

# Early Consideration Response Form

Department Planning, Building, and Code Enforcement (PBCE) Rules Date June 11, 2025 Item C.2  
 Department Rep. Name/Ext. Rachel Roberts/535-7719 Councilmember Sponsorship Ortiz, Campos, Candelas, Cohen, Casey  
 Policy/Ordinance Subject Temporary Moratorium on Smoke Shops

## Staff Recommendation

☒ **GREEN** Adopt based on tradeoffs outlined on next page ☒ **YELLOW** Refer to Priority Setting or to Budget Process ☐ **RED** Recommend Council not adopt nominated idea ☐ **NEEDS CLARIFICATION OR MORE TIME TO EVALUATE**

## Staff Evaluation

Is this already underway in a department work plan? ☐ Yes ☒ No Is this time critical or an emergency? ☐ Yes ☒ No Will this require substantial resources, staffing, budget, or strategic support? ☐ Yes ☒ No

## Criterion to Determine Scale of Project Complexity

Project complexity is determined by scoring the project in each of the 3 criteria below and then summing the score.  
 a. Low Complexity is a sum of 6 or less.  
 b. Medium Complexity is a sum of 7 – 9. Total Score = 12  
 c. High Complexity is a sum of 10 or greater.

Scoring Criterion	Low Complexity				Medium Complexity				High Complexity			
	Estimated Duration	6 – 9 months	<input type="checkbox"/> = 1		9 - 18 months	<input checked="" type="checkbox"/> = 2			More than 18 months	<input type="checkbox"/> = 3		
	Organizational Complexity	Can easily be absorbed into existing work plan	<input type="checkbox"/> = 1		Planned work (future)	<input type="checkbox"/> = 2			Work not currently proposed	<input checked="" type="checkbox"/> = 3		
	(Internal)	Have staff with required skillset/knowledge	<input type="checkbox"/> = 1		Have staff with required skillset/ requires moderate research	<input checked="" type="checkbox"/> = 2			Do not have staff with required skillset/requires significant research	<input type="checkbox"/> = 3		
		Less than or equal 2 staff required	<input type="checkbox"/> = 1		3 - 4 staff required	<input checked="" type="checkbox"/> = 2			More than 5 staff required	<input type="checkbox"/> = 3		
DEPT. Required	(External)	1 Additional department; no community outreach required	<input type="checkbox"/> = 1		2 Other departments Involved; some community outreach required	<input type="checkbox"/> = 2			3 or more departments and/or external partners involved; significant community outreach required	<input checked="" type="checkbox"/> = 3		
	<input type="checkbox"/> Airport	<input type="checkbox"/> Auditor	<input type="checkbox"/> CMO	<input type="checkbox"/> OEDCA	<input type="checkbox"/> ESD	<input type="checkbox"/> Fire	<input type="checkbox"/> HR	<input type="checkbox"/> IT	<input type="checkbox"/> PRNS	<input checked="" type="checkbox"/> Police	<input type="checkbox"/> Retirement	
	<input checked="" type="checkbox"/> Attorney	<input type="checkbox"/> Clerk	<input type="checkbox"/> CMO – Budget	<input type="checkbox"/> Community Energy	<input type="checkbox"/> Finance	<input type="checkbox"/> Housing	<input type="checkbox"/> IPA	<input type="checkbox"/> Library	<input type="checkbox"/> PBCE	<input checked="" type="checkbox"/> PW	<input checked="" type="checkbox"/> DOT	

