



## Legislation Text

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Staff Report for a Resolution of the City Council for the City of San Leandro to Approve the Establishment of a Tobacco Retailer's License Fee of Up to \$500 Per Year and Including the Tobacco Retailer's License Fee in the Master Fee Schedule for Fiscal Year 2018-19.

### **SUMMARY AND RECOMMENDATIONS**

Staff recommends that the City Council adopt an annual fee of up to \$500 per Tobacco Retailer's License to be included in the City Fees and Services Charges for 2018-19. Fees for Tobacco Retailer's Licenses will fund the costs associated with administration and enforcement of City of San Leandro Municipal Code Chapter 4-36.

The fee is set to recover the costs associated with the processing and enforcement of a tobacco retailer's license program, including outreach to retailers and periodic compliance checks.

### **BACKGROUND**

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 adults-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 purchase tobacco and electronic cigarette products. Additionally, while regulations exist regarding the sale of flavor and package sizes of cigarettes, similar regulations do not exist regarding the flavor and package sizes of electronic cigarettes and cigars.

State and federal law generally provide local jurisdictions with authority to enact tobacco retailer's ordinances and other regulations that are more restrictive than existing state and federal regulations. As a result, more than 148 cities and counties throughout California have adopted a tobacco retailer's ordinance in an effort to prevent sales of tobacco to youth to help prevent underage tobacco use.

The City Council began considering an ordinance establishing local regulations for tobacco retailing in 2015. Since then, the City Attorney's Office prepared and presented a draft tobacco retailer's ordinance to the City Council Rules Committee on May 25, 2016, November 28, 2016 and April 24, 2017. The City Council considered the draft tobacco retailer's 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. On October 16, 2017, the City Council adopted the tobacco retailer's ordinance, as codified in San Leandro Municipal Code Chapter 4-36.

#### Applicability and Prohibitions:

The tobacco retailer's 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 retailer's 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 of 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:

There are approximately 86 known tobacco retailers in the City of San Leandro. The tobacco retailer's ordinance requires that all tobacco retailers within the City obtain a tobacco retailer's license. A tobacco retailer's license requires the payment of an annual fee in order to fund costs of administration and enforcement of the ordinance.

Administrative costs include maintaining a tobacco retailer database, as well as creating and maintaining a program website that includes a dynamic list of banned products and frequently asked questions.

Fees will also fund a compliance monitoring program operated by the Police Department. This will consist of triannual compliance checks of all tobacco retailers, periodic decoy operations and retailer outreach. The fee is recommended to be structured at a rate that is "up to \$500" to allow flexibility in the actual rate that is charged to retailers each year in the event the City is able to receive additional grant funding from the State of California that would help to off-set the City's costs of implementation (and therefore reduce the amount of the fee that must be collected from retailers). As of the date of this staff report, the City has already received \$9,852 as part of a recent round of state grant funding that is derived from state tobacco taxes, which will be used to off-set some of the over-time costs associated with public outreach by the San Leandro Police Department as well as software updates related to the processing of the permits and fees. The City also expects to submit an application to a

subsequent round of grant funding that is expected to be awarded later this year.

### Annual Tobacco Retail License/Permit Fees

Other cities in the Bay Area that have a tobacco retailers ordinance adopted the following fees to cover the costs of their own enforcement programs:

El Cerrito - \$439  
Hayward - \$400  
Oakland - \$1,500  
San Jose - \$533  
Union City - \$769

As a result, the recommended fee of up to \$500 falls below both the mean and median (average) fee that is charged by other Bay Area jurisdictions.

### Outreach to Retailers in Advance of Ordinance Implementation

In addition to the public outreach to all known tobacco retailers that took place last year in advance of adopting the Tobacco Retailer's Ordinance, city staff also met with local retailers earlier this year to discuss the program's requirements and learn about any outstanding questions retailers had in regards to the ordinance's implementation. To further bolster these outreach efforts and address outstanding questions, the City will host two retailer information sessions on July 11, 2018 and July 25, 2018, in addition to developing a detailed program website at [www.sanleandro.org/TRL](http://www.sanleandro.org/TRL) that contains links to various program materials and answers to frequently asked questions. As of the date of this staff report, an invitation letter and outreach flyer were mailed to all known tobacco retailers in the City. San Leandro police officers are also conducting in-person site visits to local retailers in advance of these information sessions to ensure they are aware of the sessions as well as the pending August 15<sup>th</sup> implementation deadline.

### Fiscal Impacts

Staff estimates that the tobacco retailer's ordinance fee will generate approximately \$43,000 annually, which will cover the cost of the annual license software fee and other administrative costs.

### **PREPARED BY:**

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