

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2024-007

AN URGENCY ORDINANCE ENACTING A ZONING MORATORIUM TO PROHIBIT THE SALE OF TOBACCO-RELATED PRODUCTS AND ELECTONIC CIGARETTE-RELATED PRODUCTS IN NEW LOCATIONS, AS WELL AS NEW TOBACCONIST/CIGARETTE STORES THROUGHOUT THE CITY

WHEREAS, the City's Tobacco Retailers Ordinance found at Municipal Code Chapter 4-36 section 4-36-150 prohibits tobacco retailing within the City of San Leandro without a valid tobacco retailer's license; and

WHEREAS, "tobacco retailing" is defined at Municipal Code §4-36-100 as the sale of any tobacco products, tobacco paraphernalia, electronic cigarettes, electronic cigarette products, or electronic cigarette paraphernalia; and

WHEREAS, the City's Zoning Code §1-12-108 defines a "tobacconist/cigarette store" as a "business devoted primarily to the sale of tobacco-related and e-cigarettes, and e-cigarette-related products, as defined by: (1) devoting 20% or more of total floor area or display area to; or (2) deriving 75% or more of gross sales receipts from, the sale or exchange of tobacco-related products"; and

WHEREAS, the City's Municipal Code and Zoning Code as currently written creates a potential loophole to the City's intended regulation of tobacco retailing because businesses may sell tobacco-related products and electronic cigarette-related products without being classified as a "tobacconist/cigarette store" as long as the percentage of the business dedicated to tobacco products is less than the thresholds referenced; and

WHEREAS, the potential loophole is significant because it allows a business to be legally established without complying with the separation requirements or more stringent review process applicable to tobacconist/cigarette stores as contemplated in the Zoning Code; and

WHEREAS, as a result of the above, the City has observed an increase in the appearance of tobacco retailing by retailers without first complying with the Zoning Code's requirements for tobacconist/cigarette stores; and

WHEREAS, the City is concerned about this recent proliferation of tobacco retailer businesses, locations of tobacco retailer businesses, and the harmful effects of tobacco on the health, safety, and welfare of City residents, especially youth; and

WHEREAS, regulating the locations where tobacco can be sold is critical to ensure that tobacco sales are not near sensitive locations, such as schools, parks and day care facilities; and

WHEREAS, if not carefully regulated, a proliferation of businesses selling tobacco in a concentrated neighborhood can cause blight and negatively impact the public welfare; and

WHEREAS, tobacco use is the number one cause of preventable death in California and continues to be an urgent public health issue; and

WHEREAS, for these reasons, the City Council desires to immediately close the loophole allowing a business to sell tobacco without first complying with the zoning requirements for a “tobacconist/cigarette store”; and

WHEREAS, the City Council also desires to prohibit businesses selling tobacco-related products and electronic cigarette-related products from being established in new locations until the City has adopted comprehensive regulations; and

WHEREAS, Government Code §65858 provides that to protect against any current and immediate threat to the public health, safety, or welfare, the City Council may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City plans to study; and

WHEREAS, this temporary moratorium will provide staff with the opportunity to study various options to address the loophole created by the “tobacconist/cigarette store” zoning classification; and

WHEREAS, the City Council seeks to impose a moratorium to allow staff time to review its current ordinances to ensure that its laws preserve the quality of life for citizens while imposing limited and effective land use regulations that impact quality of life issues; and

WHEREAS, the City Council must take immediate and responsive action to protect the interests of the City, and it is in the best interests of the health, safety and welfare of the citizens of the City that a temporary moratorium on new tobacconist/cigarette stores, as well as the sale of tobacco-related products and electronic cigarette-related products be enacted; and

WHEREAS, the moratorium will have no impact on businesses with existing Tobacco Retailers Licenses, or prevent a new business from obtaining a new Tobacco Retailers License (other than a tobacconist/cigarette store), as long as such new business is established in a location where tobacco is currently legally sold.

NOW, THEREFORE, the City Council of the City of San Leandro does **ORDAIN** as follows:

Section 1. Recitals. The Recitals above are true and correct and adopted as the City Council’s findings and when applicable, incorporated herein by reference.

Section 2. Urgency Findings. The City Council of the City of San Leandro hereby finds that there is a current and immediate threat to the public health, safety and/or welfare and a need for immediate preservation of the public peace, health, or safety that warrants this urgency ordinance, which finding is based upon the facts stated in the recitals above, and in the staff report dated June 3, 2024, as well as oral and written testimony at the June 3, 2024 City Council meeting. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are all of those certain facts set forth and referenced in this Ordinance and the entirety of the record before the City Council.

Section 3. Zoning Moratorium.

A. New Tobacconist/Cigarette Stores Prohibited.

1. During the term of this ordinance, any new tobacconist/cigarette store shall be prohibited in all zoning districts and lands within the City of San Leandro. No application for any new permit, license, or land use entitlement shall be granted or approved for any new tobacconist/cigarette store in any zoning districts or lands within the City of San Leandro.
2. Notwithstanding any other provision of this ordinance, any person who lawfully holds an existing permit, license, and/or land use entitlement for an existing and lawfully operating tobacconist/cigarette store in the City of San Leandro as of the effective date of this ordinance may continue to lawfully operate under that existing permit, license, and/or entitlement, and may apply for the renewal of any such existing permit, license, and/or entitlement, which renewal may be approved or denied by the City under the standards governing such permit, license, and/or entitlement under existing law. 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.

B. Tobacco Sales Prohibited in New Locations.

1. During the term of this ordinance, no application for any new permit, license, or land use entitlement shall be granted or approved for any use involving the sale of tobacco-related products or electronic cigarette-related products, in any location where such products were not sold as of June 3, 2024.
2. Nothing in this Subsection B shall be interpreted as prohibiting a new business that sells tobacco-related products or electronic cigarette-related products, other than a tobacconist/cigarette store, from being established in a location where a business previously selling such products existed as of June 3, 2024.
3. This Subsection B shall not apply to the establishment of a new supermarket greater than 20,000 square feet.

C. General Provisions.

1. Terms used in this Ordinance and not defined shall have the same definition as specified in the San Leandro Zoning Code.
2. Except as expressly set forth herein, any business selling tobacco-related products or electronic cigarette-related products shall be subject to the applicable regulations and requirements of the San Leandro Municipal Code and San Leandro Zoning Code.

Section 4. Term of Ordinance. This ordinance shall be in effect from the date of adoption for a period of forty-five (45) days, unless it is extended pursuant to Government Code §65858(a) or other applicable law, as approved by the City Council.

Section 5. Environmental. This ordinance is exempt from further environmental review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines §15061(b)(3), the commonsense exemption that CEQA applies only to projects that have the potential for causing a significant effect on the environment; the proposed ordinance does not authorize or approve any use or project, but rather prohibits the

temporary establishment of certain types of new businesses, and preserves the status quo, and therefore has no potential for resulting in physical change in the environment, directly or indirectly.

Section 6. Severability. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each of every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

Section 7. Effective Date and Duration. This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

Section 8. Publication. The City Clerk is directed to cause this ordinance to be published in a manner required by law.

Introduced by Councilmember Ballew and passed and adopted this 3rd day of June 2024, by the following vote:

AYES: Councilmembers Aguilar, Azevedo, Ballew, Bowen, Simon, Viveros-Walton, and Mayor González (7)

NOES: None (0)

ABSENT: None (0)

ATTEST: 

Kelly B. Clancy, CMC
City Clerk