens have become a popular alternative to traditional smoking. Further, current research indicates that chemicals contained in such products may be harmful to persons, especially minors, and that vaping releases contents of e-cigarettes into the air. Further, e-cigarettes are made to mimic conventional cigarettes, making enforcement of smoking and tobacco product regulation difficult and confusing if e-cigarettes are excluded.

As a result, on November 8, 2022, California voters upheld the state law (SB 793) prohibiting a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale, most flavored tobacco products including flavored e-cigarettes and menthol cigarettes, as well as tobacco product flavor enhancers in retail locations.

On October 7, 2023, Governor Newsom signed into law AB 935, strengthening the enforcement of the flavored tobacco retail law and broadening the definition of a retail location. However, cities still retain the authority to draft and enforce local flavored tobacco bans for products that were exempted by state law.

Recently, the Shafter Police Department became aware that an existing tobacco retailer was engaged in the sale of prohibited products, including cannabis. Such illegal operations also raised concerns about the impacts of such operations on surrounding businesses and community, including minors and sensitive adjacent land uses as well

PUBLIC HEARINGS

ADOPT URGENCY ORDINANCE NO. 757 THAT ESTABLISHES A 10-MONTH AND 15-DAY MORATORIUM TEMPORARILY PROHIBITING THE ESTABLISHMENT OF SMOKE SHOP BUSINESSES, HOOKAH LOUNGES, AND TOBACCO STORES

as their use as illegal commercial cannabis stores.

While the illegal sales have ceased and enforcement actions are pending against the operator, that incident caused a review of the City's current Smoke Shop, Hookah Lounge and Tobacco Store regulations. That review revealed that the City does not have specific regulations governing how or where such uses may operate. The purpose of this Urgency Ordinance is to establish a moratorium on the approval of any (business) license or permit for potential new operators of Smoke Shops, Hookah Lounges and/or Tobacco Stores.

On June 18, 2024, the City Council adopted a 45-day moratorium on the approval of Smoke Shop, Hookah Lounge and Tobacco Store permits. The proposed moratorium was adopted to give staff time to evaluate the City's current regulations and study whether new regulations are appropriate, given that the State of California has also recently passed additional new laws prohibiting a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale, most flavored tobacco products including flavored e-cigarettes and menthol cigarettes, as well as tobacco product flavor enhancers in retail locations.

On July 16, 2024, the City Council issued a (10-Day) report of actions taken during the pendency of the moratorium and directed staff to return with an extension of the 45-day moratorium. California Government Code, Section 65858 authorizes cities to extend a moratorium for an additional ten (10) months and fifteen (15) days with a 4/5 vote.

ANALYSIS

California Government Code, Section 65858 authorizes cities to adopt an urgency measure in the form of an Urgency Ordinance to protect the public from a current and immediate threat to the public health, safety, or welfare resulting from a contemplated zoning proposal. Government Code Section 65868 further provides that such an urgency measure shall be effective for only 45 days following its adoption, but may be extended beyond the initial 45 day period, following compliance with that Section, for an additional 10 months and 15 days and subsequently for an additional 12 months.

The attached Urgency Ordinance extends the existing moratorium on the approval of any permits, licenses or entitlements seeking to establish a new Smoke Shop, Hookah Lounge or Tobacco Store in the City. If adopted, it will expire on June 17, 2025, unless further extended. It does not affect existing lawful Smoke Shops or Tobacco Stores (there are no Hookah Lounges in the City). During the time that the Urgency Ordinance is in place, City staff will study to impacts of these uses and the interplay of new state laws to craft new, comprehensive regulations and zoning requirements for the establishment of future Smoke Shops, Hookah Lounges and/or Tobacco Stores in the City.

Because this is an Urgency Ordinance, it must be adopted by 4/5 vote of the City Council.

ADOPT URGENCY ORDINANCE NO. 757 THAT ESTABLISHES A 10-MONTH AND 15-DAY MORATORIUM TEMPORARILY PROHIBITING THE ESTABLISHMENT OF SMOKE SHOP BUSINESSES, HOOKAH LOUNGES, AND TOBACCO STORES

FISCAL IMPACT

There is no significant fiscal impact resulting from the adoption of the Urgency Ordinance.

