



## CITY OF KETCHUM

City Hall

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### CITY COUNCIL MEETING AGENDA MEMO

Meeting Date:  Staff Member/Dept:

Agenda Item:

#### Recommended Motion:

Option 1: "I move to approve the second reading of Ordinance 1259 and read by title only."

Option 2: "I move to deny the second reading of Ordinance 1259."

#### Reasons for Recommendation:

- The applicant is interested in opening a cigar lounge business which would permit patrons to purchase and smoke cigars within the establishment. However, the exclusive retail tobacconist definition in KMC Chapter 8.10 – *Smoking in Public Places* imposes restrictions on retail and patron limits which prevents the applicant from obtaining a business license. Therefore, the applicant submitted a text amendment application to remove the restrictions on retail and patron limits on the exclusive retail tobacconist definition.
- The City Council held a public hearing and conducted the first reading of Ordinance 1259 for the text amendment to the exclusive retail tobacconist definition during their regular meeting on March 3, 2025. During the meeting, the Council expressed concerns with outdoor smoking negatively impacting adjacent uses and adjoining units in multiuse structures, and distance between incompatible uses such as schools and daycares.
- After reviewing the proposed text amendment and staff's analysis, the Council approved the first reading of Ordinance 1259 with the requested revisions implemented at the second reading.

#### Policy Analysis and Background:

The City Council held a public hearing and conducted the first reading of Ordinance 1259 during their regular meeting on March 3, 2025 (see Attachment 3 for the staff report). During the meeting, the Council expressed concerns that the proposed text amendment to the exclusive retail tobacconist definition lacked sufficient safeguards to mitigate the negative impacts of the use on adjacent properties (see Attachment 1 for the draft ordinance). Specifically, concerns were raised regarding outdoor smoking affecting adjacent uses and residential units in multiuse structures. The Council also discussed the need for a required separation between incompatible uses such as schools and daycares. The Council requested that the language be revised to require the use to be permitted only in free-standing structures, restrict smoking to be indoors only, and be a minimum distance from schools and daycares. After reviewing the proposed text amendment and staff's analysis, the Council approved the first reading of Ordinance 1259 with the

requested revisions implemented at the second reading. The vote was two in favor, one opposed, and one Council member was absent.

Since the meeting, staff consulted with the City Attorney Matthew Johnson to review Idaho state code and the Council's proposed regulations on tobacco retailers. The City Attorney confirmed that the City has the authority to regulate zoning and land use regulations for these types of establishments. However, it was advised that if the Council wanted to enforce land use regulations on this use, then it should be incorporated into the zoning code under Title 17 rather than through the proposed amendment to Title 8. The current text amendment application seeks to revise the definition for exclusive retail tobaccoists to allow for cigar lounge establishments, meaning the Council must first decide whether this type of use should be permitted at all. The Council now has two options:

*Option 1: Approve the Text Amendment Application with Further Zoning Amendments*

If the Council is supportive of allowing cigar lounge establishments, the path forward would be to approve text amendment application as proposed by staff and direct staff to develop a separate text amendment application to amend the zoning code in Title 17. The amendment to the zoning code would involve incorporating this use to the district use matrix and adding regulations to the use regarding restricting smoking to indoor areas only, require the use to be located within free-standing structures, and establishing a 500-foot minimum distance separation from incompatible uses such as schools and daycares. Staff could also evaluate requiring a conditional use permit for the use which could contain those criteria and would give the Planning and Zoning Commission discretion to determine the appropriateness of the use in a proposed location. If this item is addressed with the upcoming code update staff is working on, the amendment will not go into effect until June. If Council would like staff to prioritize a separate amendment, the process will take at least four months due to noticing of Planning and Zoning and City Council hearings.

Under this option, the applicant could obtain a business license immediately upon approval of the text amendment, which would be prior to the adoption of the zoning regulations. However, the applicant already meets two of the three proposed requirements, as the business is proposed in a free-standing structure (located at 491 N Washington Ave) and is greater than 500 feet from any school or daycare. Also, the applicant has submitted a revised business license application stating that smoking is restricted to indoor areas, thus voluntarily complying with all of Council's new requirements to mitigate negative impacts on adjacent uses.

*Option 2: Deny the Text Amendment Application*

If the Council is opposed to allowing cigar lounge establishments, the path forward would be to deny the text amendment application. This would leave the current exclusive retail tobaccoist definition unchanged, thus preventing cigar lounge establishments from obtaining a business license in the City.

If the Council chooses to move forward with Option 1 and approves the second reading of Ordinance 1259, further zoning regulations will be necessary to mitigate potential conflicts with surrounding uses. If the second reading is approved, the third reading will be held during the following meeting on April 7<sup>th</sup>, unless the City Council determines that readings should be consolidated.

