



# City of Clearlake Planning Commission

STAFF REPORT	
<b>SUBJECT:</b> Conditional Use Permit, CUP 2025-03 Categorical Exemption, CE 2025-04	<b>MEETING DATE:</b> June 10, 2025 6:00 p.m.
<b>SUBMITTED BY:</b> Michael Taylor, Associate Planner	
<b>REPORT PURPOSE:</b> <input checked="" type="checkbox"/> Action Item <input type="checkbox"/> Discussion <input type="checkbox"/> Information Only	
<b>LOCATION:</b> 14270 Lakeshore Drive Clearlake, CA 95422	<b>APPLICANT:</b> Musaed S. Alagi (Smoky Lake)
<b>APN:</b> 040-091-14	<b>PROPERTY OWNER:</b> Omar Musaed Alagi
<b>ZONING:</b> Downtown Commercial (CD)	<b>GENERAL PLAN:</b> Commercial

## WHAT IS BEING ASKED OF THE PLANNING COMMISSION:

The Planning Commission is being asked to consider Conditional Use Permit, CUP 2025-03, and corresponding environmental filing, Categorical Exemption, CE 2025-04 to allow tobacco sales (Business) within an existing commercial building located at 14270 Lakeshore Drive, Clearlake, CA further described as Assessor Parcel Number 040-091-14.



## **BACKGROUND**

The proposed Business is situated on a lot of approximately 5,200 square feet, fronting the Lakeshore Drive commercial corridor. The property includes a single building with an estimated floor area of 1,900 square feet, configured as one large tenant space. Surrounding land uses are predominantly commercial and include a mix of resorts, retail establishments, auto repair shops, entertainment venues, professional offices, and similar services. The most recent use of space was an electronics retail and service business.

### Surrounding Uses

Within 300 feet of the project site, medium-density residential land use is located to the northeast, across Pearl Avenue. Downtown commercial uses are situated adjacent to the side and rear property lines of the subject parcel, with additional commercial development located directly across Lakeshore Drive. Austin Park and Burns Valley Elementary School are approximately 1,700 feet to the north, while Redbud Park lies about 2,800 feet to the south, as the crow flies.

### Access and Parking

Primary vehicle and pedestrian access to the site is provided from Lakeshore Drive, which offers approximately 50 feet of street frontage. Parking is available directly off Lakeshore Drive and includes three standard perpendicular spaces, along with one perpendicular accessible space.

## **BUSINESS OPERATION**

The applicant is requesting a Use Permit to establish and operate a retail smoke shop in an existing commercial tenant space located within a one-story building approximately 1,900 square feet in size. The business will primarily engage in the retail sale of tobacco products and tobacco-related accessories, which will occupy approximately 70% of the floor area. The remaining 30% of the store will feature a variety of general merchandise not related to tobacco (Attachment B).

Tobacco-related inventory includes cigarettes, cigars, rolling papers, lighters and matches, ashtrays, humidors, and batteries and chargers for smoking accessories. The general merchandise section will offer items such as t-shirts, hats, sunglasses, keychains, candles, incense, small electronics (e.g., headphones, speakers, phone chargers), as well as personal care items and decorative goods.

The applicant anticipates an average customer traffic of 10 to 15 customers per day. The proposed hours of operation are Monday through Sunday from 10:00 a.m. to 7:00 p.m. The business will be staffed during all open hours, and the applicant emphasizes a commitment to providing courteous and respectful service to customers.

The building is currently improved with standard electrical, plumbing, and interior wall configurations, and the applicant has indicated that no interior or structural tenant improvements are proposed at this time. The layout includes product display shelving, a shared restroom for customers and staff, and an emergency exit in addition to the main entrance.

The site provides a total of four (4) off-street parking spaces immediately adjacent to the tenant space—three (3) standard spaces and one (1) accessible space compliant with ADA requirements.

Security measures will include a surveillance system for customer and staff safety. No on-site smoking lounge is proposed as part of this application, and the applicant has confirmed that such use is not being considered in the future. A business sign is not currently proposed as part of this application and may be submitted for review under a separate sign permit.

### **AGENCY REVIEW**

A request for review (RFR) was distributed by email on October 24, 2024, to the following city departments and agencies, and asked to provide comments.