CEQA ANALYSIS

This Urgency Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, section 15061(b)(3) that this interim Urgency Ordinance is nonetheless exempt from the requirements of CEQA, because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment since it temporarily prohibits the establishment of uses.

APPROVED BY THE CITY ATTORNEY

Yes

ALTERNATIVES

1. Do not adopt the Urgency Ordinance Extension; or
2. Provide alternative direction

NEXT STEPS

An extension of the Urgency Ordinance will require:

1. The City Council to issue a written report, 10 days prior to acting on any extension of the Urgency Ordinance, describing the measures taken to alleviate the condition which led to the adoption of the Urgency Ordinance; and
2. After notice pursuant to Section 65090 and public hearing, the City Council may extend the Urgency Ordinance for a final 12 months. Any extension also requires a 4/5 vote for adoption. Not more than two extensions may be adopted.

ATTACHMENTS

1. Exhibit 1 - Urgency Ordinance No. 757

URGENCY ORDINANCE NO. 757

AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SHAFTER, CALIFORNIA, ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 PROHIBITING THE ESTABLISHMENT OF SMOKE SHOPS, HOOKAH LOUNGES AND TOBACCO STORES IN THE CITY OF SHAFTER FOR TEN (10) MONTHS AND FIFTEEN (15) DAYS PENDING STUDY AND ADOPTION OF REGULATORY AND ZONING STANDARDS

WHEREAS, the City of Shafter, California (“City”) is a municipal corporation, duly organized as a Charter City under the constitution and laws of the State of California; and

WHEREAS, Article 11, Section 7 of the California Constitution authorizes the City of Shafter to make and enforce within its limits all ordinances and regulations not in conflict with general laws; and

WHEREAS, the unregulated development of Smoke Shops, Hookah Lounges and Tobacco Stores, as defined in this Urgency Ordinance, presents an immediate threat to the public health, safety and welfare for the following reasons:

- The City does not have specific regulations in its Municipal Code governing the establishment of Smoke Shops, Tobacco Stores or Hookah Lounges. Specifically, there are no detailed regulations regarding the development, operation or location standards for these uses; and
- Significant concerns have been raised regarding the lack of current regulations to address Smoke Shops, Tobacco Stores and Hookah Lounges and the noise, safety, health, and other impacts of these uses on the community including on minors and sensitive land uses as well as their use as commercial cannabis stores; and
- Many state laws have been adopted, which acknowledge the public health impacts of tobacco, especially flavored tobacco products, and specifically its effect on minors. For example, state law prohibits public school students from smoking or using tobacco products while on campus, while attending school sponsored activities, or while under the supervision or control of school district employees. State law also prohibits smoking in playgrounds. State law also prohibits smoking within 20 feet of the main entrances and exits of public buildings; and
- In recent years, e-cigarettes and other vape pens have become a popular alternative to traditional smoking. Further, current research indicates that chemicals contained in such products may be harmful to persons, especially minors, and that vaping releases contents of e-cigarettes into the air. Further, e-cigarettes are made to mimic conventional cigarettes, making enforcement of smoking and tobacco product

regulation difficult and confusing; and

- It is also appropriate the review other operational impacts from locating Smoke Shops, Hookah Lounges and Tobacco Stores in areas close to locations where children gather; and
- As a result, on November 8, 2022, California voters upheld the state law (SB 793) prohibiting a tobacco retailer, or any of the tobacco retailer's agents or employees, from selling, offering for sale, or possessing with the intent to sell or offer for sale, most flavored tobacco products including flavored e-cigarettes and menthol cigarettes, as well as tobacco product flavor enhancers in retail locations; and
- On October 7, 2023, Governor Newsom signed into law AB 935, strengthening the enforcement of the flavored tobacco retail law and broadening the definition of a retail location; and
- Cities still retain the authority to draft and enforce local flavored tobacco bans for products that were exempted by state law; and
- Smoke Shops, Hookah Lounges and Tobacco Stores can also be a target for theft and vandalism and it would be prudent to study operational elements that discourage such activities. Additionally, Smoke Shops and Tobacco Stores may be affiliated with the sale of illegal cannabis products and drug paraphernalia that encourage illegal activity, which can negatively affect the neighborhoods and surrounding community; and
- The establishment of Hookah Lounges produces secondary smoke, far more concentrated than cigarette smoke, which can negatively affect workers, passers-by, neighbors, the elderly, sick and disabled and particularly minors. Recognizing the health risks, state laws have been adopted to prohibit unlawful smoking of tobacco in hookah pipes in an enclosed place of employment as well as prohibiting smoking of tobacco in hookah pipes by those under 18 years of age; and
- Due to the lack of development, operation and location standards for these uses, the City desires to study new zoning regulations in order to provide clear, consistent, and uniform guidance to businesses and individuals regarding the citing and operational characteristics while also addressing significant community concerns; and

