



Agenda Item

City Council

Item #: 10.2.

6/10/2025

File #: 25-0276

TO: Honorable Mayor and Members of the City Council

THRU: Tom Kisela, City Manager

FROM: Russell Bunim, Community Development Director

1. SUBJECT

Introduction and First Reading of Ordinance No. 12-25, adding Chapter 5.100 to the Orange Municipal Code establishing provisions for Tobacco Retail Establishments.

2. SUMMARY

The proposed Ordinance establishes a requirement that all tobacco retailers must register with the City, comply with regulations, and obtain a specialized permit to operate. Currently, the City does not have any regulatory ordinance related to tobacco retailing in the Orange Municipal Code.

3. RECOMMENDED ACTION

Introduce and conduct First Reading of Ordinance No. 12-25: An Ordinance of the City Council of the City of Orange adding Chapter 5.100 of the Orange Municipal Code establishing Code provisions including operational standards and permitting requirements for tobacco retail establishments.

4. FISCAL IMPACT

None.

5. STRATEGIC PLAN GOALS

Goal 1: Maintain Strong Emergency and Safety Services

6. DISCUSSION AND BACKGROUND

Overview of Tobacco Retail Regulations and Local Enforcement in California

California's tobacco retail industry is governed by Federal and State regulations addressing licensing, sales, marketing, and distribution of tobacco products. These regulations aim to ensure lawful tobacco commerce while addressing public health concerns, such as preventing youth access, limiting flavored tobacco, and reducing the societal impacts of tobacco use. A summary of key State legislation, highlights of enforcement challenges, and local efforts to close regulatory gaps is provided below.

State-Level Regulations and Authority

The Cigarette and Tobacco Products Licensing Act of 2003 requires all tobacco retailers to obtain a license from the California Department of Tax and Fee Administration, ensuring tax collection and regulatory oversight.

In 2016, the State of California amended the Stop Tobacco Access to Kids Enforcement Act to raise the legal purchase age to 21, strengthen enforcement by the California Department of Public Health and local authorities (police and code enforcement), require “Age of Sale Warning” signage, and allow cities to impose stricter regulations than those under State law.

Under California Business and Professions Code §22971.3, local governments can adopt additional tobacco control ordinances, providing they do not interfere with State tax collection. This includes local permitting requirements and enforcement of both State and local laws.

Flavored Tobacco Product Legislation

Effective December 21, 2022, Senate Bill 793 (California Health and Safety Code §104559.5) placed a ban on most flavored tobacco products statewide. Voters upheld the ban through the passage of Proposition 31 on November 8, 2022. The following products are banned for sale or possession in retail settings:

- Flavored e-cigarettes, vapes, pods, cartridges, and e-juices
- Menthol cigarettes
- Flavored cigars, cigarillos, and blunt wraps
- Flavored smokeless tobacco
- Flavored roll-your-own tobacco
- Flavored rolling papers and flavor enhancers

Exemptions include:

- Flavored premium cigars (wholesale price of \$12 or more)
- Flavored loose-leaf pipe tobacco
- Flavored shisha/hookah tobacco (sold only in licensed 21+ establishments)

Assembly Bill 935 (California Business and Professions Code, Section 22974.8) which took effect on January 1, 2024, imposes civil penalties on retailers selling or possessing prohibited flavored tobacco products or flavor enhancers. It mandates immediate removal of such products from retail locations.

Local Enforcement and Regulatory Challenges

Despite a strong state-level regulatory framework, local enforcement faces several challenges. Penalties often fail to deter repeat offenders, and enforcement is resource-intensive, especially in municipalities lacking dedicated funding.

The Tobacco Grant Program, administered by the California Department of Justice (DOJ) and funded through Proposition 56, offers limited financial support for enforcement efforts. However, grants are time-limited, highly competitive, and require municipalities to meet strict eligibility and reporting

requirements.

To fill enforcement gaps, over 200 California cities and counties have implemented local tobacco retail licensing or permitting ordinances. These ordinances require retailers to:

- Obtain a local tobacco license or permit
- Pay fees for compliance monitoring and enforcement
- Face fines, license or permit suspension, or revocation for repeat violations

These local programs enhance enforcement efforts and promote responsible retail practices.

Enforcement Landscape in Orange County

Several cities in Orange County, including Buena Park, Santa Ana, Westminster, Stanton, and Anaheim have adopted tobacco retailer licensing, or permitting ordinances to maintain local tobacco control. In addition, 12 other cities in the County have implemented some other forms of local tobacco control regulations or restrictions.

Tobacco Retailing in the City of Orange

As of 2025, approximately 104 businesses in the City of Orange sell tobacco products, including:

- Convenience stores
- Gas stations
- Supermarkets and liquor stores
- Specialty or hybrid retailers (e.g., smoke shops, cigar shops, vape stores)

Currently, these businesses are only required to obtain a general City Business License and comply with basic zoning standards. The City does not mandate a specific tobacco retail permit, land-use entitlements such as a conditional use permit, or impose additional tobacco-related requirements or regulations.

Of the 104 businesses, approximately 25 are dedicated tobacco retailers such as smoke shops, cigar shops, vape stores, and hybrid establishments. (See Attachment 2 for a detailed retailer map.)

Enforcement Actions in the City of Orange

The Orange Police Department and the Community Development Department's Code Enforcement Division, through both joint and independent operations have identified over 25 businesses engaged in the sale of prohibited or regulated tobacco products. These include banned flavored tobacco items, flavor enhancers, cannabis and related accessories, disguised vaping or e-cigarette devices, nitrous oxide, and drug paraphernalia. These mitigation efforts are funded, in part, by an existing Tobacco Grant Program awarded to the Police Department.

