



# AGENDA REPORT

City Council

<b>DATE:</b>	April 2, 2024
<b>TO:</b>	Members of the City Council
<b>FROM:</b>	Mayor Eduardo Martinez Vice Mayor Claudia Jimenez Councilmember Melvin Willis
<b>Subject:</b>	Temporary Moratorium on New Tobacco Retailers
<b>FINANCIAL IMPACT:</b>	The urgency ordinance, if adopted, would be enforced pursuant to routine Code Enforcement efforts, which is included within the City's budget. The ordinance; therefore, at this time is not expected to have any additional fiscal impact on the General Fund.
<b>PREVIOUS COUNCIL ACTION:</b>	<a href="#">Click or tap here to enter text.</a>
<b>STATEMENT OF THE ISSUE:</b>	In recent months, the City has received numerous complaints regarding the increased number of smoke shops and tobacco retailers throughout the City. City investigation shows that many retailers are operating without a required tobacco retailers license. Additionally, those with licenses were found to have violations related to the requirements of the tobacco retailer license. It is recommended to adopt an interim urgency ordinance, which will establish a temporary moratorium on all new tobacco retailers and provide time for staff to study and engage the public in the establishment of a conditional use permit process for tobacco retailers to minimize any potential off-site impacts from these uses. In effect, this urgency ordinance will protect the public health, safety, and welfare of residents from immediate threats presented by these uses.

<b>RECOMMENDED ACTION:</b>	ADOPT an urgency ordinance placing a temporary 45-day moratorium on the issuance of any new permit, license, or other entitlement for any new tobacco retailer in the City of Richmond - (Mayor Martinez 510-620-6503/Vice Mayor Jimenez 510-620-6565/Councilmember Willis 510-412-2050 ).
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**DISCUSSION:**

It is recommended that the City Council adopt an urgency interim ordinance adopting a moratorium on the issuance of any new permit, license, or other entitlement for any new tobacco retailer in the City of Richmond.

**BACKGROUND INFORMATION:**

California Business and Professions Code Section 22971.3 authorizes cities to implement local tobacco licensing laws. Consistent with state law, the City of Richmond (City) regulates the sale of tobacco products and tobacco paraphernalia through the issuance of a special business license, as set forth in Richmond Municipal Code (RMC) Chapter 7.106. Chapter 7.106 was adopted in 2009 and modified in 2013, “to impose a licensing requirement on tobacco retailers” (RMC § 7.106.010).

Currently, the City has 78 licensed tobacco retailers, which were issued licenses mostly by the Richmond Police Department’s former Regulatory Unit and most recently by Community Development’s Code Enforcement Division. These licenses must be renewed annually and are subject to suspension or revocation for violations of state and local laws related to tobacco sales and distribution. In addition to special licensing for tobacco retailers, the City does not allow smoke shops in the City; however, complaints have been received that some have been established within the City.

Smoke shops currently operating with a tobacco retailer’s license have not been required to obtain a conditional use permit (CUP), as business license issuance is not tied to zoning (or building) code compliance.

In 2011, the City also adopted an ordinance that regulates smoking in certain areas (RMC Chapters 9.56 and 9.57). Among other regulations, RMC Chapters 9.56 and 9.57 prohibit smoking within multi-family housing and within 300 feet of a school or other youth-oriented facility. Tobacco regulations are generally enforced by the Code Enforcement Unit. The Planning Division enforces the licensing and land use components of tobacco businesses within the City.

**ANALYSIS/DISCUSSION:**

The City has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in 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. 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 RMC. Recently strengthened regulations in other cities put Richmond in a position to be an attractive market for tobacco and vape retailers.

In recent months, the City has received numerous complaints regarding new smoke shops and tobacco retailers throughout the City. It is recommended that the City Council consider establishing a temporary moratorium on approval of new tobacco retailer licenses to address revising the definitions of tobacco products to expressly include vape products and vapor smoking devices; increasing penalties for violations of local laws; reviewing licensing fees and licensee restrictions; and, studying whether development of a CUP process for tobacco retailers will be effective within the City. Subject to the City Council's direction, City staff are directed to develop an ordinance addressing these points and any others provided by the City Council on the hearing of this item.

A proposed urgency ordinance is provided for the City Council's consideration of imposing the temporary moratorium. No new permit, license, or other entitlement for any new smoking lounge, smoke shop, or tobacco retailer within the City would be allowed during the moratorium. Existing tobacco retailers would be permitted to apply for renewals of licenses, which would be subject to approval or denial under existing standards. The City would also reserve the right to suspend or revoke any existing permit, license, or entitlement of tobacco-related businesses under existing standards. The proposed urgency ordinance would require a vote of at least four-fifths of the City Council to pass. If the ordinance is adopted, the moratorium will be in effect for 45 days. Following a noticed public hearing, the City Council may extend the moratorium for an additional 10 months and 15 days, and could subsequently extend it for another year. Unless otherwise directed by the City Council, and assuming the City Council adopts the proposed moratorium, City staff are requested to return to the City Council within the 45-day period to seek an extension of the moratorium. (Gov. Code § 65858.)

#### **ENVIRONMENTAL ANALYSIS:**

This proposed ordinance is intended to preserve the status quo while the City considers further regulations on tobacco sales and distribution. The ordinance will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. This action, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

**ALTERNATIVE ACTIONS:**

The City Council could decide not to adopt a moratorium at this time and may direct staff to continue work on possible amendments to City codes while processing new tobacco retailer license applications and renewals. This could result in immediate adverse impacts on the public health, safety, and welfare, such as tobacco and vape retailers that close in other cities and relocated to Richmond during the period required to develop and propose stronger regulations, some of which may locate in areas frequented by youth such as near schools or after school programs.

**DOCUMENTS ATTACHED:**

Attachment 1 – Urgency Interim Ordinance