WHEREAS, due to the health, safety, and welfare impacts of Smoke Shops, Hookah Lounges and Tobacco Stores, the City wishes to study the appropriate types of local regulations that can address their impacts; and

WHEREAS, California Government Code Section 65858 provides that, without following the procedures otherwise required prior to the adoption of a zoning ordinance, an urgency measure in the form of an interim ordinance may be adopted by a four-fifths vote of the City Council to protect the public from a current and immediate threat to the public health, safety, or welfare

resulting from a contemplated zoning proposal. Government Code Section 65868 further provides that such an urgency measure shall be effective for only 45 days following its adoption, but may be extended beyond the initial 45 day period, following compliance with that Section, for an additional 10 months and 15 days and subsequently for an additional 12 months; and

WHEREAS, City staff requires time to gather data about the adverse impacts of Smoke Shops, Hookah Lounges and Tobacco Stores, including vape stores, and to research, study, and consider ways to possibly amend the City's Municipal Code to address the potential impacts caused by these uses; and

WHEREAS, City staff and the Shafter Police Department intend to conduct research into the possible and likely impacts of further regulating Smoke Shops, Hookah Lounges and Tobacco Stores, including vape stores, in the City in order to mitigate adverse impacts; and

WHEREAS, on June 18, 2024, the City Council adopted an Urgency Ordinance imposing a forty-five (45) day moratorium on the approval of any business licenses and/or land use entitlement or permit so that the City can research and select the best course of action for the City's citizens and the community at large; and

WHEREAS, pursuant to Government Code, Section 65858, on July 16, 2024, the City Council issued a report of actions taken during the pendency of the moratorium; and

WHEREAS, the City Council wishes to extend the Moratorium to allow City staff to further study zoning regulations for the approval of future Smoke Shops, Hookah Lounges and Tobacco Stores.

THE CITY COUNCIL OF THE CITY OF SHAFTER DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS.

The above recitals are true and correct and are incorporated herein by reference. The Shafter City Council hereby finds and determines that Smoke Shops, Hookah Lounges and Tobacco Stores constitute an immediate threat to the public health, safety and welfare. The approval of additional entitlements for Smoke Shops, Hookah Lounges and Tobacco Store establishments under the City's current regulations will further threaten public health, safety, or welfare. The adoption of this Urgency Ordinance is therefore necessary for the immediate protection of the public safety, health and welfare.

SECTION 2. COMPLIANCE WITH CEQA.

The City Council finds that this Urgency Ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The City Council further finds, under Title 14 of the California Code of Regulations, section 15061(b)(3) that this interim Urgency Ordinance is nonetheless exempt from the requirements of CEQA,

because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment since it prohibits the establishment of uses.

SECTION 3. **MORATORIUM.**

During the time this Ordinance is in effect, no business license or other permit or entitlement shall be issued for the establishment or operation of a Smoke Shop, Hookah Lounge and/or Tobacco Store, as defined herein, unless this moratorium is extended or terminated by the City Council.

