



Legislation Text

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Adopt an Urgency Ordinance to Enact a Zoning Moratorium to Prohibit in *New Locations* the Sale of Tobacco-Related Products and Electronic Cigarette-Related products, as well as New Tobacconist/Cigarette Stores Throughout the City

COUNCIL PRIORITY

- Community & Business Development

SUMMARY

To address outdated zoning regulations that have contributed to enforcement challenges, staff recommends that the City Council approve an urgency ordinance enacting a temporary zoning moratorium to:

1. Prohibit the sale of tobacco-related products or electronic-cigarette related products in a new location where such products are not sold as of June 3, 2024. This prohibition would not apply to supermarkets greater than 20,000 square feet. In addition, the prohibition would not prevent new businesses that sell tobacco-related products or electronic-cigarette related products, other than tobacconist/cigarette stores, from being established in a location where such products are currently sold; and
2. Prohibit new tobacconist/cigarette stores. Existing legal tobacconist/cigarette stores would not be impacted and could continue to operate.

Should the City Council adopt the proposed moratorium, staff plans to return to the City Council within the 45-day period to evaluate whether an extension of the moratorium is needed.

The purpose of the moratorium is to give staff time to review the Municipal Code and Zoning Code to determine appropriate regulations. After staff completes its review, it will return to the City Council with proposed regulations.

RECOMMENDATIONS

Staff recommends that the City Council adopt an urgency ordinance enacting a zoning moratorium to prohibit the sale of tobacco-related products and electronic cigarette-related products in new locations and prohibit new tobacconist/cigarette stores.

BACKGROUND

California Business and Professions Code section 22971.3 authorizes cities to implement local tobacco licensing laws. Consistent with State law, the City of San Leandro regulates the sale of tobacco products and tobacco paraphernalia throughout the City. The City's Tobacco Retailers Ordinance, found in San Leandro Municipal Code ("SLMC") Chapter 4-36, currently prohibits the sale of electronic cigarettes and tobacco, as well as related products and paraphernalia, without a valid

license. Specifically, section 4-36-150 prohibits “tobacco retailing” without a valid tobacco retailer’s license (“TRL”). (SLMC §4-36-150). Tobacco retailing is defined as the sale of any tobacco products, tobacco paraphernalia, electronic cigarettes, electronic cigarette products, or electronic cigarette paraphernalia. (SLMC §4-36-100).

Separately, the City’s Zoning Code (“ZC”) 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 sale receipts from, the sale or exchange of tobacco-related products.” (ZC §1-12-108). Tobacconist/cigarette stores are conditionally permitted uses in some zones, but not a permitted use in any zone. Additionally, the Zoning Code requires Tobacconist/Cigarette Stores to be located at least 1,500 feet from certain sensitive uses like schools and parks, as well as other tobacconist/cigarette stores.

Under the City’s current Tobacco Retailers Ordinance and Zoning Code, businesses may sell tobacco-related products within the City of San Leandro without being classified as a “tobacconist/cigarette store” so long as the percentage of the business dedicated to tobacco products is less than the thresholds referenced above. This 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. Some of these businesses are legitimate businesses, such as convenience stores or supermarkets (also known as grocery stores). However, other businesses may initially abide by the limit on a maximum of 20% of the total floor area or display area for tobacco products, only to later easily, but illegally, expand the percentage of the business dedicated to tobacco products. This loophole enables the easy establishment of illegal smoke shops. As a result, the City has observed an increase in the appearance of smoke shops by retailers without first complying with the Zoning Code’s requirements for tobacconist/cigarette stores.

In recent months, the City has received numerous complaints regarding new smoke shops and tobacco retailers throughout the city. After review of the City’s current Tobacco Retailers Ordinance and separate Zoning Code, staff believes that this uptick is due at least in part because of a loophole which allows businesses that do not reach permitting thresholds to sell tobacco-related products without having to comply with the City’s Zoning Code’s requirements.

ANALYSIS

Tobacco use is the leading preventable cause of over 480,000 deaths annually in the United States. If smoking continues at current rates, 5.6 million-or 1 out of every 13-of today’s children will ultimately die prematurely from a smoking-related illness. In recent years, the introduction of vaping and smoking of non-tobacco products, identified by the Centers for Disease Control (CDC) as harmful, has created a market for smoking products not currently captured by tobacco sales regulations in the San Leandro Municipal Code. Recently strengthened regulations in other cities put San Leandro in a position to be an attractive market for tobacco and vape retailers.

The City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use. This includes discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and, in protecting children from being lured into illegal activity through the misconduct of adults.

