



AGENDA REPORT

Department: Planning
Prepared by: Martin Reeder, AICP – Acting Director of Community Development
Meeting Date: Tuesday, August 19, 2025
Approved by: Scott W. Huth, Interim City Manager

SUBJECT:

Public Hearing – Amendment of NCMC 9.38 establishing a Tobacco Retail License Program

RECOMMENDATION:

Provide Feedback to Staff and/or Introduce the Ordinance entitled, “An Ordinance of the City Council of the City of National City Amending Title 9 of the National City Municipal Code by Amending Chapter 9.38 Pertaining to Tobacco Retailer Licensing and Restricting the Sale, Display and Promotion of Tobacco to Youth.”

BOARD/COMMISSION/COMMITTEE PRIOR ACTION:

Not Applicable.

EXPLANATION:

At the meeting of January 21, 2025, the City Council directed staff per a Policy 105 request to consider development of an Ordinance amending Chapter 9.38 to include a Tobacco Retail License program. Staff returned with a staff report on March 4, 2025 and was directed to bring back an Ordinance amending the chapter and creating a Tobacco Retail License Program.

Chapter 9.38 of the Municipal Code – Restricting the sale, display, and promotion of tobacco products or cigarettes to minors – was adopted in 2000 and amended in 2003 (Exhibit A). This chapter contains regulations related to product placement within retail locations located within a thousand feet of any school, playground, recreation center or facility, childcare center, or library. Advertisement of tobacco products within one thousand feet of the same is prohibited. Signage is also required stating that the sale of tobacco products and cigarettes to persons under twenty-one years of age is prohibited by law and subject to penalties.

In addition to the regulations contained in Chapter 9.38, Title 18 (Zoning) also contains regulations pertaining to tobacco specialty businesses, defined as a business with more than forty percent of the floor area devoted to the use, display, and/or sales of tobacco products and/or paraphernalia. Chapter 18.30.230 requires a Conditional Use Permit for such a use.

In 2018 the City Council adopted amendments to Chapters 9.37 (Prohibition of Smoking in Open Air Dining Areas), 9.38, and Chapter 10.52 (Regulations for the use of municipal parks, playgrounds and golf courses). These amendments generally amended definitions of tobacco products to include electronic cigarettes.

In California, it is illegal for retailers and clerks to sell tobacco products to anyone under the age of 21. This law applies to the sale of traditional tobacco products like cigarettes as well as to the sale of electronic smoking devices like e-cigarettes and tobacco product paraphernalia. There is also a requirement for all retailers that sell electronic smoking devices in California to apply to the

California Department of Tax and Fee Administration (CDTFA) for a license. However, this is for taxation purposes. California law also now prohibits the sale of most flavored tobacco products, including e-cigarettes and menthol cigarettes. This law went into effect on December 21, 2022.

This Code Amendment request was made via a Policy 105 action that was initiated based on communication with National City For Better Health, in collaboration with SAY San Diego, administrators of the San Diego Smoke-Free Project, which encouraged adoption of a Tobacco Retail License (TRL) policy. The TRL program is aimed at ensuring local and state tobacco laws are being followed. The program, while containing rules already encompassed at the state level, would place the administrative and enforcement burden for compliance with the City. The intention of the program is for it to be supported through license fees. The main components of a TRL include:

- No new license within a thousand feet of youth-oriented facilities
- No new license within a thousand feet of another tobacco retailer
- No new license within a thousand feet of a cannabis retailer
- Total number of retail licenses limited to one per 2,500 residents
- No sales of flavored tobacco products
- Packaging, labeling, and pricing consistent with manufacturer's specifications and applicable federal requirements
- Annual renewable permit
- No transfer of license between location or person
- Compliance monitoring

All other components of the existing Municipal Code sections are maintained in some form in suggested language provided by SAY San Diego and incorporated in the attached Draft Ordinance (Exhibit B). The license fees would need to be determined and approved by City Council, and will be incorporated into the City's fee schedule.

