



City Council Staff Report

Report Type: CONSENT CALENDAR

Lead Department: Public Works

Meeting Date: September 23, 2024

Report #:2409-3477

TITLE

Adoption of an Ordinance Updating Palo Alto Municipal Code Chapter 4.64 (Permits for Retailers of Tobacco Products) to Conform with County Amendments and Approval of the Updated Agreement Between the County of Santa Clara and City of Palo Alto for a Tobacco Retail Permit Program; CEQA Status – Not a Project

RECOMMENDATION

Staff recommends that Council:

1. Adopt an ordinance amending City of Palo Alto Municipal Code Chapter 4.64, Permits for Retailers of Tobacco Products to align the code with the Santa Clara County Tobacco Retail Permit Ordinance; and
2. Approve the updated Agreement Between the County of Santa Clara and City of Palo Alto for a Tobacco Retail Permit Program.

EXECUTIVE SUMMARY

The City of Palo Alto partners with the Santa Clara County Department of Public Health to administer the Palo Alto Municipal Code (PAMC) Chapter 4.64, Permits for Retailers of Tobacco Products.¹ The existing ordinance requires permits for tobacco sellers and restricts the sale of flavored tobacco and electronic cigarette products, among other provisions. The agreement between the County of Santa Clara and City of Palo Alto for a Tobacco Retail Permit (TRP) Program outlines each agency's roles and responsibilities of Tobacco Retail Permit Ordinance administration. Per the existing agreement, Palo Alto's ordinance must mirror the County's ordinance for the County to conduct its TRP administrative and enforcement responsibilities.

The proposed Ordinance revisions (Attachment A) clarify requirements and increase fines for noncompliant retailers; the revisions do not include any new restrictions on any tobacco products. The proposed Agreement revisions (Attachment B), update details about Agreement

¹ City of Palo Alto Municipal Code 4.64 Permits for Retailers of Tobacco Products;
https://codelibrary.amlegal.com/codes/paloalto/latest/paloalto_ca/0-0-0-64706

administration, and the roles and responsibilities of City and County staff in Ordinance oversight and enforcement.

BACKGROUND

Council approved the most recent version of the City of Palo Alto Tobacco Retailer Permit Ordinance (PAMC Chapter 4.64) on June 8, 2020.² Existing law requires tobacco retailers to obtain a permit (TRP), prohibits retailers from selling flavored tobacco and electronic cigarette products, and stipulates duties for signage, record keeping, and related details.

ANALYSIS

The proposed Ordinance revisions required by the County are administrative in nature and do not change any criteria for products that are prohibited from sale, or where items can be sold.

Updated Ordinance provisions include:

1. Fines up to \$2,500 and up to a 180-day suspension of a business's TRP permit for a second violation of the TRP Ordinance within a five-year period
2. Permanent permit revocation for a third Ordinance violation within a five-year period. Any business continuing to sell tobacco products after TRP revocation will be subject to additional fines
3. Increased penalties for retailers operating without a valid permit and the following related fines:
 - Up to \$2,500 and 30 days of permit ineligibility for an initial violation
 - Up to \$5,000 and one year of permit ineligibility for a second violation within a five-year period
 - Up to \$10,000 and permanent TRP ineligibility for each subsequent violation within a five-year period
4. Businesses that have their TRP suspended must post a prominent public notice at their business during the entire suspension period
5. Businesses must (1) consent to inspection by the County of all areas and records; and (2) comply with any impound or seizure order issued by the County. Violations of these provisions would be a basis for suspension/revocation of a TRP
6. If inspections reveal noncompliance with any of the Ordinance requirements, such that reinspection is needed to determine compliance, the cost of such reinspection will be billed to the retailer
7. Clarification that a retailer is liable for all enforcement-related fees and costs
8. Tobacco retailers are responsible for the actions of their employees relating to the

² City Council, June 8, 2020; Agenda Item #4; SR# 11372

<https://www.cityofpaloalto.org/files/assets/public/v/1/agendas-minutes-reports/reports/city-manager-reports-cmrs/year-archive/2020/id-11372-tobacco.pdf?t=62779.86>

sale and furnishing of tobacco products at the retail location; nothing in the Ordinance shall be construed to penalize the purchase, use, or possession of a tobacco product by any person not engaged in tobacco retailing

9. Businesses must examine an individual's identification to confirm the age of that person, regardless of appearance, prior to selling tobacco products to any person

FISCAL/RESOURCE IMPACT

There is no financial impact to the City in adopting this Ordinance revision. Under the Agreement with the County, the TRP is administered and primarily staffed by the County.

STAKEHOLDER ENGAGEMENT

The Santa Clara County Department of Health notified Palo Alto tobacco retailers about proposed Ordinance changes on May 20, 2024 and provided a three-week comment period.³ One retailer submitted questions about required age checks. The County provided answers to those questions.⁴ The City of Palo Alto also provided information about proposed Ordinance changes on the City's Smoking Ordinance webpage (www.cityofpaloalto.org/smokingordinance).

ENVIRONMENTAL REVIEW

Approval of the Ordinance and Agreement is not a project under the California Environmental Quality Act (CEQA) because it does not cause a direct physical change in the environment or a reasonably foreseeable indirect change in the physical environment.

ATTACHMENTS

Attachment A: Ordinance Amending PAMC Chapter 4.64

Attachment B: County-Palo Alto Amended and Restated TRP Agreement

APPROVED BY:

Brad Eggleston, Director Public Works/City Engineer

³ County of Santa Clara Public Health Department, May 20, 2024; Retailer Notification, <https://www.cityofpaloalto.org/files/assets/public/v/1/public-works/environmental-compliance/smoking-ordinance/2024-retailer-notification-for-trp-revisions.pdf>

⁴ County of Santa Clara Public Health Department, 2024 Answers to Retailer Questions, <https://www.cityofpaloalto.org/files/assets/public/v/1/public-works/environmental-compliance/smoking-ordinance/santa-clara-county-dept-of-health-answers-to-retailer-questions.pdf>