

IN THE CITY COUNCIL OF THE CITY OF SAN LEANDRO

ORDINANCE NO. 2024-010

AN INTERIM ORDINANCE TO MAKE FINDINGS AND EXTEND A TEMPORARY ZONING MORATORIUM TO PROHIBIT THE SALE OF TOBACCO-RELATED PRODUCTS AND ELECTRONIC 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 section 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 section 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, the City Council finds that issuing business licenses, use permits and/or building permits for new tobacconist/cigarette stores, would pose a current and immediate threat to the public health, safety, and

welfare, since such uses could potentially create conflicts with surrounding land uses and could conflict with the City's long-term planning goals; and

WHEREAS, the City Council desires to (1) address the community concerns regarding the establishment and operation of business selling tobacco and electronic cigarette-related products, (2) study the potential impacts that tobacconist/cigarette stores may have on the public health, safety, and welfare, (3) study and determine what local regulations may be appropriate or necessary for the regulation of tobacconist/cigarette store, (4) study and determine the appropriate zoning and location for tobacconist/cigarette store, and (5) determine appropriate controls for protection of public health and welfare; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, California Government Code §65858(a) provides: that local legislative bodies may, to protect public safety, health and welfare, 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 legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect forty-five (45) days from the date of adoption, and may be extended a maximum total duration of two years; and

WHEREAS, California Government Code §65858(c) provides that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, or welfare, and that the approval of additional entitlements would result in that threat to the public health, safety or welfare; and

WHEREAS, at its regular June 3, 2024, meeting, pursuant to Government Code §65858, the City Council lawfully adopted a moratorium on the establishment of tobacconist/cigarette stores pending study of a Zoning Ordinance amendment proposal (Ordinance No. 2024-007); and

WHEREAS, in the time since the moratorium was adopted, San Leandro staff has been exploring options for regulation of tobacconist/cigarette stores, which staff will be presenting to the Planning Commission and City Council for consideration; however, the Zoning Ordinance amendment proposal is not yet ready for adoption; and

WHEREAS, a report describing the measures the City has taken to address the concerns that led to this ordinance was made publicly available ten (10) days prior to the adoption of this ordinance in accordance with Government Code §65858(d); and

WHEREAS, the City Council has determined that certain businesses that sell tobacco-related products, specifically large supermarkets and premium cigar retailers, do not cause these same negative impacts due to unique aspects of those businesses; and

WHEREAS, the City Council desires to narrow the zoning moratorium to exempt supermarkets and premium cigar retailers; and

WHEREAS, on July 1, 2024, in accordance with Government Code §65858(a), the City Council held a properly noticed public hearing to consider extending the moratorium for a period of one (1) year, (10) months, and fifteen (15) days from that date that Ordinance No. 2024-007 would have otherwise expired; and

WHEREAS, the City Council desires to adopt this Ordinance to extend the moratorium.

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 July 1, 2024, as well as oral and written testimony at the July 1, 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 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 in size, or a premium cigar retailer. For the purposes of this ordinance, a premium cigar retailer is a retailer that: 1) sells no tobacco-related products or electronic cigarette-related products other than cigars, and 2) sells cigars for a price of no less than ten dollars (\$10) per cigar.

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 one year, ten (10) months and fifteen (15) days from July 1, 2024, unless it is extended pursuant to Government Code section 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 Section 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 land uses, 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.

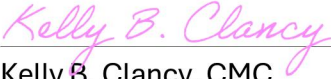
Section 8. Publication. The City Clerk is directed to cause this ordinance to be published in a manner required by law.

Introduced by Councilmember Aguilar and passed and adopted this 1st day of July 2024 by the following vote:

AYES: Councilmembers Aguilar, Azevedo, Ballew, Bowen, Viveros-Walton, Mayor González (6)

NOES: None (0)

ABSENT: Vice Mayor Simon (1)

ATTEST: 
Kelly B. Clancy, CMC
City Clerk