



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Chris Burton

SUBJECT: Temporary Moratorium on
the Issuance of Tobacco
Retail Licenses

DATE: October 14, 2025

Approved

Date:

10/22/2025

COUNCIL DISTRICT: Citywide

RECOMMENDATION

Adopt an urgency interim ordinance establishing urgency measures to implement a temporary moratorium on the issuance of Tobacco Retail Licenses to businesses at new locations within San José.

SUMMARY AND OUTCOME

Staff is recommending that the City Council adopts an urgency interim ordinance establishing a temporary moratorium on new tobacco retailer, smoke shop, and smoking lounge permits issued under the San José Municipal Code Chapter 6.87, Tobacco Retail License (TRL). This short-term pause would allow the City of San José (City) to review and strengthen its tobacco retail regulations in response to increased complaints about unpermitted vape and smoke shop activity and growing concerns over youth access to nicotine and vaping products. During the moratorium, staff will evaluate updates to the City's licensing program, including, if necessary, expanding definitions to cover vape products, revising fees and penalties, assessing zoning and location restrictions—such as requiring Conditional Use Permits—and enhancing coordination between Planning, Building, and Code Enforcement Department and Police Department.

If adopted, the moratorium will take effect immediately for 45 days, with the option to extend up to two years under state law. Existing licensed retailers could continue operating and renew their permits, while new applications would be temporarily suspended. The outcome for San José would be a more modern, comprehensive regulatory framework for tobacco and vape retailers that better protects public health, prevents youth exposure, and ensures consistent enforcement across all retail establishments.

BACKGROUND

On June 11, 2025, the Rules and Open Government Committee directed the City Attorney and Code Enforcement Division staff in the Planning, Building and Code Enforcement Department to draft an ordinance enacting a temporary moratorium on approving and establishing new smoke shops citywide, focusing on addressing the overconcentration of such businesses in neighborhoods such as East San José and return to City Council with the ordinance in October 2025.

In a memorandum to the Mayor and City Council from Councilmembers Ortiz, Campos, Candelas, Cohen, and Casey dated May 22, 2025, the Councilmembers highlighted the growing concern over the number of smoke shops operating within the San José especially in East San José where neighborhoods are seeing a disproportionate concentration of smoke shops within close proximity to schools, youth serving facilities, and residential communities. The memorandum also shared the growing concerns of public health impacts, youth access to tobacco and vaping products, and potential for businesses to contribute to neighborhood blight or crime. The memorandum cited the 2025 Latino Health Assessment¹, which found concerning disparities in East San José, including a higher density of tobacco retailers in 2023 compared to the rest of the county raising significant public health concerns for Latino and other underserved communities such as potential for increased exposure to tobacco products, which can lead to higher smoking rates, related illnesses, and broader impacts on community well-being.

The Councilmembers also expressed concern that the City currently does not have adequate regulatory controls in place to manage the density of smoke shops and without intervention, new businesses will continue to open, further oversaturating already highly impacted areas.

In addition, the Police Department, in coordination with the Planning, Building, and Code Enforcement Department, responded to City Council direction by providing reports on this topic to the City Council meeting on May 14, 2024, and to the Public Safety, Finance and Strategic Support Committee on April 17, 2025. These reports included potential approaches for regulating and enforcing vape and smoke shops, as well as the sale of hemp products containing tetrahydrocannabinol).

¹ <https://files.santaclaracounty.gov/exjcpb1751/2025-05/lhareport-5-05-2025.pdf?VersionId=x29kOMOkTjA3JoztYS5K8tbKUKkgFQrs>

Current Tobacco Retail License Regulations

Currently the City regulates Tobacco Retail Businesses under Chapter 6.87, TRL of the San José Municipal Code. The TRL Ordinance No. 28875 first became effective on February 11, 2011. The ordinance prohibits retailers from selling tobacco products or paraphernalia without a valid tobacco retail license. On September 28, 2021, the City Council amended the ordinance to ban the sale of flavored tobacco and e-cigarettes, including menthol. The amendment also restricted new tobacco retailers from opening within 500 feet of existing ones or within 1,000 feet of schools, parks, and other youth-sensitive areas. It eliminated license exemptions for adults-only shops and raised the minimum purchase age to 21 bringing local law in line with state standards and strengthening protections for youth and vulnerable communities.

Current Enforcement

To ensure regulatory compliance, the Code Enforcement Division oversees the Tobacco Retail License Program fully funded by the annual permit license fees. The Tobacco Retail License Program inspector reviews all new license applications for approval or denial, oversees annual license renewal, conducts a minimum of one proactive annual inspection of each business, and responds to complaints from the public regarding unpermitted businesses, products, and operations. Code Enforcement also reconciles the TRL business roster with State Licensed Tobacco retailers each year to ensure the program is capturing all businesses subject to the ordinance.

