

# City of Hesperia STAFF REPORT



**DATE:** October 19, 2021  
**TO:** Mayor and Council Members  
**FROM:** Nils Bentsen, City Manager  
**BY:** Rachel Molina, Assistant City Manager  
Jamie Carone, Management Analyst  
**SUBJECT:** Consideration of a Tobacco Retail Licensing Ordinance

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## RECOMMENDED ACTION

It is recommended that the City Council introduce and place on first reading Ordinance No. 2021-07 adopting Chapter 5.80 of the Hesperia Municipal Code, regulating tobacco product sales, requiring the licensure of tobacco retailers.

## BACKGROUND

Tobacco use remains the leading cause of preventable disease, disability, and death in the United States. Tobacco use is responsible for the premature death of more than 480,000 people each year and typically begins during adolescence. According to the Center for Disease Control (CDC), 90% of adults who smoke cigarettes daily began smoking before 18 years of age. Each day, approximately 1,600 youth smoke their first cigarette, and an estimated 34,000 youth start smoking in California each year despite federal and state laws prohibiting the sale of tobacco to youth under 21 years of age.

The enforcement of state and federal tobacco laws is difficult to enforce at the local level, and consequences for violating these laws aren't always punitive enough to deter violations, such as selling tobacco products to underage youth. Consequently, many states and cities have implemented Tobacco Retail Licensing (TRL) to reduce youth usage, bolster existing state and federal laws, and foster health equality. In short, a TRL program requires retailers to obtain a license before selling tobacco products and enforces the concept that retailers selling tobacco products must comply with all relevant tobacco laws or risk losing the ability to sell these products.

On May 4, 2021, City Council received a report regarding Tobacco Retail License programs and directed staff to draft an ordinance with a specific focus of deterring the sale of tobacco to underage youth.

## ISSUES/ANALYSIS

The City of Hesperia has an interest in reducing the number of individuals of all ages who use cigarettes and other tobacco products, and a particular interest in protecting adolescents from tobacco usage and dependence as well as the illnesses associated with tobacco use. The proposed TRL program will provide the City with the ability to enforce existing state and federal laws and the opportunity to create provisions that specifically deter retailers from selling tobacco products to underage youth. Existing state and federal laws found in the TRL include no selling

tobacco to any person under 21 years of age and requiring a valid government-issued photographic identification to purchase tobacco products.

Youth often fall victim to deceptive and clever advertising created by tobacco companies. For example, many tobacco products are displayed in fun, colorful packaging and are sold in candy or fruit flavors to attract children and adolescents. Tobacco retailers also sell cigars and little cigars individually and offer coupons and discounts to make these products more accessible. Therefore, the proposed TRL ordinance includes provisions that ban the advertisement of flavored tobacco products. The license also prohibits the sale of individually packaged tobacco products and prohibits tobacco and flavored tobacco coupons, discounts, promotions, and/or samples.

The proposed program will mandate that all tobacco retailers within the City obtain a Tobacco Retail License. This license shall be renewed annually and shall be displayed at all times at the retail location. Violations of the TRL will result in license suspension or revocation, depending on the number and type of offense (see Exhibit A). Tobacco retailers who sell tobacco to a minor are subject to the penalties above; additionally, a retailer who sells tobacco to underage youth shall, upon the first violation of this nature, apply for a Conditional Use Permit (CUP) which may result in losing the ability to sell all tobacco products.

Operating without a TRL will constitute a violation of the license which will also result in suspension and/or revocation of the license. During the period of suspension or revocation, the retailer shall not sell, display, or advertise tobacco products of any kind.

The proposed TRL ordinance will include compliance checks conducted by the City's Code Enforcement department. The San Bernardino County Sheriff's Department may also conduct sting operations to ensure compliance with the TRL ordinance and state and federal tobacco laws. A violation of any existing state or federal law will constitute a violation of the Tobacco Retail License.

The proposed fee for the program will fund code enforcement and business licensing staff to monitor the inspection and citation process, to process and issue tobacco retail licenses, and to respond to questions and concerns from tobacco retailers and the public. Sting operations conducted by the San Bernardino County Sheriff's Department may also be partially funded by the associated fees. Proposed fees will be collected annually from each tobacco retailer and the license must be renewed each year.

## **FISCAL IMPACT**

The cost for a Tobacco Retail License will be \$210.00. The fee was determined by calculating 1.5 hours of a Code Enforcement Officer's time for the initial inspection, upon license application, as well as additional inspections throughout the year. Additionally, the fee is comprised of one-half hour of a Community Development Technician's time to administer the program, enter data, and issue each Tobacco Retail License.

A Combination License Fee will be available for retailers who fall under the City's Deemed Approved program. The cost of this license will be \$485. This fee is comprised of the Deemed Approved fee of \$325 plus an additional \$160 to cover the costs of the additional Code Enforcement inspections upon license application and throughout the year. If necessary, a re-inspection fee may be charged for an additional \$60 for each inspection.

**ALTERNATIVE(S)**

1. Provide alternative direction to staff.

**ATTACHMENT(S)**

1. Ordinance No. 2021-07
2. Exhibit A Municipal Code
3. Map of existing tobacco retailer locations
4. List of Current Hesperia Tobacco Retailers