



## Legislation Text

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Consideration of an Urgency Ordinance extending an existing temporary zoning moratorium to prohibit in new locations the sale of tobacco and tobacco-related products, as well as new Tobacconist/Cigarette Stores throughout the City. Pursuant to Government Code §65858, if adopted, the moratorium will last until June 2, 2026

### **COUNCIL PRIORITY**

- Community & Business Development

### **SUMMARY**

To address outdated zoning regulations that present enforcement challenges, staff recommends that the City Council approve an urgency ordinance extending the temporary zoning moratorium for a period of one (1) year, ten (10) months, and fifteen (15) days 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 or premium cigar retailers, as defined. 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.

The proposed urgency ordinance, extending the moratorium, may only be adopted by a four-fifths vote of the City Council. If adopted, the ordinance would go into effect immediately, and would provide staff with adequate time to finalize and bring forth updated regulations for retail tobacco stores.

### **RECOMMENDATIONS**

Staff recommends that the City Council adopt an urgency ordinance extending the temporary zoning moratorium that would be, consistent with State law, for a period of one (1) year, ten (10) months, and fifteen (15) days 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 §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 through 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, SLMC § 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 illegally expand the percentage of the business dedicated to tobacco products. This has enabled the establishment of illegal smoke shops. As a result, the City has observed an increase in retail smoke shops that have opened without first complying with the Zoning Code’s requirements for tobacconist/cigarette stores.

In addition to the City’s observations, 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 businesses that do not reach permitting thresholds to sell tobacco-related products may open without having to comply with the City’s Zoning Code’s requirements. In turn, retailers that initially opened legally begin expanding sales of prohibited product to become illegal smoke shops.

At the June 6, 2024, meeting, the City Council adopted an urgency ordinance establishing a 45-day 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. Since the adoption of the Interim Ordinance, City staff began initial review of related ordinances from other jurisdictions throughout California, as well as model ordinances for retail tobacco sales. City staff is also beginning the process of evaluating draft standards applicable to retail tobacco stores for incorporation into the City’s Zoning Ordinance. A brief report describing the measures staff took 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). City staff from the Community Development Department, the Police Department and the City Attorney’s Office will continue to evaluate and refine

a set of regulations that will be effective and enforceable. When ready, these regulations will be presented to the City Council for consideration.

### **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 extend the 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 land uses selling tobacco-related products. Government Code § 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.

### Current Ordinance

The current ordinance achieves the following:

1. Prohibits new tobacconist/cigarette stores anywhere in the City. Existing legal tobacconist/cigarette stores are not impacted and can continue to operate.
2. Prohibits 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 does not apply to supermarkets. In addition, the prohibition does 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 does 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 does not prevent a new business that opened in the same location from selling tobacco-related products.

If a moratorium is adopted, City staff can use that period for increased enforcement of existing rules related to businesses that sell tobacco-related products, as well as 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 are permitted to apply for renewals of licenses, which would be subject to approval or denial under existing standards. None of the proposed moratoria prevents 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 also reserves the right to suspend or revoke any existing permit, license, or entitlement of tobacco-related businesses under existing standards.

### Extension of Moratorium & Proposed Changes

The proposed moratorium extension would extend the prohibition enacted by the temporary zoning moratorium. If the extension is adopted, the moratorium would be narrowed to exclude large supermarkets and premium cigar retailers from the moratorium. Those businesses do not cause the same negative impacts due to unique aspects of those businesses; and

The City has followed the necessary public notice and hearing requirements, such that the City may now extend that moratorium for a period of one (1) year, ten (10) months, and fifteen (15) days. The proposed urgency ordinance, extending the moratorium, may only be adopted by a four-fifths vote of

the City Council. If adopted, the ordinance would go into effect immediately, and would provide staff with adequate time to finalize and bring forth appropriate regulations for retail tobacco stores.

### **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.

### **ATTACHMENTS**

***Attachment A:** Urgency Interim Ordinance*

***Attachment B:** Report on Interim Activity*

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