



Legislation Text

File #: 17-603, **Version:** 1

Staff Report for an Ordinance of the City of San Leandro adding Chapter 4.36 “Tobacco Retailers” to the San Leandro Municipal Code to require the licensure of Tobacco Retailers and to regulate the sale of cigars, cigarillos and electronic cigarettes

RECOMMENDATIONS

Staff recommends that the City Council adopt the attached Ordinance adding Chapter 4.36 “Tobacco Retailers” to the San Leandro Municipal Code to require the licensure of Tobacco Retailers and to regulate the sale of cigars, cigarillos and electronic cigarettes

BACKGROUND AND SUMMARY

State and federal law currently establish restrictions and regulations on tobacco and electronic cigarette retailing. These restrictions and regulations include, but are not limited to:

- Prohibiting the sale or furnishing of cigarettes (including electronic cigarettes), tobacco products, and smoking paraphernalia to anyone under the age of 21;
- Requiring that retailers post conspicuous notices stating that selling tobacco products to anyone under 21 years of age is illegal;
- Prohibiting the sale of tobacco products and paraphernalia through self-service displays with limited exceptions;
- Prohibiting the sale of “bidis” (filterless cigarettes wrapped in temburni or tendu leaf) except in adult-only establishments;
- Prohibiting the manufacture, distribution, or sale of cigarettes in packages of less than 20 and prohibiting the manufacture, distribution, or sale of “roll-your-own” tobacco in packages containing less than 0.60 ounces of tobacco; and
- Prohibiting the sale of flavored cigarettes (except for menthol).

Despite state and federal regulations, studies show that underage individuals are still able to gain access to tobacco and electronic cigarette products. Additionally, while regulations exist regarding the flavor and package size of cigarettes, similar regulations do not exist regarding the flavor and package size of electronic cigarettes and cigars.

State and federal law generally provide local jurisdictions with authority to enact retail licensing ordinances and other regulations that are more restrictive than existing state and federal regulations. As a result, more than one hundred and forty-eight cities and counties throughout California have adopted a tobacco retailer licensing ordinance in an effort to prevent underage tobacco use.

The City Council began considering an ordinance establishing regulations for tobacco retailing in 2015. Since then, the City Attorney’s Office prepared and presented draft tobacco retailers licensing

ordinances to the City Council Rules Committee on: May 25, 2016; November 28, 2016; and April 24, 2017. The City Council considered the draft tobacco retailers licensing ordinance on June 5, 2017 and referred the draft ordinance to the City Council Rules Committee for further consideration. The City Council Rules Committee considered the draft ordinance on June 26, 2017.

First Reading and Introduction of Tobacco Retailers Ordinance:

On October 2, 2017, the City Council considered the draft ordinance, made some minor amendments, and voted 4-3 to waive first reading and introduce the ordinance. A summary of the key provisions of the tobacco retailers licensing ordinance, including the proposed revisions are below:

Applicability and Prohibitions:

The ordinance applies to all tobacco retailers within the City, which includes any person who sells electronic cigarettes, electronic cigarette products, electronic cigarette paraphernalia, tobacco products, or tobacco paraphernalia. Prohibited activities include:

- The sale of tobacco or electronic cigarette products without a valid tobacco retailers license;
- Tobacco retailing via a self-service display;
- Tobacco retailing by an individual that is younger than 18;
- The non-sale distribution of tobacco and electronic cigarette products in a public place;
- The sale of cigars in a package at less than \$7 per five cigars, except for the sale of single cigars in excess of \$5;
- The sale of flavored cigars; and
- The sale of flavored electronic cigarette products, whether such products contain nicotine or not.

Licensing Provisions and Enforcement:

The ordinance requires that all tobacco retailers obtain a tobacco retailers license from the City. A tobacco retailers license requires the payment of an annual fee in order to fund costs of administration and enforcement of the ordinance. The fees obtained from tobacco retailers will fund a compliance monitoring program operated by the Police Department. If violations are discovered, tobacco retailers are subject to the below penalties:

1. First Violation: Written warning and thirty days to cure the violation.
2. Second Violation: Licensee fined two thousand five hundred dollars (\$2,500)
3. Third Violation: License suspended for 20 days.
4. Fourth Violation: License revoked and license cannot be issued to retailer or the retail location for three years.

In addition to administrative penalties, the ordinance permits criminal and civil enforcement by the City.

First Reading and Revisions from the October 2, 2017 City Council Meeting:

The City Council voted 4-3 to conduct a first reading and introduce the ordinance with the following changes:

1. Revise the timeframe for calculating violations from violations occurring during a sixty-month (5 years) period to violations occurring during a thirty-six-month (3 years) period.
2. Revise and clarify the minimum pack size and price requirement for cigars to reflect that cigars, including all cigar products, cannot be sold in a package of less than \$7 per five Cigars, including all applicable taxes and fees, except for single cigars sold for more than \$5.

Effective Date:

The draft ordinance provides that it shall not become operative until March 1, 2018.