Per the Draft Ordinance language, all lawfully operating retailers would be "deemed approved" subject to receipt of a Tobacco Retail License and compliance with basic standards such as; maintenance of license, no cessation of sales for more than 60 days, no substantial change in premises or operation, compliance with other requirements (e.g., state, federal licensing).

Based on an assessment by SAY San Diego, there are 54 existing tobacco retailers in the City. Based on their initial one license per 2,500 residents suggestion, only around 22 new licenses would be able to be approved (based on an approximate current population of 55,000). This would mean that, assuming the majority of existing retailers get a license, no new tobacco retail licenses would be permitted without attrition. However, staff is suggesting that a limitation of one license per 800 residents may be more appropriate. The current number of licenses equates to about one per 1,000 people. Additionally, there is economic benefit that the City realizes from the legal and responsible sale of tobacco. Therefore, it may be preferable to not only bring the existing 54 retail outlets into compliance, but also to grow the number of licensees in the program if there is demand. It should be noted that the City's daytime population is significantly larger than our stated population, which creates an opportunity to capitalize from sales to visitors.

Of note is the suggestion for each licensed premises to be checked annually, as well as least two compliance checks (decoy checks) per year. While this is potentially good policy, having an absolute requirement memorialized in an Ordinance may be problematic given that the number of existing retailers in the City, which would mean more than one inspection per week. Depending on priorities at the time, the ability to maintain that level of inspection frequency would be dependent on workload and staff positions.

Other cities in San Diego County that have a tobacco retail license program include Chula Vista, El Cajon, Escondido, Lemon Grove, Oceanside, San Diego, San Marcos, Solana Beach, and Vista. The County of San Diego also has its own program. For purposes of previous reports, staff looked at the Chula Vista and County programs.

The City of Chula Vista program is administered by the Police Department and costs \$322 each year. Compliance checks are required every two years. Licensees are required to maintain a California Cigarette and Tobacco Products Retailer's License in addition to a City business license and Tobacco Retailers Permit. The County of San Diego program costs \$730 per year and requires compliance checks, including decoy operations, once a year.

If the City Council opts to adopt this ordinance and create a Tobacco Retail License program, staff suggests a fee closer to that of the County of San Diego (\$730), but a compliance schedule (with decoy operations as an optional component dependent on workload and staff levels/priorities) similar to Chula Vista (checks at least once every two years). The language in the draft ordinance is as follows, which mirrors the suggested language by SAY San Diego:

The city shall conduct up to two compliance checks per 12-month period that involves the participation of persons between the ages of 18 and 20 to enter licensed premises to attempt to purchase tobacco products.

This language does not fully commit the City to two "decoy" checks per year, but this is a more likely outcome if the fee charged for licensing is commensurate to the anticipated time spent and cost of compliance. It should also be noted that code compliance staff will generally be tasked with visiting each retailer on a regular basis (likely once annually). Therefore, staff is suggesting that the fee for a Tobacco Retail License be set at \$700.

FINANCIAL STATEMENT:

The license fee of \$700 will pay for staff time associated with business inspections. Based on the 54 existing retail outlets selling tobacco, the total annual fee collected would amount to approximately \$37,800, which would cover the cost of 54 annual business inspections and allow for a decoy compliance check program to augment staff inspections.

RELATED CITY COUNCIL 2020-2025 STRATEGIC PLAN GOAL:

Health, Environment, and Sustainability

ENVIRONMENTAL REVIEW:

This is not a project under CEQA, and is therefore, not subject to environmental review. CCR15378; PRC 21065.

PUBLIC NOTIFICATION:

The Agenda Report was posted at least 72 hours before the Regular Meeting date and time, and 24 hours before a Special Meeting in accordance with the Ralph M. Brown Act.

ORDINANCE:

First Reading

EXHIBITS:

Exhibit A – Current Chapter 9.38

Exhibit B – Draft Ordinance