**Sustainability Impact:**

Ordinance 1259 does not impact the City's ability to reach its sustainability goals.

Financial Impact:

None	There is no financial request to the City of Ketchum for Ordinance 1259 and therefore no budget implications.
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Attachments:

1. Draft Ordinance 1259
2. Text Amendment Application
3. March 3, 2025, City Council Meeting Staff Report: First Reading of Ordinance 1259



City of Ketchum

# Attachment 1: Draft Ordinance 1259

**ORDINANCE NO. 1259**

**AN ORDINANCE OF THE CITY OF KETCHUM, BLAINE COUNTY, IDAHO, AMENDING TITLE 8 – HEALTH AND SAFETY, CHAPTER 8.10: SMOKING IN PUBLIC PLACES, SECTION 8.10.040: DEFINITIONS, TO AMEND THE DEFINITION FOR EXCLUSIVE RETAIL TOBACCONIST TO REMOVE THE RESTRICTIONS ON PATRON LIMITS AND RETAIL AND TO CLARIFY CONSUMPTION LOCATIONS; PROVIDING A SAVINGS AND SEVERABILITY CLAUSE, PROVIDING A REPEALER CLAUSE; PROVIDING FOR PUBLICATION BY SUMMARY; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, a member of the public submitted a text amendment application to remove the restrictions on retail and patron limits on the exclusive retail tobacconist definition which prevent the applicant from obtaining a business license for a cigar lounge;

WHEREAS, the Ketchum Municipal Code imposes restrictions on retail and patron limits for exclusive retail tobacconists, limiting the ability of businesses to provide a modern cigar lounge that blends retail with seating areas for onsite consumption;

WHEREAS, staff support the text amendment application and recommend amending the definition further to clarify consumption locations;

WHEREAS, providing a space for onsite consumption of tobacco products in a comfortable, social setting can enhance customer experience and support the growth of local businesses;

WHEREAS, compared to other communities in Idaho with existing cigar lounges, Ketchum is the only community that has a standalone requirement for these establishments with the level of restrictions on patron limits and directives on sales;

WHEREAS, removing the restrictions on retail and patron limits removes unnecessary barriers to tobacco-related establishments and better aligns with regulations for other communities in Idaho;

WHEREAS, clarifying the consumption location ensures that onsite consumption is explicitly permitted to reduce ambiguity in licensing and distinguishing the definition of exclusive retail tobacconist from a retail tobacco business;

WHEREAS, the amended exclusive retail tobacconist definition will not allow smoking within food or drinking establishments, the use is strictly for tobacco-related businesses;

WHEREAS, the City Council held a public hearing on \_\_\_\_\_ to review the ordinance and information;

WHEREAS, the City Council held three readings of Ordinance 1259 on \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, resulting in approval of this ordinance;

WHEREAS, the City Council hearings were duly noticed per the requirements of Idaho Code Section 67-6509; and

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF KETCHUM**

**SECTION 1. AMENDMENT TO CHAPTER 8.10 – SMOKING IN PUBLIC PLACES**

Section 8.10.040 – Definitions

Exclusive retail tobacconist: A retail tobacco business which derives ~~majority~~ **more than 95 percent** of sales from tobacco and tobacco products sold on the premises for consumption **on or** off the premises and which the sale, manufacture, or promotion of other products is merely incidental. ~~The status as an exclusive retail tobacco business is lost if at any time the business premises provide seating for more than four patrons or is used to sell or serve food or drink, vend lottery tickets or newspapers or magazines not primarily for tobacco enthusiasts, or if the premises are used for dancing, karaoke, gaming, or live entertainment or performance of any kind.~~

**SECTION 2. SAVINGS AND SEVERABILITY CLAUSE.** If any section, paragraph, sentence or provision hereof of the application to any particular circumstances shall ever be held invalid or unenforceable, such holding shall not affect the remainder hereof, which shall continue in full force and effect and applicable to all circumstances to which it may validly apply.

**SECTION 3. REPEALER CLAUSE.** All City of Ketchum Ordinances or parts thereof which are in conflict herewith are hereby repealed.

**SECTION 4. PUBLICATION.** This Ordinance, or a summary thereof in compliance with Section 50-901A, Idaho Code, substantially in the form annexed hereto as “Exhibit A” shall be published once in the official newspaper of the City, and shall take effect immediately upon its passage, approval, and publication.

**SECTION 5. EFFECTIVE DATE.** This Ordinance shall be in full force and effect after its passage, approval and publication, according to law.

