

City of San Leandro City Council Meeting



**Tobacco Retailers Ordinance
October 2, 2017
City Attorney's Office**

Existing Federal and State Law Related to Tobacco and E-Cigarettes

- Prohibits the sale of cigarettes and electronic cigarettes, and smoking paraphernalia to anyone under the age of 21
- Prohibits the sale of “bidis” (filterless cigarettes wrapped in temburni or tendu leaf) except in adult-only establishments
- Prohibits the sale of cigarettes in packages of less than 20
- Prohibits the sale of flavored cigarettes

Factual Background

- Flavors and Package Sizes
 - Federal and State Law do not regulate the flavors and package sizes for cigars and electronic cigarettes
- Retail Licensing Ordinances
 - Cities are authorized to enact retail licensing ordinances and other regulations
- Other Jurisdictions
 - More than 148 cities and counties have adopted a tobacco retailer licensing ordinance

City Council and Rules Committee

- The City Council referred the consideration of a tobacco retailers ordinance to the City Council Rules Committee in 2015
- The City Council Rules Committee considered tobacco retailers ordinance drafts at three separate meetings:
 - May 25, 2016
 - November 28, 2016
 - April 24, 2017

City Council and Rules Committee

- The City Council considered the draft tobacco retailers ordinance on June 5, 2017
 - Referred the draft ordinance to the City Council Rules Committee for further consideration
- The City Council Rules Committee further considered the draft ordinance on June 26, 2017 and made additional modifications

Proposed Text Amendments

- Applicability:

The Tobacco Retailers Ordinance applies to any business that sells:

- Electronic cigarettes
- Electronic cigarette products
- Electronic cigarette paraphernalia
- Tobacco products or
- Tobacco paraphernalia

Proposed Text Amendments

- General Provisions:
 - Requires all tobacco retailers to obtain a tobacco retailers license
 - ✓ Includes businesses that sell electronic cigarettes
 - ✓ Electronic cigarette product excludes any cessation product approved by the FDA for use in treating nicotine or tobacco dependence
 - General prohibitions on certain tobacco retailing activities

Proposed Text Amendments

- General Prohibitions:
 - Sale of tobacco or electronic cigarette products without a valid tobacco retailers license
 - Selling via a self-service display
 - The nonsale distribution of tobacco and electronic cigarette products in a public place

Proposed Text Amendments

- Cigar Sales:
 - Must be in a package containing 5 cigars and more than \$7 per package
 - ✓ Exception for “premium cigars” valued in excess of \$5
 - The sale of flavored cigars prohibited
- Electronic Cigarette Products:
 - The sale of flavored electronic cigarette products prohibited
 - ✓ Includes products without nicotine

Proposed Text Amendments

- Tobacco Retailers License:
 - Requires annual renewal and annual fee
 - Fee funds costs of administration and enforcement including compliance monitoring program operated by the Police Department

Proposed Text Amendments

- Penalties for Violations:
 - 1st Violation: Written warning and thirty days to cure the violation
 - 2nd Violation: \$2,500 penalty
 - 3rd Violation: License suspended for 20 days
 - 4th Violation: License revoked and license cannot be issued to retailer or for the retail location for three years

Proposed Text Amendments

- Operative Date:
 - March 1, 2018
 - Provides retailers that currently have flavored tobacco and electronic cigarette inventory additional time to sell existing inventory
 - Approximately fourteen additional weeks from the effective date of the ordinance

Rules Committee Revisions

1. Minimum age for persons engaged in tobacco retailing lowered from the minimum age for possession to 18 years old.
2. Minimum pack size for cigars was lowered from fifteen cigars to five cigars and for no less than \$7.00 per package.

Rules Committee Revisions

3. The penalties were revised with proposed revisions in parentheses:
 - 1st Violation: Written warning and thirty days to cure the violation (Unchanged)
 - 2nd Violation: License revoked and retailer cannot reapply for license for 90 days (\$2,500 fine)
 - 3rd Violation: License revoked and retailer cannot reapply for license for 120 days (20 day suspension)
 - 4th Violation: License revoked and license cannot be issued to retailer or for the retail location for five years (3 year revocation)

Recommendation

- That the City Council introduce and conduct a first reading of the ordinance attached to the staff report to require the licensure of tobacco retailers and to regulate the sale of cigars, cigarillos and electronic cigarettes