Staff recommends that the City Council consider establishing a temporary moratorium on approval of: 1) new tobacconist/cigarette stores anywhere in the City, and 2) businesses selling tobacco-related products or electronic-cigarette related products in a new location where such products are not sold as of June 3, 2024. The moratorium will not impact the ability of any existing legal business to continue operating and selling tobacco-related products or electronic cigarette-related products. Additionally, the moratorium will not prevent any new business that sells such products, other than a tobacconist/cigarette store, from being established if the business is established in a location where such products are currently sold.

The purpose of the moratorium is to give staff time to review the Municipal Code and Zoning Code to determine what new regulations for such businesses are appropriate. This may include, but is not limited to, reviewing definitions of tobacco products; increasing penalties for violations of local laws; reviewing licensing fees and licensee restrictions; and, studying whether other restrictions for tobacconist/cigarette stores will be effective within the City. After staff completes its review, it will return to the City Council with proposed regulations.

Authority to Adopt a Zoning Moratorium

The City Council may adopt an interim ordinance, commonly referred to as a moratorium, that would temporarily stop the establishment of certain businesses selling tobacco-related products. Government Code section 65858(a) expressly authorizes the City Council to adopt, as an urgency measure, a moratorium prohibiting any uses that may conflict with a contemplated general plan, specific plan, or zoning proposal that the City Council intends to adopt or study within a reasonable time to protect public safety, health, and welfare.

The adoption of such an urgency measure requires a four-fifths vote of the legislative body (i.e., six votes of the City Council). The City Council must make findings that demonstrate: (1) a “current and immediate threat” to health, safety, or welfare; and (2) approval of additional permits would result in the identified threat to public health, safety or welfare. Courts generally defer to the public agency on these types of findings. Should the City Council make the required findings to support the ordinance, the moratorium will be in effect for forty-five (45) days from adoption, which is 11:59 p.m. on June 20, 2024.

Ten (10) days before the interim ordinance expires, the City Council must issue a written report describing the measures taken to alleviate the condition that led to the adoption of the ordinance. (Govt. Code § 65858(d).) Alternatively, following a noticed public hearing, the City Council may, by a four-fifths vote, extend the interim ordinance by of one year, 10 months and 15 days (for a total combined period of not to exceed 2 years).

Proposed Ordinance

The proposed urgency ordinance is provided for the City Council’s consideration to impose the temporary moratorium. If adopted, the proposed ordinance would do two things:

1. Prohibit new tobacconist/cigarette stores anywhere in the city. Existing legal tobacconist/cigarette stores would not be impacted and could continue to operate.

2. Prohibit the sale of tobacco-related products or electronic-cigarette related products in a new location where such products are not sold as of June 3, 2024. This prohibition would not apply to supermarkets greater than 20,000 square feet. In addition, the prohibition would not prevent new businesses that sell tobacco-related products or electronic-cigarette related products, other than tobacconist/cigarette stores, from being established in a location where such products are currently sold.

For example, if a convenience store that currently sells tobacco products is sold to a new owner, the proposed ordinance would not prevent tobacco-related products from continuing to be sold at the location. Similarly, if a convenience store that currently sells tobacco products closes, the ordinance would not prevent a new business that opened in the same location from selling tobacco-related products.

If a moratorium is adopted, City will review the Municipal Code and Zoning Code to determine what new regulations for such businesses are appropriate. Possible amendments include: 1) decreasing the current allowable thresholds of 20% or less of the total floor area or display area to, or 75% or more of gross sales receipts from, the sale or exchange of tobacco-related products before a business is considered a tobacconist/cigarette store, or 2) eliminating the tobacconist/cigarette store land use completely.

Existing tobacco retailers would be permitted to apply for renewals of licenses, which would be subject to approval or denial under existing standards. None of the proposed moratoria would prevent a new TRL from being issued to the new owners of a business with an existing TRL. This is important because the value of certain businesses (like convenience stores) decreases significantly if new owners are not able to continue selling tobacco products. The City would also reserve the right to suspend or revoke any existing permit, license, or entitlement of tobacco-related businesses under existing standards.

Should the City Council adopt the proposed moratorium, Staff plans to return to the City Council within the 45-day period to evaluate whether an extension of the moratorium is needed (Gov. Code § 65858).

Financial Impacts

Adoption of the moratorium does not have a direct fiscal impact. There will be costs, primarily staff time, related to reviewing the current Municipal Code and Zoning Code for potential revision.

ATTACHMENT:

Att A: Urgency Interim Ordinance

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