



# Memorandum

**TO:** CITY COUNCIL

**FROM:** Mayor Sam Liccardo  
Vice Mayor Chappie Jones  
Councilmember Pam Foley  
Councilmember Magdalena Carrasco  
Councilmember David Cohen

**SUBJECT:** SEE BELOW

**DATE:** September 24, 2021

Approved

Date

9/24/2021

**SUBJECT:** AMENDMENT TO CHAPTER 6.87-TOBACCO RETAIL LICENSE  
OF TITLE 6 OF THE SJMC IN ALIGNMENT WITH CITY COUNCIL  
PRIORITY #12

## RECOMMENDATIONS

Approve staff's recommendation with the following amendments:

1. Include language in the ordinance clarifying enforcement will be aimed at tobacco retailers.
2. Direct Code Enforcement to continue to perform a minimum of one annual compliance check per year.
3. Direct the Administration to search and apply for grants at the Federal, State, or County levels of government and any private or philanthropic organizations that might allow for a more robust enforcement program, including funding for decoy enforcement programs.
4. Direct staff to return to the Neighborhood Services and Education Committee within 12 months after full implementation analyzing the ordinance's effects on tobacco retail

licenses throughout San José with a special focus on tobacco retail licenses that are within 1,000 feet of a youth-sensitive receptor.

5. Direct staff to propose amendments to the fine schedule to increase the penalty for violations of this ordinance.
6. Direct staff to report back to Council through an information memorandum or informal presentation regarding efforts to cross-train inspectors to enable a single inspector to provide multiple inspections (e.g., alcohol, tobacco, and code) for a single business, and thereby improve efficiency of code operations. Fees should be accordingly adjusted to reflect partial cost recovery proportionate to the cost of inspection of each subject.

## **BACKGROUND**

Nearly 90% of smokers pick up the habit of smoking by age 18. Across the country, noted by parents and child advocates alike, e-cigarettes and flavored tobacco have become a convenient vice of choice amongst too many children. According to the 2017-18 California Student Tobacco Survey, eight in ten Santa Clara County teens who use tobacco products currently use a flavored product such as a vape pen or menthol cigarette. An ordinance aimed at reducing this dangerous attraction for our youth is consequential to their health and wellbeing.

The danger of flavored tobacco however does not just impact our children. It impacts various affinity populations too. Menthol has become one of the most popular tobacco choices for certain marginalized communities. From 1980 to 2018, menthol cigarettes alone were responsible for 10.1 million new smokers, 378,000 premature deaths, and 3 million life years lost across the United States. Amongst African Americans, 45,000 lives are prematurely and unnecessarily lost from tobacco-caused diseases. By one study, it's estimated that 85% of these individuals smoked menthol cigarettes. Given menthol-flavored tobacco's negative impact on various populations, it is welcome news to see a ban menthol flavors included in the proposed ordinance.

By aligning the City of San José's flavored tobacco ban ordinance with state and federal regulations, we believe it is possible to achieve a robust set of rules that disallow flavored tobacco products from becoming more pervasive throughout our community.

Still, efforts must be made to enact an ordinance with teeth. A strong Tobacco Retail License (TRL) program will include clear enforcement protocol to assist retailers with compliance and ensure the policy's successful implementation. San José currently has only one enforcement officer for 600+ retailers and the existing TRL lacks an enforcement protocol. For the licensing program to be effective in deterring illegal tobacco sales to youth, the TRL must align with the Public Health Law Center's model policy in the following ways:

- Ensure the license fee adequately covers the cost of this program and direct staff to continue to apply for grants aimed at increasing enforcement.

COUNCIL AGENDA

September 28, 2021

**Subject: Amendment to Chapter 6.87-Tobacco Retail License of Title 6 of the SJMC in Alignment with City Council Policy Priority #12**

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- Require a minimum of one compliance check per store per year to ensure the City regularly monitors stores for compliance with the minimum legal sales age law, verifies the policy's intent is upheld by retailers, and adjusts the compliance check frequency to allow for a more accurate fee calculation.
- Acknowledge the licensee is responsible for any act of their employees and that the licensee assumes monetary responsibility for any fines and will be responsible for any violations of this ordinance.
- Clearly state "Nothing in this section shall be construed to penalize the purchase, use or possession of a tobacco product by any person not engaged in tobacco retailing."

*The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.*