



STAFF REPORT TO THE CITY COUNCIL

DATE: Regular Meeting of January 27, 2026

TO: Mayor and Members of the City Council

VIA: Dante Hall, City Manager

SUBMITTED BY: Christie Crowl, City Attorney

SUBJECT: Discussion of potential ordinance regulating tobacco sales

RECOMMENDED ACTION:

Receive report. Provide direction to staff regarding preparation of an ordinance, if desired.

BACKGROUND:

At the March 25, 2025 City Council meeting, several members of the Community Villages group spoke about local ordinances that regulate the sale of tobacco products, specifically retail licensing ordinances. Councilmember Walker-Griffin requested that the City Council discuss adoption of such an ordinance, and the City Council voted unanimously to direct staff to add such a discussion item to a future City Council meeting.

ANALYSIS:

Overview of Regulatory Framework for Retail Sale of Tobacco in California

Tobacco sales in California are governed by a comprehensive regulatory framework that includes state statutes, state agency enforcement programs, and federal law. Local jurisdictions may adopt additional regulations but they are not required to do so, and such jurisdictions may not adopt regulations that conflict with or are otherwise preempted by state or federal law.

These laws generally regulate the following:

1. Minimum age to purchase tobacco. State and federal law both prohibit sale of tobacco products to anyone under 21.
2. Sales practices.

- a. State and federal law require retailers to confirm a sale to anyone who appears under the age of 27 by checking photo identification, and such identification must be government-issued and unexpired.
- b. State law requires retailers to post their state and local tobacco retail licenses as well as an “age-of-sale warning” sign stating the minimum 21 years of age requirement at each cash register where tobacco sales are made.
- c. State law prohibits the sale of single cigarettes or packages with less than 20 cigarettes.
- d. State law prohibits any self-service display of tobacco products or tobacco paraphernalia in most circumstances.
- e. State law prohibits the sale of tobacco products anywhere cannabis is sold.
- f. State law prohibits free tobacco samples.
- g. State law restricts tobacco vending machines to adult-only locations.

3. *Flavored tobacco products.*

- a. State law prohibits the sale of flavored cigarettes and most flavored tobacco products.
- b. State law prohibits the sale of tobacco products anywhere cannabis is sold.
- c. State law prohibits the sale of electronic cigarettes or refilling solutions unless there are child-resistant packaging meeting federal standards.

4. *Advertising and packaging.* State law refers to federal/Food and Drug Administration (FDA) regulations governing product labeling, health warnings, and marketing practices.

5. *Enforcement.*

- a. The California Department of Public Health (CDPH) and its Office of Youth Tobacco Enforcement (OYTE) conducts undercover youth compliance inspections under the Stop Tobacco Access to Kids Enforcement (STAKE) Act.
- b. The California Department of Tax and Fee Administration (CDTFA) administers and enforces the state’s own TRL and has the authority to seize illegal products.
- c. Local law enforcement agencies can conduct inspections and cite violations of state and federal law.

In sum, there is a robust federal and state regulatory and enforcement system governing tobacco sales.

Overview of Tobacco Retailer License Ordinances

Generally, cities with ordinances governing tobacco product sales require tobacco retailer licenses (“TRLs”) in addition to all state-required permits. These ordinance are generally adopted in order to raise revenue to fund compliance checks or public health programs, and to reduce illegal sales to minors. Jurisdictions throughout California have adopted

TRL ordinances and/or regulate tobacco in ways that are consistent with state and federal law.

However, adoption is not uniform statewide. Many smaller cities, particularly those with limited retail outlets or low rates of tobacco-related violations, have opted not to adopt local licensing beyond what is required under California and federal law.

Existing HMC Requirements for Smoke Shops and Tobacco Retailers

Hercules currently requires any smoke shop or tobacco retailer to obtain a conditional use permit which is a discretionary review process allowing the Planning Commission to confirm that the use will not adversely impact the general welfare of the City. Larger retailers like supermarkets and gas stations also require a conditional use permit to operate. Hercules Municipal Code section 5-6.111 further requires the following related to smoke shops and tobacco retailers:

- Smoke shops and tobacco stores shall not be located within 300 feet from a school, daycare or childcare facility, youth center, community center, recreational facility, park, church, hospital, or other similar uses where children regularly gather.
- Smoke shops and tobacco stores shall not be located within 500 feet of another smoke shop or tobacco store.
- Sale of tobacco products to anyone under age 21 is prohibited.
- Smoke shops and tobacco stores must post a notice stating that selling tobacco products to anyone under 21 is illegal and subject to penalties. The notice must also state that the law requires that all persons selling tobacco products check the identification of a purchaser of tobacco products who reasonably appears to be under 21. The notice must also include a toll-free telephone number to the State Department of Public Health for persons to report unlawful sales of tobacco products to any person under 21.