PASSED BY the CITY COUNCIL and APPROVED by the MAYOR of Ketchum, Idaho, on this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

APPROVED BY the Mayor of the City of Ketchum, Idaho, this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

APPROVED:

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Neil Bradshaw, Mayor

ATTEST:

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Trent Donat, City Clerk



City of Ketchum

# Attachment 2: Text Amendment Application



**Application For Amendment to Zoning Code ~~XXXXX~~ / CODE 8.10.040 and 8.10.090**

Please modify the language by striking out the following restrictive and conflicting language

**Sun Valley Cigar LLC**

**By Jason Decker Its Managing Member**

491 Washington Ave N.

PO BOX 864

Ketchum ID 83340

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**CODE 8.10.040**

**Retail tobacco business:** A business which, during the normal course of business, primarily distributes any tobacco and/or tobacco product or provides any equipment or material used for the consumption of tobacco.

C. An "exclusive retail tobacconist" as defined in section [8.10.040](#) of this chapter.

**Exclusive retail tobacconist:** A retail tobacco business which derives ~~more than 95 percent~~ **majority of sales** from tobacco and tobacco products sold on the premises for consumption off the premises and which the sale, manufacture, or promotion of other products is merely incidental. The status as an exclusive retail tobacco business is lost if at any time the business premises provide seating ~~for more than four patrons or is used to sell or serve food or drink, vend lottery tickets or newspapers or magazines~~ **not primarily for tobacco enthusiasts**, or if the premises are used for dancing, karaoke, gaming, or live entertainment or performance of any kind.

***NOTE:** Or make a new separate use for cigar lounge vs gas station, grocery store tobacco sales currently used by BaseCamp and Atkinson's Market, these two businesses do sell other items such as alcohol and food.*

**8.10.090 - Where smoking is not regulated.**

Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions herein:

A.

Private residences, unless used as a childcare, adult daycare, or healthcare facility, or as a home office that is accessible to one or more employees or members of the public.

B.

Privately owned outdoor spaces, including rooftop patios, courtyards, bars and sidewalk cafes.

Any such privately owned outdoor spaces established consistent with all applicable building and zoning codes existing at the time of the effective date hereof shall be exempt from the 20-foot rule in subsection 8.10.080.B of this chapter.

C.

An "exclusive retail tobacconist" as defined in section [8.10.040](#) of this chapter.

D.

American Indian/Alaska Native ceremonies. A religious ceremony using a traditional pipe under this subsection is subject to any applicable state or local law, except as provided in this subsection. A person is exempt from the restrictions of this chapter if the person:

1.

Is a member of an American Indian/Alaska Native tribe whose members are recognized as eligible for the special programs and services provided by the United States to American Indians/Alaska Natives who are members of those tribes; and

2.

Is an American Indian/Alaska Native who actively practices an American Indian/Alaska Native religion, the origin and interpretation of which is from a traditional American Indian/Alaska Native culture; and

3.

Is smoking tobacco using the traditional pipe of an American Indian/Alaska Native tribal religious ceremony, of which tribe the person is a member, and is smoking the pipe as part of that ceremony; and

4.

The ceremony is conducted by a pipe carrier, American Indian/Alaska Native spiritual person, or medicine person recognized by the tribe of which the person is a member and by the American Indian/Alaska Native community.

(Ord. 1105, 2013)



City of Ketchum

**Attachment 3:**  
**March 3, 2025, City Council**  
**Meeting Staff Report: First**  
**Reading of Ordinance 1259**



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**CITY COUNCIL MEETING AGENDA MEMO**

Meeting Date:  Staff Member/Dept:

Agenda Item:

Recommended Motion:

Reasons for Recommendation:

- The applicant is interested in opening a cigar lounge business which would permit patrons to purchase and smoke cigars within the establishment. However, the exclusive retail tobacconist definition in KMC Chapter 8.10 – *Smoking in Public Places* imposes restrictions on retail and patron limits which prevents the applicant from obtaining a business license. Therefore, the applicant submitted a text amendment application to remove the restrictions on retail and patron limits on the exclusive retail tobacconist definition.
- Staff is supportive of the text amendment application and recommends modifying the definition further to clarify consumption locations.
- Removing retail restrictions and patron limits removes unnecessary barriers to tobacco-oriented establishments and better aligns with regulations for other communities in Idaho.
- Clarifying the consumption location ensures onsite consumption is explicitly permitted, to reduce ambiguity in licensing and distinguishes the definition of exclusive retail tobacconist from a retail tobacco business.
- The amended exclusive retail tobacconist definition will not allow smoking within food or drinking establishments, this use is strictly for business that are tobacco-oriented, such as a cigar lounge.