CMO Approval: /s/ Lee Wilcox Date 6/10/2025

Analysis
<b>Explain the rationale for staff recommendation, including any mitigating factors that need to be considered (recent legislative action, significant work plan changes, etc.). Please address the following as well.</b>
<p><b>GREEN LIGHT:</b> The Administration can implement this nominated idea under its current work plan. Item should be sent to Council to add to department work plan. (1) How will the idea be approached? (2) If adopted, what is its impact and/or tradeoff to the City Council Focus Area or to a department work plan, including strategic support? (3) What is the minimum viable scope to move the idea forward and reduce its complexity?</p> <p>Staff is currently managing several other outstanding Council Referral items related to the regulation and enforcement of Tobacco Retail License (TRL) businesses/Vape and Smoke Shops including a zoning ordinance amendment to add vape and smoke shops as an enumerated use requiring a Conditional Use Permit or other permit and increasing fines for violation of the TRL ordinance. As part of MBA #3 for the FY 2025-2026 Operating Budget, staff has recommended deferring this item to streamline efforts of a similar nature, optimize resources, and ensure timely completion of time sensitive priority initiatives. In addition, the Police Department, in coordination with the Planning, Building and Code Enforcement (PBCE) Department, has responded to Council direction by providing reports on this topic to the City Council on May 14, 2024, and to the PSFSS Committee on April 17, 2025. These reports addressed potential approaches for regulating and enforcing vape and smoke shops, as well as the sale of hemp products containing THC. This current proposal incorporates staff's continued efforts to address both recent and outstanding Council direction regarding TRL businesses and the regulation of vape and smoke shops.</p> <p>A primary goal of the proposed temporary moratorium is to reduce access to and impact of tobacco retailers and vape and smoke shops in our most vulnerable communities and on our residents citywide. Implementing policies such as the proposed temporary moratoriums requires staff capacity to make necessary findings and to carry out enforcement activities. A moratorium also implies that additional regulatory actions will follow after it expires. To ensure the City is properly staffed and funded to enforce such measures both during and after the moratorium period, staff is recommending a two-phased approach involving both "green lit" and "yellow lit" items. The recent Operational Assessment describes the increasing number of Code programs and policy initiatives over time, without a corresponding increase in staffing or resources to support that workload. While the Assessment includes recommendations to build long-term capacity, many of those improvements will not be implemented until the end of the fiscal year 2025-2026 or 2026-2027. In the meantime, the same core team continues to absorb all high-priority work. Additionally, funding for the Tobacco Retail License (TRL) program is based on a fee-for-service model, which currently supports only the required annual inspections of licensed businesses. Our increased efforts to address non-compliant or problematic businesses have already impacted our ability to complete these annual inspections. Assigning new work without additional resources will further hinder our capacity to fulfill existing TRL obligations.</p> <p>See further GREEN analysis on page 3.</p>
<p><b>YELLOW LIGHT:</b> The Administration recommends Council send this nominated idea to the Priority Setting Process or to the Budget Process due to (describe cost implications, workload impacts, or other factors).</p> <p>Completion of the below yellow lit items, including new fines and regulations, will be dependent on timing of other committed priority work items and staff capacity. During the 90-day moratorium, staff will be unable to work on the following:</p> <ul style="list-style-type: none"> <li>- Monitor progress and outcome of State's temporary ban on hemp products containing THC ending in September 2025</li> <li>- Develop ordinance amendments strengthening TRL regulation and closing loopholes regarding various aspects including but not limited to new products, product exemptions, storage of products, 21+ signage</li> <li>- Aligning the zoning ordinance with existing TRL regulations</li> <li>- Amending the fine schedule to increase TRL fines (existing Council direction to be completed as part of Operation Assessment Implementation Work Plan)</li> <li>- Continue annual proactive inspections and complaint response of TRL businesses and vape and smoke shops</li> </ul> <p>As noted above, the same core team continues to absorb all high-priority work, which limits the department's ability to manage additional demands. Thus, as proposed, staff anticipates impacts to existing Council direction, including the implementation of the Operational Assessment, the Abandoned Shopping Cart Pilot, the Codex software replacement project, and the new Vacant Building Ordinance. Given Code Enforcement's limited staffing to support policy work and a full work plan for the upcoming fiscal year, capacity to take on additional initiatives is extremely constrained. As a result, without additional resources, staff would need to shift between priorities, which will likely lead to delays in either the moratorium work or other key projects. Because of this, staff is yellow lighting this activity. However, if other prioritized projects are completed ahead of schedule next fiscal year, staff will re-evaluate shifting staff resources to this body of work.</p>
<p><b>RED LIGHT:</b> The Administration recommends Council not to adopt this nominated idea due to (describe reason implementation would be difficult if not impossible – conflict with other laws, etc.).</p>

## Analysis (Continued)

[Green light Analysis continued]

As such staff is proposing to implement the proposed temporary moratorium once the below “green lit” items are in place, including securing additional funding to support moratorium enforcement and solidifying internal and external partnerships. Green lit items proposed for implementation in the short term to ensure the moratorium is effective include:

- Explore an amendment to the existing City/County Public Health DOJ Tobacco Enforcement Grant to expand the scope to include enforcement of the moratorium and illegally operating businesses providing funding for this work;
- Once grant funding is established, onboard temporary staff such as a retire rehire to support targeted enforcement efforts; and
- Develop a memorandum of understanding between Code Enforcement and the Police Department to establish roles, responsibilities, and procedures in the enforcement of these businesses when criminal or illegal activity is observed such as the sale of illegal drugs.

To simplify the process and shorten the timeline for implementation, staff recommends a temporary citywide moratorium of new tobacco retail license businesses/vape and smoke shops lasting no more than 90 days from the date of adoption. Certain businesses, such as larger grocery and retail stores, are recommended for exemption. Limiting the duration and scope will reduce the amount of outreach and stakeholder engagement required, which would be more extensive for a longer-term moratorium. A moratorium exceeding 90 days would likely need more thorough engagement with key groups like Tobacco Retail License (TRL) businesses and tobacco companies. Additionally, the shorter duration and narrower scope will decrease the staff resources needed to enforce the moratorium effectively.

Anticipated steps to enact the moratorium include:

- Clarify Scope including impacted businesses and moratorium duration;
- Conduct research and benchmarking of existing ordinances, state law, and data to ensure compliance and support of required findings;
- Draft Moratorium Ordinance including purpose, definitions, prohibitions, enforcement provisions, time frame, etc.
- Conduct outreach, inform stakeholders, and receive feedback;
- Develop memorandum and final ordinance and bring to City Council for adoption; and
- Implement Moratorium including staff training, inspection, and enforcement.

Staff will also:

- Continue to conduct annual proactive inspections and complaint response of TRL businesses and vape and smoke shops; and
- Complete cross training efforts combining TRL and OSA inspections (existing Council direction to be included in Code Enforcement Implementation Work Plan Informational Memorandum, August 2025).

\*\*\*Importantly, this work plan is proposed based on the assumption that the Council Referral items recommended for deferral or removal in MBA #3 are approved as part of the FY 2025-2026 Operating Budget. If those items are not approved as proposed, the impact on existing staffing and workload will need to be re-evaluated.\*\*\*