

ORDINANCE NO. 05-26

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE AMENDING CHAPTER 5.100 OF THE ORANGE MUNICIPAL CODE TO ELIMINATE CERTAIN RESTRICTIONS ON THE RETAIL SALE OF TOBACCO AND TOBACCO PRODUCTS AND PROVIDE CLARIFICATION ON THE TRANSFERABILITY OF TOBACCO RETAILER PERMITS

WHEREAS, California Constitution, Article XI, Section 7, authorizes the City of Orange (“City”) to adopt and enforce local police, sanitary, and other ordinances and regulations that are not in conflict with general laws; and

WHEREAS, California Health & Safety Code section 101450 empowers the City Council to take measures necessary to preserve and protect public health, including adopting ordinances, regulations, and orders that are not in conflict with general laws; and

WHEREAS, a local tobacco retailer and several tobacco retail advocates provided public comment at a recent City Council meeting regarding the adverse economic impacts of restricting the sale of tobacco products, including electronic smoking devices and related accessories, between the hours of 2:00 a.m. and 6:00 a.m., as well as the resulting impacts on other general merchandise sales, and requested clarification regarding the transferability of a valid Tobacco Retailer Permit to a new proprietor in connection with the sale of a business; and

WHEREAS, the City Council finds and determines that removing certain restrictions and clarifying the transferability of a valid Tobacco Retailer Permit to a new proprietor in connection with the sale of a business will help mitigate adverse economic impacts on responsible local tobacco retailers while preserving the City’s regulatory authority and enforcement discretion.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION I:

The subject Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) per State CEQA Guidelines (Guidelines) Sections 15060(c)(2) and 15060(c)(3) because the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it is not a "project" as defined in Guideline 15378.

SECTION II:

Sections 5.100.040 of the Orange Municipal Code, Business Taxes and Regulations – Tobacco Retailers – Tobacco Retailer Permit Applications, is hereby amended to read as follows:

5.100.040 Tobacco Retailer Permit Applications

- A. Permit Required.** No person shall engage in tobacco retailing within the City without first obtaining and maintaining a valid tobacco retailer permit for each specific location.
- B. Application Procedure.**
 - 1.** Applications must be submitted on forms provided by the City and include a non-refundable annual fee as set by City Council resolution.
 - 2.** Each application shall include, at minimum, the following:
 - a.** Full legal name, date of birth, government-issued identification number, mailing address, phone number, and email for each proprietor;
 - b.** Business name, address, phone number, and hours of operation;
 - c.** Disclosure of any prior permit suspensions or revocations under this chapter, including dates and reasons;
 - d.** Proof of a valid state tobacco retailer license from the California Department of Tax and Fee Administration;
 - e.** Any other information deemed necessary by the City Manager for the administration or enforcement purposes;
 - f.** A signed certification by each proprietor under penalty of perjury affirming the accuracy of the information provided and compliance with this chapter.
- C. Authority to Adopt Administrative Regulations.** The City Manager may adopt and implement additional administrative regulations, consistent with this chapter, to effectively enforce and administer local tobacco control measures. All regulations must be published in advance and filed with the City Clerk's office for public inspection.
- D. Change of Information.** Permittee shall notify the City in writing of any changes to submitted application information within 10 calendar days. A fee as set by City Council resolution may be imposed for processing such changes.
- E. Permit Generally Nontransferable.** A Tobacco Retailer Permit issued pursuant to this Chapter shall not automatically transfer or assign to any other person, proprietor, entity, or location except as expressly authorized by this Section. A Tobacco Retailer Permit is revocable regulatory privilege only and does not create a vested right, property interest, or entitlement.
- F. Transfer Upon Change in Ownership.** An existing Tobacco Retailer Permit may be transferred to a new owner or proprietor of the same business location upon approval by the City, provided that:

1. The proposed transferee submits a completed transfer application on a form approved by the City as contained in Subsection B prior to the transfer of ownership;
2. The transferee pays all applicable annual fees as established by resolution of the City Council;
3. The business location remains in compliance with all applicable federal, state, and local laws, including this Chapter;
4. No suspension, revocation, unpaid administrative fines, penalties, outstanding violations, or delinquent City obligations exist against the permit or business location at the time of transfer; and
5. The proposed transferee otherwise satisfies all requirements necessary to obtain a Tobacco Retailer Permit under this Chapter.

