

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA TO OVERRULE THE APPEAL AND UPHOLD THE COMMUNITY DEVELOPMENT DIRECTOR'S DENIAL OF A ZONING CLEARANCE FOR A SMOKE SHOP AT 770 KIELY BOULEVARD

WHEREAS, on September 25, 2025, Planning staff informed Xianqiong Wu (“Applicant”) that a smoke shop is not a permitted use at the Project Site and provided the Santa Clara City Code (SCCC) definition of a smoke shop;

WHEREAS, on October 2, 2025, the Applicant filed an application for a Zoning Clearance (PZC25-00381) for a new convenience store business with ancillary tobacco sales for a tenant space located at 770 Kiely Boulevard, Santa Clara (“Project Site”);

WHEREAS, on October 31, 2025, the Applicant informed staff of their intention to operate as a smoke shop and not as a convenience store with ancillary tobacco sales;

WHEREAS, pursuant to Section 18.160.190 of the SCCC, a smoke shop is “Any premises dedicated to the display, sale, distribution, delivery, offering, furnishing, or marketing of tobacco, tobacco products, or tobacco, vaping, compressed gas (i.e. nitrous oxide), or cannabis paraphernalia. Any grocery store, supermarket, convenience store or similar retail use that only sells conventional cigars, cigarettes or tobacco as an ancillary sale shall not be defined as a “smoke shop” and is not subject to the restrictions in this chapter”;

WHEREAS, the Project Site has a General Plan land use designation of Neighborhood Mixed Use, which is intended for pedestrian-oriented development with a focus on ground-level neighborhood-serving retail along street frontages;

WHEREAS, the Project Site is zoned Mixed-Use Neighborhood Commercial (MU-NC), which is intended for pedestrian oriented developments that focus on neighborhood-serving commercial

uses (e.g. coffee shops, grocery stores, retail establishments), and smoke shops are not authorized in MU-NC zones;

WHEREAS, pursuant to Section 18.02.070 of the SCCC, all Planning applications that are active and deemed complete prior to the effective date of the Zoning Code or any amendment, shall be processed in compliance with the requirements in effect when the application was deemed complete;

WHEREAS, Pursuant to Chapter 18.126 of the SCCC, a Zoning Clearance must be obtained before issuance of a City Business License and the Community Development Director shall determine whether the request complies with all Zoning Code provisions applicable to the proposed land use or structure;

WHEREAS, on November 13, 2025, the Applicant requested a formal written denial letter;

WHEREAS, on December 15, 2025, Planning staff issued a letter of denial for the Zoning Clearance application;

WHEREAS, on December 17, 2025, the Applicant filed and paid fees for an appeal (PLN25-00562) of the Community Development Director's decision to deny the Zoning Clearance application;

WHEREAS, the California Environmental Quality Act ("CEQA") Guidelines Section 15270 provides that "CEQA does not apply to projects which a public agency rejects or disapproves";

WHEREAS, on January 29, 2026, the notice of public hearing for the February 11, 2026, Planning Commission meeting for this item was mailed to property owners within a 300-foot radius of the Project Site; and

WHEREAS, on February 11, 2026, the Planning Commission conducted a public hearing to consider the appeal. At the hearing, the Planning Commission invited and considered any and all verbal and written testimony offered in favor of and in opposition to the Project.

NOW THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA AS FOLLOWS:

1. That the Planning Commission hereby finds the above Recitals are true and correct and by this reference makes them a part thereof.

2. That pursuant to SCCC Section 18.126.030, the Planning Commission determines that the following findings exist to support the Zoning Clearance denial and justify overruling this appeal:

A. Uses of land that are allowed by right in a zone require the issuance of a Zoning Clearance and are called “permitted uses”. Zoning Clearances shall first be reviewed and issued by the Director, in consultation with the City Fire Marshall, Public Works Department, and County Environmental Health Department. These Zoning Clearances are necessary to confirm compliance with all applicable City laws and regulations before the issuance of a Building Permit, or the initiation of an activity where no Building Permit is required. The proposed smoke shop use is prohibited in the Mixed-Use Neighborhood Commercial (MU-NC) zoning district, as noted in Table 2-11 of Chapter 18.14 of the Zoning Code (ordinance no. 2077; effective July 10, 2025).

B. The Director shall issue the Zoning Clearance only after first determining that the request complies with all Zoning Code provisions applicable to the proposed land use or structure. The request to operate a smoke shop, meeting the definition in Section 18.160.190, is prohibited in the Mixed-Use Neighborhood Commercial (MU-NC) zoning district, and therefore, does not comply with the Zoning Code.

C. Although the Section 18.02.070 of the Zoning Code recognizes a right to seek approval of planning applications that were deemed complete prior to the effective date of the Zoning Code or any amendment, in this case the Planning Application was filed on October 2, 2025, and the current regulations of smoke shops were effective prior to then, on July 10, 2025.

3. That based on the findings set forth in this Resolution and the evidence in the City Staff Report, the Planning Commission hereby overrules the appeal and upholds the Community Development Director's denial of the Zoning Clearance.

4. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE PLANNING COMMISSION OF THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 11th DAY OF FEBRUARY, 2026, BY THE FOLLOWING VOTE:

AYES:	COMMISSIONERS:
NOES:	COMMISSIONERS:
ABSENT:	COMMISSIONERS:
ABSTAINED:	COMMISSIONERS:

ATTEST: _____
AFSHAN HAMID
DIRECTOR OF COMMUNITY DEVELOPMENT
CITY OF SANTA CLARA

Attachments Incorporated by Reference:
1. Zoning Clearance