When businesses are found to be in violation, the property owner and/or business are issued citations and/or a compliance order to address the unpermitted activity. If illegal drug sales are observed or there are reports of illegal activity occurring, Code Enforcement will coordinate with the Police Department for appropriate follow-up. If a business is found to be selling tobacco products without a valid tobacco retail license, staff conducts enforcement to ensure the business either obtains a license, if eligible, or ceases tobacco product sales. For the most egregious and repeat violators, the City may revoke the retailer's tobacco license, prohibiting any further legal sales of tobacco products, and may also coordinate with the City Attorney's Office to pursue legal action, such as issuing a cease-and-desist letter or filing a public nuisance lawsuit. Code Enforcement also works in conjunction with the state to coordinate enforcement efforts.

In Fiscal Year 2024-2025, staff completed 427 or 75% of the required proactive annual inspections, issued 61 citations, responded to 12 complaints, approved 18 new license applications, and canceled 14 licenses. As of September 1, 2025, there were 551 TRL holders in San José.

Despite these continued enforcement efforts, recent data analysis shows an increase in not only businesses operating without a license but also an increase in illegal flavored tobacco sales, sale of cannabis and cannabis related products, sale of illegal drugs such as mushrooms and whippets, and evidence of other illicit activity occurring, such as possession of firearms.

ANALYSIS

Over the past several years, Code Enforcement staff has seen an increase in the number of unlicensed businesses, and businesses selling prohibited products such as flavored tobacco products, cannabis products, and/or illegal drugs. For example, public complaints increased significantly over time, with just three complaints in FY 2021-2022, rising to 15 in FY 2022-2023, 17 in FY 2023-2024, 12 in FY 2024-2025, and five already received in the current fiscal year (see Table A). Most prevalent among the complaints received by Code Enforcement are businesses operating without a tobacco retail license and sale of flavored products (see Table B).