- City of Clearlake Departments: Building, Code, Police
- Agencies: Lake County Fire, Highlands Water, Lake County Environmental Health, Special Districts

During the review period comments were received (Attachment D).

### **CLEARLAKE REGULATIONS**

#### **Land Use**

Pursuant to Chapter 18-18 (Use Regulations), Section 18-18.010(b) – Uses Allowed by Zones: Interpretation of Use Listing, the Zoning Ordinance authorizes the Community Development Director to determine whether a use not explicitly listed in the use regulations is sufficiently similar in character and function to other permitted or conditionally permitted uses within the zone. This interpretation process is subject to appeal under Article 18-36.

*Retail smoke shops focused on tobacco sales are not expressly listed in the zoning ordinance. However, such uses are functionally similar to other specialty retail uses permitted or conditionally permitted in commercial zones, particularly where the sale of regulated goods requires case-by-case review. Based on the nature of the proposed use, the Community Development Director has determined that this smoke shop use, due to its focus on the sale of tobacco products and accessories, may be allowed subject to a Use Permit, in accordance with Section 18-18.010(b).*

The property is zoned Downtown Commercial Mixed-Use (CD) Zone and is intended to provide for a wide range of retail sales, service and entertainment uses meeting community-wide and regional market demands and a variety of housing types including affordable workforce housing. The CD Zone is intended to be applied within the City's main commercial district (Attachment C).

## **Tobacco Sales**

### **Ordinance No. 272-2024**

Ordinance No. 272-2024 establishes a local tobacco retailer licensing program in the City of Clearlake to strengthen enforcement of tobacco control laws and protect public health, particularly among youth and underserved communities. The ordinance is based on findings that tobacco use remains the leading cause of preventable death in the U.S. and that flavored tobacco products and lax enforcement contribute to rising youth usage.

The ordinance affirms that a local licensing system is an appropriate and necessary tool for ensuring retailer compliance with federal, state, and local tobacco regulations. It emphasizes that such a system will not unduly burden lawful businesses but will enhance the City's ability to monitor retail practices and prevent sales to underage individuals. The ordinance aligns with California law and incorporates state public health goals, including the prohibition of flavored tobacco products, the need for strong age verification procedures, and restrictions on product marketing.

The City authorizes the Lake County Department of Public Health to administer the licensing program on its behalf while retaining authority for local enforcement. The ordinance supports a collaborative approach between the City and County in regulating tobacco sales, with the intent to reduce access to harmful products and ensure compliance with business standards and public health protections.

### **Municipal Code**

Pursuant to Chapter 6-10, Section 6-10.102, General Requirements and Prohibitions, tobacco retailing within the City of Clearlake is subject to specific operational standards and licensing requirements. All businesses engaged in the sale of tobacco products must obtain and maintain a valid tobacco retailer's license for each location, and operating without such a license is considered a legal nuisance. Retailers must comply with all applicable local, state, and federal laws governing the sale of tobacco products. Smoking, including sampling of tobacco products, is strictly prohibited inside the store and within twenty-five (25) feet of the business exterior. Sales of tobacco products to individuals under twenty-one (21) years of age are prohibited, and identification must be verified using government-issued photo ID. A valid tobacco retailer license must be displayed prominently and visibly within the store. Self-service displays of tobacco products are not permitted; all tobacco merchandise must be stored in a secure area behind the counter or otherwise inaccessible to the general public. Additionally, tobacco products may not be displayed within five (5) feet of youth-oriented items such as toys, candy, snacks, or nonalcoholic beverages. Finally, all sales must occur in person at the licensed location; delivery or third-party sales are not permitted.

*The proposed smoke shop is consistent with local requirements for tobacco retailers. The applicant has acknowledged that all tobacco sales will be conducted in-person at the store, and no delivery or online sales are proposed. The business does not include a smoking lounge, and no on-site smoking or sampling of tobacco products will occur,*

*consistent with regulations prohibiting smoking in and around tobacco retail locations. The applicant has also confirmed that age verification will be conducted using photo ID to ensure compliance with the minimum sales age of 21. Product shelving will include tobacco and accessories stored behind the counter, in accordance with the prohibition on self-service displays. During business license or occupancy inspection, staff will confirm that tobacco displays are not placed near youth-appealing items such as candy or beverages. A valid tobacco retailer's license must be obtained and displayed prior to opening, and ongoing compliance with local, state, and federal tobacco laws will be required. As proposed, the business appears capable of complying with all applicable tobacco retailing regulations.*