Inspections also revealed that many retailers conceal illegal tobacco products in backrooms, hidden compartments, under counters, and behind display shelves to avoid detection but made these products available for public sale upon customer request.

Code Enforcement and Public Health and Safety Violations

In addition to tobacco-related offenses, the Code Enforcement Division has documented a range of

other violations during inspections, including unlicensed business operations, unpermitted interior construction, unsafe electrical systems, illegal residential occupancy, and the use of open-flame devices in commercial spaces.

The Orange Police Department has also conducted enforcement actions resulting in citations and/or arrests under State tobacco control laws.

Year	Smoke Shops / Tobacco Retailers	Total Operations	Attempt Undercover Buys	California Health and Safety Code violations	Additional enforcement actions
2023	31	15	84	44	N/A
2024	30 (5 closed, 4 opened, 3 renamed)	10	37	13	47 retail shops inspected/educated
2025	25	6	12	1 = seizure of 700+ banned flavored tobacco items)	1 psilocybin purchase, 1 fentanyl-related arrest and 8 retailers selling cannabis products

Without a local tobacco retail permit program or established enforcement measures, the City lacks the necessary tools to hold violators accountable. State law grants cities the authority to implement local tobacco licensing or permitting ordinances, allowing them to impose higher fines, suspend or revoke permits for repeat violations, and strengthen oversight. Establishing such a program for the City of Orange would improve compliance, enhance enforcement, and create a well-defined regulatory framework for tobacco sales. Additionally, it would enable the City to address local concerns, tailor regulations to meet community needs, and implement safeguards such as restricting sales near schools, parks, and other sensitive areas to reduce youth access to tobacco and ancillary smoking paraphernalia, cannabis products, and nitrous oxide.

Proposed Tobacco Retail Ordinance

The proposed ordinance aims to establish local tobacco control regulations within the City of Orange, drawing on State guidelines and models from other California cities. It addresses the number, location, and types of tobacco retailers, and includes the following key provisions:

1. Tobacco Retailer Permit: All tobacco retailers must obtain a permit from the City.
2. Annual Renewal: The permit must be renewed annually.
3. Non-Transferable: Permits are non-transferable.
4. Issuance: Permits will be issued by the Community Development Department's Code Enforcement Division, in coordination with the Orange Police Department.
5. Population-Based Cap. Tobacco retailer permits are limited to one per 2,500 residents, based

on the latest population data. Once the cap currently set at 55 retailers is reached, no new permits will be issued.

6. Location Restrictions: New permits will not be issued for businesses located within 500 feet of schools (elementary to high school), public libraries, parks, or other sensitive uses (see Attachment 3).
7. Nonconforming Uses: Existing retailers within 500 feet of these locations will become nonconforming uses under the Orange Zoning Code (see Attachment 4).
8. Prohibited Products: Retailers cannot sell flavored tobacco, cannabis products, nitrous oxide, drug paraphernalia, or electronic smoking devices, including disguised vapes or self-serve displays.
9. Compliance: Retailers must adhere to all applicable State and Federal tobacco control laws.

Penalties and Enforcement

Violations are classified as misdemeanors, punishable by a fine of up to \$1,000, county jail, or both. The City may also issue administrative citations (impose fines) and suspend (cease tobacco product sales) or revoke permits. The proposed penalty schedule is as follows:

- No Tobacco Retailer Permit: \$750 fine.
- First Violation (within 5 years): Written warning (compliance period of 72 hours) or \$500 fine.
- Second Violation (within 5 years): \$1,000 fine and/or 30-day permit suspension.
- Third Violation (within 5 years): \$1,500 fine and/or 60-day permit suspension.
- Fourth Violation (within 5 years): \$2,000 fine and/or 90-day permit suspension.
- Fifth or Subsequent Violation (within 5 years): \$4,000 fine for the fifth violation; \$5,000 for subsequent violations and/or 120-day permit suspension.
- Revocation: After five or more violations within five years, the permit may be revoked.

Any person who receives an administrative citation imposing fines or faces suspension or revocation action may file an appeal, upon payment of the required appeal fee before an independent hearing officer to safeguard their constitutional due process rights.

Staff intend to work collaboratively with tobacco retail establishments to ensure compliance with legal tobacco retailing, emphasizing education and adherence over punitive measures. However, suspension, revocation, or other enforcement actions will be reserved for cases where there is a lack of cooperation or failure to comply with the Code.

Next Steps:

If approved by the City Council, tobacco retailers will then have 60 days from the effective date of the Ordinance to apply for a Tobacco Retailer Permit.

To support compliance, the City will post information on its website and mail notification letters, including the ordinance and application instructions, to all known tobacco retailers. City staff also plans to host an outreach meeting to educate business owners on the new requirements and address questions.

Permit fees associated with the ordinance will be included in the City's Master Schedule of Fees. Fees would reflect anticipated full staff cost recovery for application processing, compliance monitoring, and enforcement. In parallel, the Code Enforcement Division is actively seeking a separate Tobacco Enforcement Grant from the California Department of Justice, distinct from the grant previously awarded to the Police Department. If awarded, the grant would fund staffing, equipment, and supplies to support the new permitting program, promote responsible retail practices, and strengthen enforcement efforts, particularly to prevent underage tobacco sales.

7. ATTACHMENTS

- Attachment 1 Ordinance No. 12-25
- Attachment 2 Detailed Map of Existing Tobacco Retailers
- Attachment 3 Detailed Map of Location Buffer from Other Retailers
- Attachment 4 Detailed Map of Sensitive Use Buffer from Retailers