Table A: Number of Complaints Received by Fiscal Year

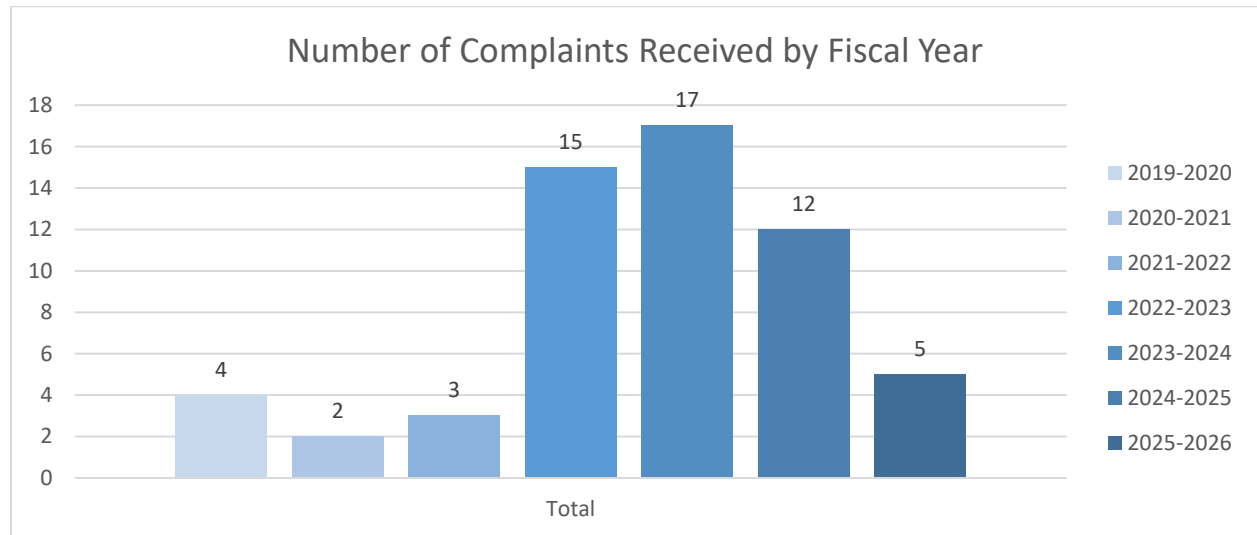
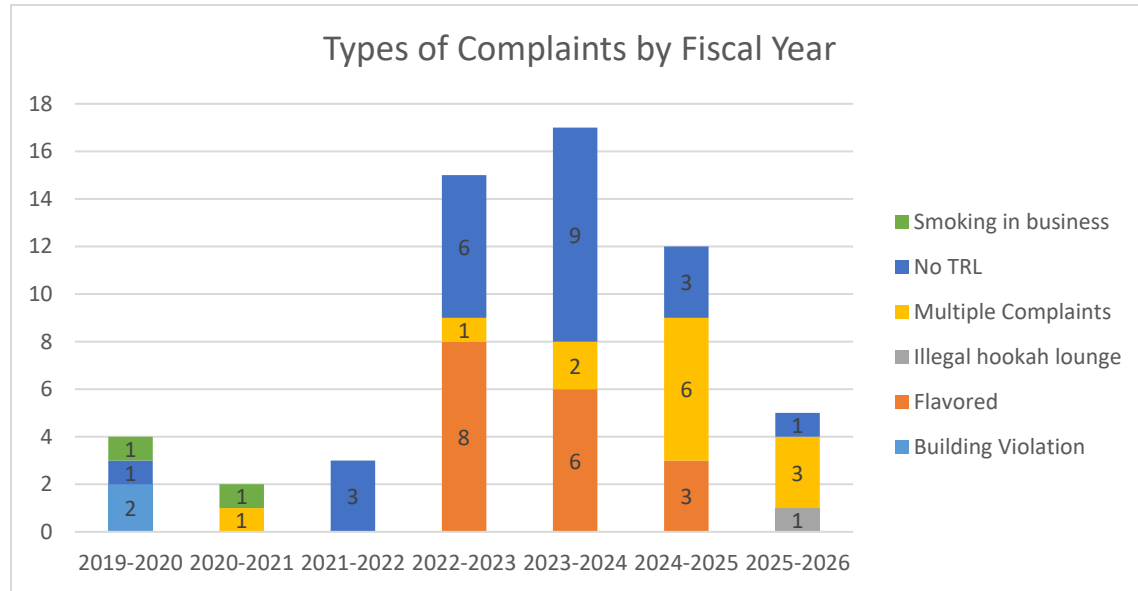
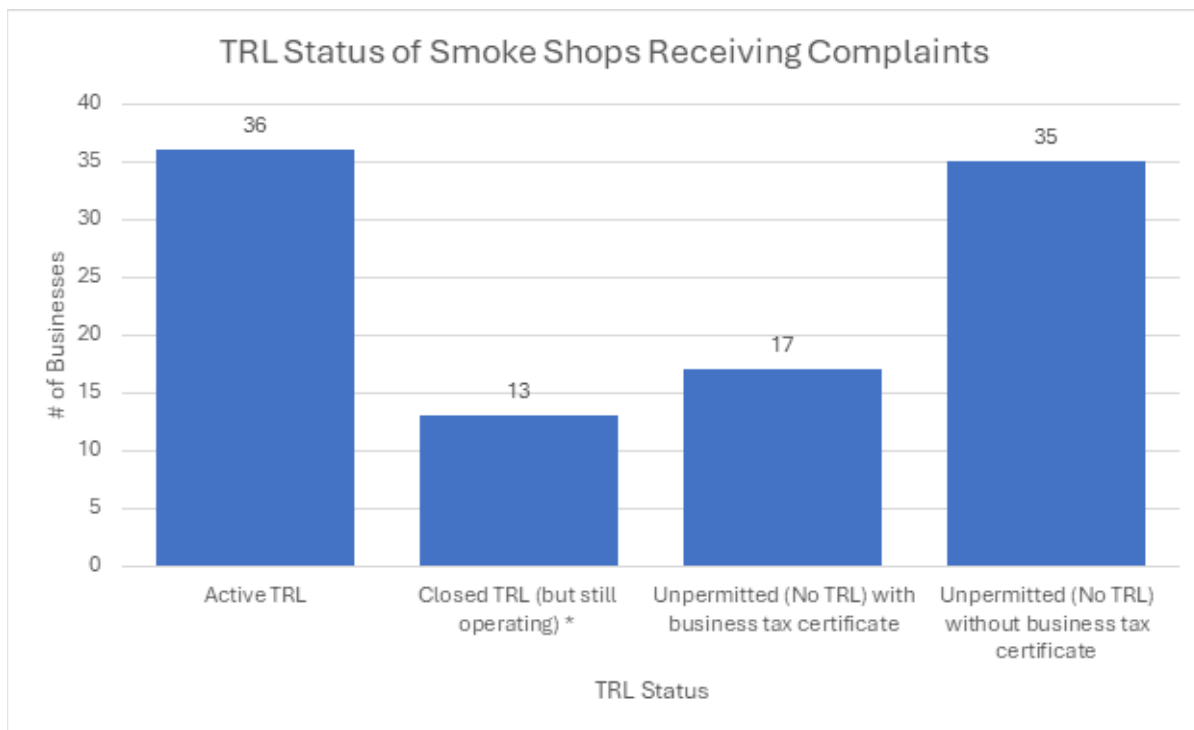


Table B: Types of Complaints by Fiscal Year



In recent months, Code Enforcement also received a list of businesses reported to the Police Department by the public for alleged illegal cannabis sales. When staff compared these reports with Code Enforcement’s complaint data, they found that, as of September 2025, out of the 101 unique businesses that had been identified, 30 are operating without a TRL, and another 35 are operating without a TRL and a Business Tax Certificate (see Table C).