Staff notes that most cities in Contra Costa County actually do have a licensing requirement, but the smaller cities (e.g. Pinole, Martinez) have minimal requirements associated with the license that are similar to what HMC section 5-6.111 requires. For example, Pinole's TRL ordinance requires a license to operate a tobacco retailer but its regulations govern only limited advertising and display practices consistent with state law.

Tobacco Retailers in Hercules

Hercules has only five retailers that sell tobacco products:

- Lucky's Supermarket (1590 Sycamore Avenue)
- Shell (3900 San Pablo Avenue)
- Willow Food & Liquor (844 Willow Street)
- Rocket (828 Willow Avenue)
- Safeway (4080 San Pablo Avenue)

In 2025, there were approximately 192 calls for service and/or security checks performed at these five locations and RiteAid (which closed in July). None of those calls/checks

were related to tobacco sales or resulted in any citations related to tobacco sales or use of tobacco by a minor.

Three of these locations (Lucky's, Shell, and Safeway) are subject to corporate compliance programs that are intended to ensure all local, state, and federal law requirements are met and involve extensive employee training programs. There is a strong incentive for these locations to adhere to such requirements. For example, Safeway Corporation lost a lawsuit brought by the Attorney General and the City of Los Angeles in 2004 for violation of age-of-sale laws which resulted in hefty state law-imposed fines and legal costs. Further, it is staff's understanding that the other two locations (Willow Food & Liquor and Rocket) have not been the subject of any code enforcement or other investigation.

Analysis of the City's Need for a TRL Ordinance

Hercules has not experienced a pattern of calls for service or documented problems related to illegal sales of tobacco to minors or the sale of illegal flavored products. The absence of local enforcement issues suggests that there is not a pressing public safety concern that a TRL ordinance would uniquely address.

A local TRL ordinance would create a new regulatory program that requires annual license issuance, fee collection, monitoring, compliance checks, and enforcement actions. For jurisdictions with expansive retailer networks and significant youth access problems, such programs may be justified. However, for a small city with limited staffing — particularly in the Police Department and code enforcement — administrative and enforcement burdens may overwhelm the City's current bandwidth and capacity. Without dedicated staff or budget for compliance checks, a local licensing program risks becoming more symbolic rather than effective, while imposing new requirements on businesses.

Moreover, many TRL ordinances anticipate revenue from licensing fees to offset enforcement costs. In a city with so few retailers, fees may not generate sufficient revenue to sustain compliance checks and administrative tasks, forcing the city to subsidize enforcement efforts with general funds or existing overextended staff.

Finally, staff notes that nationwide and statewide data show long-term declines in youth tobacco use, even in the absence of local TRL ordinances. According to a recent study by the Centers for Disease Control and Prevention (CDC), tobacco use among middle and high school students has significantly declined in the past few years, reaching the lowest level ever measured. The report notes that the decline in high schoolers' use of e-cigarettes represents a significant factor in the decline. The American Lung Association has reported that California is one of the nation's leaders in "smokefree air" and "tobacco prevention programs," noting that the state invests hundreds of millions of dollars annually in robust tobacco control and prevention programs.

Summary of Analysis and Recommendation

While youth use of tobacco products remains a public health focus, current data suggest overall use rates are relatively low compared to past decades. Given that Hercules only has five retailers that sell tobacco, and given that none of these retailers has caused any

problems related to sales to minors or have been the subject of calls for service related to illegal tobacco sales, staff does not believe that the City needs a TRL ordinance. Further, the license fees from such a small number of retailers likely would not sufficiently fund the licensing program, including administration and enforcement. Finally, administration and enforcement would be difficult for the City's limited staff.

Balancing the City's local context, administrative burden, and existing state and federal enforcement mechanisms suggests that maintaining the status quo is a reasonable path forward for ensuring compliance with tobacco laws and protecting youth in Hercules. Staff thus recommends that the City continue to rely on its existing regulations along with state and federal law. Staff will continue to monitor these locations and return to the City Council should issues associated with tobacco sales arise.

FISCAL IMPACT:

There is no fiscal impact to continued reliance on existing regulations.

If the City Council desires to explore preparation of a TRL ordinance, staff would need to conduct a study evaluating, at minimum: (1) the costs associated with enforcement of the proposed ordinance, (2) potential revenue from the 5 existing retailers, and (3) costs associated with administration of the ordinance's licensing program. Staff may need to hire a consultant to perform such a study, and the cost of such a contract could vary based on the type of ordinance and regulations that the Council is proposing.

ATTACHMENTS:

None.