Pursuant to Chapter 6-10, Section 6-10.103, Sale of Flavored Tobacco Products Prohibited, it is unlawful for any tobacco retailer in the City of Clearlake to sell flavored tobacco products. A flavored tobacco product is defined as any product with a taste or smell other than tobacco, including those with fruit, candy, mint, menthol, vanilla, or other distinct flavoring. Any public claim made by the product manufacturer or distributor that a tobacco product has a non-tobacco taste or aroma is considered presumptive evidence that the product is flavored, even if the packaging does not explicitly list a flavor. The intent of this regulation is to restrict the sale of products that may appeal to minors or obscure the health risks associated with tobacco.

*The applicant has stated in the application that the business will sell only regular cigarettes and cigars without flavors, consistent with the City's prohibition on flavored tobacco products. No flavored items are proposed as part of the inventory. Based on this representation, the business appears to comply with the prohibition. The applicant will be advised that flavored tobacco products—whether labeled or marketed as such—are not permitted for sale under City regulations. As a condition of approval, the business shall be prohibited from offering any tobacco product that is flavored or marketed with a characterizing flavor other than tobacco.*

Pursuant to Chapter 6-10, Section 6-10.104, Tobacco Product Pricing and Packaging, all tobacco products sold in the City of Clearlake must comply with specific packaging, labeling, pricing, and promotional requirements. Tobacco products must be sold only in the original manufacturer's packaging intended for consumer sale. All packaging must meet applicable federal labeling requirements and any child-resistant standards required by law. The price of each tobacco product must be clearly displayed on the product itself, or on shelving, signage, or displays at the point of sale. Additionally, it is unlawful to distribute tobacco products as free samples or at a nominal price as a form of promotion or advertising.

*The applicant has not indicated any intent to repackage or alter tobacco products and has stated that the business will sell cigarettes and cigars in standard, permitted packaging, which suggests compliance with manufacturer packaging requirements. Although the business description does not specifically address labeling or child-resistant packaging, such standards are typically met by regulated manufacturers and are expected to be maintained when products are sold in their original packaging. The applicant has not*

*proposed any sampling or promotional giveaways, and there is no indication of discounted or free product distribution. Based on the information provided, the proposed business appears able to comply with the City's requirements related to packaging, labeling, pricing display, and promotional restrictions.*

Pursuant to Chapter 6-10, Section 6-10.105, Limits on Eligibility for a Tobacco Retailer License, tobacco retailing in the City of Clearlake is subject to location-based restrictions. A tobacco retailer license may only be issued for a fixed, permanent location. Mobile vending of tobacco products—such as from carts, vehicles, or temporary stands—is strictly prohibited and not eligible for licensure. In addition, no license may be issued or renewed for a tobacco retailer operating at a location that is also licensed for commercial cannabis activity under state law.

*The applicant is proposing a tobacco retail business within a fixed, 1,900-square-foot commercial tenant space in an existing building. There is no indication that the business is mobile or intended to operate outside of a permanent location. The business is not associated with a cannabis operation and is not co-located with any state-licensed cannabis activity. Based on the information provided, the proposed use complies with the City's restrictions on tobacco retail license eligibility and is not subject to either disqualification criterion outlined in this section.*

Pursuant to Chapter 6-10, Section 6-10.106, Application Procedure, any person or business intending to engage in retail tobacco sales in the City of Clearlake must submit a complete tobacco retailer's license application in the name of each proprietor. The application must be signed by each proprietor or their authorized agent and must be submitted using official forms provided by the Lake County Environmental Health Department. If a license is issued based on false, misleading, or incomplete information—or if it violates this article or any other law—it is subject to revocation. Possession of a tobacco retailer's license does not create any right to operate in violation of other applicable regulations or legal requirements.