Table C: TRL Status of Smoke Shops Receiving Complaints



In addition to public complaints, staff has also directly observed the sale of prohibited products including cannabis items, mushrooms, whippets, flavored tobacco, and other items at various vape and smoke shops across San José, including some businesses with a TRL.

Proposed Tobacco Retail License Moratorium

A primary goal of the proposed temporary moratorium is to address the growing proliferation of tobacco, vape, and smoke shops throughout San José—particularly in areas that are disproportionately impacted by health inequities. The primary goal is to reduce access to tobacco and vape products, protect youth and vulnerable communities, and provide staff the necessary time to develop and implement a stronger regulatory and enforcement framework.

Adoption of a moratorium by urgency ordinance is authorized under California Government Code Section 65858, which allows a legislative body to impose interim measures that prohibit uses potentially in conflict with contemplated updates to the City’s General Plan, zoning regulations, or other policies. Such an ordinance requires approval by at least eight members of the City Council and must include findings demonstrating a current and immediate threat to public health, safety, or welfare. Once adopted, the moratorium would initially take effect for 45 days, with the potential for extensions up to two years as permitted by law.

Threat to the Public Safety, Health, or Welfare

Recent increases in unpermitted vape and smoke shop activity, sales of prohibited or illegal products, and the clustering of such retailers near schools and residential areas constitute a current and immediate threat to public health, safety, and welfare. Under both state law and City Charter Section 605, these conditions justify the adoption of an urgency ordinance. Without interim controls, additional TRL approvals could exacerbate community health risks and undermine local enforcement efforts.

To protect the community, staff recommends adoption of the temporary moratorium to provide time for a comprehensive review and policy development. During this period, staff will coordinate with the City Attorney's Office, the Police Department, California Department of Tax and Fee Administration, Santa Clara County District Attorney and the Public Health Department, and Sheriff's Office, to enhance enforcement and compliance mechanisms. The moratorium will also allow the City to consider whether to strengthen regulations on vape and smoke shops or prohibit them altogether.

During the 45-day moratorium, staff will begin work, including but not limited to:

- 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;
- Amend the fine schedule to increase TRL fines (*existing City Council direction to be completed as part of fine study*);
- Reconcile the City's list of businesses with the state roster of permitted businesses and ensure all eligible businesses obtain a TRL;
- Conduct enforcement on businesses operating in violation, including but not limited to ceasing the sale of tobacco, revoking a TRL, ceasing operations, or legal action as appropriate;
- Continue annual proactive inspections and complaint response of TRL businesses, and vape and smoke shops;
- Collaborate with the Santa Clara County Public Health Department to expand the scope of the California Department of Justice grant, enabling targeted enforcement against unpermitted tobacco, vape, and smoke shop businesses; and
- Monitor progress and outcome of the state's recent ban on hemp products containing tetrahydrocannabinol.

Racial Equity Impact Analysis

The moratorium directly responds to community concerns over public health, youth exposure, and neighborhood safety in areas with high concentrations of smoke shops.

The primary beneficiaries of the proposed temporary moratorium are residents, particularly youth and families in East San José and other communities disproportionately impacted by tobacco and vape retail concentration. These neighborhoods, which tend to experience higher densities of smoke shops and related public health risks, will benefit from reduced tobacco retail businesses, exposure to tobacco and vaping products, and potential for stronger regulatory oversight.

Businesses and property owners seeking to open new tobacco or vape shops may experience economic burdens during the moratorium. Certain communities such as immigrant or small business owners may be disproportionately impacted by these restrictions. However, since the moratorium does not affect existing licensed retailers, long-term negative impacts are expected to be limited.

Potential unintended consequences include an increase in unlicensed operators and businesses attempting to evade the moratorium. There could also be short-term economic effects on business owners seeking to begin selling tobacco products.

EVALUATION AND FOLLOW-UP

Staff will prepare a report at least 10 days prior to the expiration of the initial moratorium period detailing the measures taken to address the conditions that led to its adoption. The outcome of this process will guide the City Council's consideration of long-term policy options for regulating or restricting tobacco and vape retailers citywide.

COST SUMMARY/IMPLICATIONS

The urgency ordinance, if adopted, would be enforced pursuant to routine Code Enforcement efforts, which is included within the City's budget. Currently, the ordinance is not expected to have any significant fiscal impact on the General Fund.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

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PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the November 4, 2025 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/

Chris Burton

Director, Planning, Building, and Code
Enforcement Department

For questions, please contact Rachel Roberts, Deputy Director, Planning, Building, and Code Enforcement Department, at rachel.roberts@sanjoseca.gov.