Policy Analysis and Background:

An applicant is interested in opening a business called Sun Valley Cigar which would feature a membership-based cigar lounge with indoor seating for approximately 30 patrons and a cigar retail shop. The definition for exclusive retail tobacconist in the Ketchum Municipal Code (KMC) Chapter 8.10 – *Smoking in public places* imposes restrictions on retail and limits onsite seating to a maximum of four patrons, which prevents the applicant from obtaining a business license. Currently, the definition for exclusive retail tobacconist reads as follows:

*Exclusive retail tobacconist: A retail tobacco business which derives more than 95 percent of sales from tobacco and tobacco products sold on the premises for consumption off the premises and which the sale, manufacture, or promotion of other products is merely incidental. The status as an exclusive retail tobacco business is lost if at any time the business premises provide seating for more than four patrons or is used to*

*sell or serve food or drink, vend lottery tickets or newspapers or magazines not primarily for tobacco enthusiasts, or if the premises are used for dancing, karaoke, gaming, or live entertainment or performance of any kind.*

In recent years, cigar lounges have evolved beyond simple retail operations, as they have become social spaces where patrons consume tobacco products in a relaxed setting. Many modern cigar lounges integrate retail sales with comfortable seating areas and membership-based experiences that cater to tobacco enthusiasts. The KMC’s restrictions on exclusive retail tobacconists limit the ability of a business to provide a contemporary cigar lounge that blends tobacco retail with experiential services. In review of the application to amend the exclusive retail tobacconist definition, staff conducted research into the origin of the KMC’s current definition and were unable to determine the reason for the restrictions imposed. To better understand how these establishments are regulated in Idaho, staff reached out to other communities with existing cigar lounges. See the chart below for an analysis of Idaho communities.

City	Permitted	Cigar Lounge Use Classification	Municipal Code Tobacco/Smoking Retail Definition
Eagle, ID	Yes	Bar	None
Meridian, ID	Yes (conditional use permit)	Drinking Establishment	Smoking product retail store: An establishment that sells, offers for sale, offers for trade, or offers free of charge tobacco, smoking products, or products containing or related to tobacco or smoking products.
Post Falls, ID	Yes	Bar/Tavern/Lounge	None

Staff found that Ketchum is the only community that has a standalone requirement for these establishments with the level of restrictions on the number of patrons and directives on sales. Staff believes that the KMC’s definition for an exclusive retail tobacconist does not reflect the evolving nature of this industry and that the existing restrictions are not necessary and hinder the establishment of modern cigar lounges. However, staff is supportive of maintaining a standalone definition to clearly distinguish where indoor smoking is permitted to ensure it is excluded from food and drinking establishments. Amending the definition for exclusive retail tobacconist will not permit smoking within food or drinking establishments, this use is strictly for businesses that are tobacco oriented.

To allow Sun Valley Cigar and similar businesses to operate in Ketchum, the applicant submitted a text amendment application (Attachment 1) to amend the exclusive retail tobacconist definition. While the application included a suggestion for additional language to add cigar lounge and gas station as new uses, staff did not feel that it was necessary to include as both of those uses are captured in the exclusive retail tobacconist and retail tobacconist definitions. The applicant proposed the following revised language for the exclusive retail tobacconist definition:

*Exclusive retail tobacconist: A retail tobacco business which derives majority of sales from tobacco and tobacco products sold on the premises for consumption off the premises and which the sale, manufacture, or promotion of other products is merely incidental.*

While staff is supportive of removing the restrictive language related to patron limits and retail, staff recommends modifying the definition further to clarify that onsite consumption is permitted. Explicitly allowing onsite consumption will reduce ambiguity in licensing and distinguishes the definition of exclusive retail tobacconist from a retail tobacco business, which solely sells tobacco products or provides any equipment or material used for the consumption of tobacco. Staff proposes that the amended definition for exclusive retail tobacconist include the additional language underlined below:

*Exclusive retail tobacconist: A retail tobacco business which derives majority of sales from tobacco and tobacco products sold on the premises for consumption on or off the premises and which the sale, manufacture, or promotion of other products is merely incidental.*

Staff believes that the proposed text amendment removes unnecessary restrictions on the exclusive retail tobacconist definition and better reflects the evolving nature of the tobacco industry. Therefore, staff recommend the City Council approve the first reading of Ordinance 1259. A redlined version of the draft ordinance can be found in Attachment 2. If the first reading is approved, the second and third readings would be held during the following subsequent meetings of March 17<sup>th</sup> and April 7<sup>th</sup>, unless the City Council determines that readings should be consolidated.

Sustainability Impact:

Ordinance 1259 does not impact the City's ability to reach its sustainability goals.

Financial Impact:

None	There is no financial request to the City of Ketchum for Ordinance 1259 and therefore no budget implications.
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Attachments:

- |                               |
|-------------------------------|
| 1. Text Amendment Application |
| 2. Draft Ordinance 1259       |