*At the time of application for a use permit, the applicant has not submitted an application to the County of Lake Environmental Health Department for a tobacco retailer's license. As such, the proposed business is not currently in compliance with the City's procedural requirements for operating a tobacco retail business. The applicant must provide proof of license issuance before final business license approval or occupancy. A condition of approval will be required to ensure that no tobacco sales occur without first securing and maintaining a valid tobacco retailer's license in accordance with local law.*

### **CALIFORNIA STATE TOBACCO REGULATIONS (SUMMARY)**

California regulates the sale and distribution of tobacco products through a combination of statewide laws aimed at protecting public health and reducing youth access. All tobacco retailers must obtain and maintain a tobacco retailer license from the California Department of Tax and Fee Administration (CDTFA), as required by the Business and Professions Code §§ 22970–22995. Tobacco sales are only permitted from fixed locations and must adhere to packaging, labeling, and tax requirements under Revenue and Taxation Code §§ 30001–30483.

Retailers are prohibited from selling flavored tobacco products, including menthol cigarettes and flavored e-cigarettes, under BPC § 104559.5 (SB 793). Tobacco sales to anyone under 21 years of age are prohibited, consistent with both state and federal law, and retailers must verify age using government-issued identification (BPC § 22958). Additionally, the STAKE Act (BPC §§ 22950–22964) requires signage warning against sales to minors and authorizes enforcement through undercover inspections.

These state regulations are further supported by local ordinances enacted by the City of Clearlake and Lake County, including Ordinance No. 272-2024, which aligns local enforcement with state tobacco control policy.

*The applicant proposes a retail smoke shop primarily selling cigarettes, cigars, and related accessories. While the business description indicates sales limited to non-flavored tobacco products and excludes on-site smoking, the applicant has not confirmed application for or possession of the required California tobacco retailer license. As such, the proposed business is not currently in compliance with applicable state regulations or the City's adopted licensing ordinance.*

*Since the City of Clearlake and Lake County have adopted ordinances consistent with state law—including the prohibition on flavored tobacco products, age verification, packaging requirements, and local licensing—compliance is mandatory for any tobacco retail operation. Staff recommends condition of approval be included requiring the applicant to obtain and maintain a valid California tobacco retailer license, comply with all applicable state and local laws, and provide verification of such compliance prior to initiating tobacco sales.*

#### **ENVIRONMENTAL REVIEW (CEQA)**

The California Environmental Quality Act (CEQA) requires agencies to evaluate the environmental implications of land use actions. Upon review of the application, the agency comments, and considering that the project is located within an urbanized area, staff has determined the project to be Categorical Exempt from environmental review in accordance with Chapter 19, Section 15301, Existing Facilities.

*The project qualifies for the above referenced Categorical Exemption involving negligible or no expansion of existing or former use. No improvements are proposed.*

#### **LEGAL NOTICE & PUBLIC COMMENT**

The public hearing was noticed at least ten (10) days in advance in an electronic publication of the Lake County Record Bee on May 31, 2025, and mailed (via USPS) to all surrounding property owners within 300 feet of the subject parcel as required pursuant to the Clearlake Municipal Code.

- All mailing addresses are drawn from the electronic database supplied by the Lake County Assessor Office.
- The City of Clearlake did not receive any written public comment or concerns regarding the project.

### **FINDINGS OF APPROVAL**

Pursuant to Section 18-28.040, to grant a Conditional Use Permit, the Community Development Director, Planning Commission or City Council must determine the following:

1. That the proposed use will not be detrimental to the health, safety or welfare of people working or living at the site or within the vicinity.
2. The Community Development Director, Planning Commission or the City Council may deny the proposal or attach conditions as deemed necessary to secure the purposes of these regulations.
3. Actions on use permits shall be justified by written findings, based on substantial evidence in view of the whole record.

### **MOTION/OPTIONS**

1. Move to Adopt Resolution PC 2025-05 (Attachment A), A Resolution of the Planning Commission of the City of Clearlake Approving Conditional Use Permit CUP 2025-03 and Categorical Exemption, CE 2025-04 located at 14270 Lakeshore Drive, Clearlake, CA 95422, further described as Assessor Parcel Number 040-091-14.
2. Move to deny Resolution PC 2025-05, and direct staff to prepare appropriate findings.
3. Move to continue the item and provide alternate directions to staff.

### **ATTACHMENTS**

- Attachment A (Resolution PC 2025-05 / Conditions of Approval)
- Attachment B (Submitted application for use permit)
- Attachment C (Zoning)
- Attachment D (Agency comments received)