

City of San Leandro City Council Meeting



Tobacco Retailers Ordinance

June 5, 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

Rules Committee

- The City Council Rules Committee considered tobacco retailers ordinance drafts at three separate meetings:
 - May 25, 2016
 - November 28, 2016
 - April 24, 2017
- The draft tobacco retailers ordinance includes direction from the Rules Committee

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
 - Sales by an individual that is younger than the established age for possession and use of tobacco and electronic cigarette products
 - The nonsale distribution of tobacco and electronic cigarette products in a public place

Proposed Text Amendments

- Cigar Sales:

- Must be in a package containing 15 cigars
 - ✓ 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: License revoked and retailer cannot reapply for license for 90 days
 - 3rd Violation: License revoked and retailer cannot reapply for license for 120 days
 - 4th Violation: License revoked and license cannot be issued to retailer or for the retail location for five years

Proposed Text Amendments

- Operative Date:
 - November 1, 2017
 - Provides retailers that currently have flavored tobacco and electronic cigarette inventory additional time to sell existing inventory
 - Approximately fifteen additional weeks from the effective date of the ordinance

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
- Motion introducing the ordinance should include a minor revision to remove the reference to Health & Safety Code Section 119405(b) in definition of “electronic cigarette”