As used in this Urgency Ordinance, the following definitions apply:

- A. “Establish” or “operate” a Smoke Shop, Hookah Lounge or Tobacco Store (as defined in this Urgency Ordinance) means and includes any of the following: (i) the opening or commencement of the operation of a Smoke Shop, Hookah Lounge or Tobacco Store; (ii) the conversion of an existing business, facility, use establishment, or location to a Smoke Shop, Hookah Lounge or Tobacco Store; and (iii) the addition of a Smoke Shop, Hookah Lounge or Tobacco Store to any other existing business, facility, use, establishment or location.
- B. “Hookah” means a glass or metal water pipe usually decorated and shaped somewhat like a bottle or small tank, with a long, flexible cord pipe, also known as shisha, nargile, hubble bubble, nag and Turkish water Pipe.
- C. “Hookah Lounge” means an area of a commercial establishment, whether enclosed, indoor or outdoor, designated specifically for the use of hookahs, but does not include private use of hookahs in personal residences if otherwise in compliance with applicable law.
- D. “Tobacco Paraphernalia” means any device, product, equipment, or material of any kind that is intended or designed for use for smoking, inhaling, or ingesting tobacco, notwithstanding that the device, product, equipment, or material may also be used for smoking, inhaling, or ingesting any controlled substance. “Tobacco paraphernalia” includes, but is not limited to, all of the following: (i) Metal, ivory, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured bowls; (ii) Water pipes; (iii) Bongs; (iv) Chillums; (v) Ice pipes or chillers; (vi) Cigarette papers or wrappers; (vii) Cigarette rolling machines; (viii) Blunt wraps, as defined in Section 308 of the Penal Code; (ix) Hookahs and similar devices constructed with a receptacle or container in which water or some other liquid may be placed into which smoke passes and is cooled in the process of being inhaled or ingested; and (x) any electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah. “Tobacco Paraphernalia” shall include any component, part, or accessory of the foregoing, whether or not sold separately.
- E. “Tobacco Product” means any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including,

but not limited to, cigarettes, e-cigarettes (with or without flavoring), cigars, little cigars, chewing tobacco, pipe tobacco, or snuff or vaping accessories. “Tobacco Product” shall include any component, part, or accessory of the foregoing, whether or not sold separately. “Tobacco Product” does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

- F. “Tobacco Store” or “Smoke Shop” means a retailer or wholesale business or any person that: (1) sells, offers for sale or offers to exchange for any form of consideration, tobacco, Tobacco Products or Tobacco Paraphernalia; and (2) has fifteen percent (15%) or more of the square feet in the establishment used for the sale or display of tobacco, Tobacco Products or Tobacco Paraphernalia.

Notwithstanding the prohibition contained in this section, the City will continue to accept and process applications for uses prohibited by this moratorium if so required by State law. Any application received and processed during the moratorium shall be processed at the applicant’s sole cost and risk with the understanding that no permit, license, approval or other entitlement for a use covered by this Section may be issued while this moratorium or any extension of it is in effect.

In addition, any person who lawfully holds an existing permit, license, and/or land use entitlement for an existing and lawfully operating Smoke Shop. Hookah Lounge and/or Tobacco Shop in the City of Shafter, as of the effective date of this Urgency Ordinance may continue to lawfully operate under that existing permit, license, and/or entitlement. Nothing herein shall limit the authority of the City to revoke or suspend any existing license, permit, and/or entitlement as authorized under existing law.

SECTION 4. **ADOPTION.**

Pursuant to Government Code Section 65858 and 36937, this interim urgency ordinance is designed to protect the health, safety, and welfare of the City and its residents and becomes effective immediately upon adoption by a four-fifths (4/5) vote of the City Council following the notice and public hearing required by Government Code Section 65858(a).

SECTION 5. **TERM.**

This Urgency Ordinance is adopted under the provisions of Government Code Section 65858 and 36937(b), and shall take effect immediately upon its passage by a four-fifths vote of the City Council. This Urgency Ordinance shall remain in effect for ten (10) months, fifteen (15) days from August 2, 2024 (**June 17, 2025**), unless earlier repealed or extended pursuant to law.

SECTION 6. **REPORT REQUIRED**

No less than ten (10) days prior to the scheduled expiration of this Urgency Ordinance, staff shall issue a report to the City Council on the progress of its study and on determinations for how the

City should proceed, insofar as conclusions have been drawn.

SECTION 7. SEVERABILITY

If any provision of this Urgency Ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Urgency Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Urgency Ordinance are severable. The City Council hereby declares that it would have adopted this Urgency Ordinance irrespective of the invalidity of any particular portion thereof.

PASSED, APPROVED, AND ADOPTED this 30th day of July, 2024.

Chad Givens, Mayor

ATTEST:

Yazmina Pallares, City Clerk