G. No Expansion of Existing Rights.

1. Approval of a permit transfer shall not authorize:
 - a. Expansion or intensification of the tobacco retail use;
 - b. Relocation of the business to another site;
 - c. Modification of any conditions previously imposed upon the permit; or
 - d. Any waiver of applicable buffer, density, zoning, land use, or operational requirements of this Chapter or other applicable law.

H. Arm's-Length Transactions and Related Transfers.

A transfer application may be considered only where the business remains substantially the same operation at the same approved location and the transfer involves one or more of the following:

1. Sale of the business through a bona fide arm's-length transaction;
2. Transfer between immediate family members; defined as spouse, domestic partner, parent, child, sibling, grandparent, grandchild or other person related by blood, marriage, or legal guardianship;
3. Transfer between business partners, related entities, corporations, limited liability companies, or successor entities;
4. Change in ownership structure where the business remains substantially the same operation at the same location; or

5. Internal restructuring, merger, conversion, or reorganization of the same operating business entity; or
6. Succession following the death or incapacity of the proprietor.

I. City Review Authority.

The City Manager, Community Development Director, or designee may approve, conditionally approve, or deny a transfer application if the proposed transfer does not comply with this Chapter or applicable law.

J. Effect of Unauthorized Transfer.

Any attempted transfer, assignment, or operation under a Tobacco Retailer Permit without City approval shall render the permit void and constitute a violation of this Chapter.

K. Continuation of Operations Pending Review.

A timely filed transfer application shall temporarily toll expiration of the existing Tobacco Retailer Permit during administrative review by the City unless the Tobacco Retailer Permit is suspended, revoked, or otherwise rendered invalid by operation of law.

L. Effect of Prior Violations at Location. Permit ineligibility due to prior violations at a location shall continue to apply unless:

1. The location has been transferred to new proprietor(s) in a bona fide Arm's Length Transaction; and
2. The new proprietor submits clear and convincing evidence of such transfer to the City's satisfaction.

SECTION III:

Section 5.100.060.C of the Orange Municipal Code, Business Taxes and Regulations – Tobacco Retailers –Prohibitions and Requirements, is hereby amended to read as follows:

5.100.060.C. Prohibitions and Requirements – Prohibited Products and Activities

The following items shall not be sold, distributed, displayed, furnished, administered, exchanged, given away, or possessed with the intent to sell or offered for sale by any tobacco retailer:

1. Drug paraphernalia;
2. Nitrous oxide or any device used to dispense it as defined by state law and the City Code;
3. Cannabis, cannabis products, cannabis accessories, or edible cannabis products as defined in state or federal law;

4. Controlled substances, including marijuana where applicable, as governed by California Health and Safety Code Sections 11351, 11352, 11359, 11360, 11366, 11378, and 11379 as may be amended from time to time.
5. Flavored tobacco products and tobacco product flavor enhancer, as prohibited under state or federal law;
6. (Reserved).
7. Imitation tobacco products, including, but not limited to, candy cigarettes and bubble gum cigars;
8. Edible tobacco look-alike products, including, but not limited to, snacks packaged or marketed to resemble tobacco products;
9. Disguised vape or electronic smoking devices, including, but not limited to, those made to look like USB drives, pens, markers, phone cases, watches, lipstick, remote keys or other non-tobacco items.
10. Unlawful weapon sales, including, but not limited to, violations of California Penal Code Sections 17235 (switchblade knives over two inches), 20410 (ballistic knives), 21810 (brass knuckles) as may be amended from time to time, and any other applicable local, state or federal laws.

SECTION IV:

Section 5.100.060.H of the Orange Municipal Code, Business Taxes and Regulations – Tobacco Retailers – Prohibitions and Requirements, is hereby amended to read as follows:

5.100.060.H Prohibitions and Requirements - Premises Regulations.

1. The business must maintain a clearly designated front entrance for customers. All non-emergency public access must occur through this entrance.
2. Front entrance doors must remain unlocked during regular business hours, unless temporarily secured for safety or emergency response.
3. (Reserved).

SECTION V:

If any section, subdivision, paragraph, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each section, subdivision, paragraph, sentence, clause and phrase thereof,

irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION VI:

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this ____ day of _____, 2026.

Daniel R. Slater, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

APPROVED AS TO FORM:

Nathalie Adourian, City Attorney, City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the 26th day of May, 2026, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2026 was duly passed and adopted by the following vote, to wit:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange