



MEETING DATE: 08/04/2025

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: JIM SADRO, CITY MANAGER

By: Susan Kim, Director of Community & Economic Development

SUBJECT: APPROVE INITIATION OF AMENDMENTS TO THE LA HABRA MUNICIPAL CODE RELATED TO SMOKE SHOPS AND DIRECT STAFF TO PREPARE AN ORDINANCE ESTABLISHING A MORATORIUM ON SMOKE SHOPS IN THE CITY OF LA HABRA

RECOMMENDATION:

That the City Council:

A. Direct staff to initiate amendments to the La Habra Municipal Code related to Smoke Shops; and,

B. Direct staff to prepare an Urgency Ordinance to establish a temporary moratorium on Smoke Shops in the City of La Habra.

DISCUSSION:

On April 7, 2025, during City Council comments, Councilmember Gomez made a motion, seconded by Mayor Pro Tem Medrano, for staff to place on a future City Council agenda a report discussing the feasibility of placing a moratorium on new "Smoke Shops" in the City of La Habra. Public comments regarding this matter were subsequently received at the April 21, 2025, and July 21, 2025, City Council meetings; and on May 12, 2025, during the Planning Commission public hearing for the Zone Change related to Conditional Use Permits and Minor Conditional Use Permits. For the purpose of this staff report, and because "Smoke Shops" is not a defined term in the La Habra Municipal Code (LHMC), when referring to "Smoke Shops", staff are generally defining the use with the same definition used by the City of Gardena for "Significant Tobacco Retailers", which refers to a commercial location where the principal or core business is selling tobacco products, tobacco paraphernalia, or both, as evidenced by any one or more of the following:

- 20% or more of the floor/display area devoted to tobacco products/paraphernalia;
- 67% or more of gross sales are from these types of products; or,
- 50% or more of transactions at the location include these types of products.

This staff report provides an overview of the requirements and regulations related to this use in the LHMC and under State law, the number of Tobacco Retailers that are currently licensed to operate in La Habra, and an overview of how some other cities are addressing this type of use. Based on the information contained in this report, staff recommends that the City Council direct staff to initiate amendments to the LHMC to address "Smoke Shops" and prepare an Urgency Ordinance to establish a temporary moratorium on Smoke Shops.

La Habra Municipal Code

While "Smoke Shops" is not a term found in the LHMC, "Tobacco Retailers" are addressed in LHMC Chapter 9.02 (Regulation of the Sale of Tobacco Products) of Title 9 (Public Peace and Welfare). This chapter defines a "Tobacco Retailer" as any person or governmental entity that operates a store, stand, booth, concession, or other place where sales of tobacco products are made to purchasers for consumption or use. Chapter 9.02 regulates the sale of tobacco products, including prohibitions on selling to minors, requirements for plainly visible signs at the point of purchase stating age restrictions (under 18) and photo identification requirements for purchasers appearing under 27, and a ban on self-service displays and tobacco vending machines. Although Chapter 9.02 regulates the manner in which tobacco may be sold, it does not identify where it may be sold. The full text of Chapter 9.02 is provided as Attachment 1.

Chapter 9.04 (Drug Paraphernalia Sale and Display) of Title 9 (Public Peace and Welfare) of the LHMC also addresses

some of the products that might be found in a "Smoke Shop." Chapter 9.04 refers to California Health and Safety Code (HSC) Section 11364.5 to define "Drug Paraphernalia" as "...all equipment, products, and materials of any kind which are intended for use or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance." The full text of HSC Section 11364.5, which provides a list of products that meet the definition of "Drug Paraphernalia," is provided as Attachment 2.

Chapter 9.04 (Drug Paraphernalia Sale and Display) requires businesses that sell Drug Paraphernalia to keep these products in a separate room or enclosure, in such a manner that they are not visible from any other portion of the premises, and in a location that excludes access by persons under the age of 18, unless accompanied by a parent. Any such violation of these requirements constitutes grounds for revocation of any business license issued by the City, following a hearing before the City Council. The full text of Chapter 9.04 is provided as Attachment 3.

Section 12.28.140 (Smoking Prohibited) of LHMC Chapter 12.28 (Parks) states that it is unlawful for any person at any time to smoke in the following places:

- a. City parks;
- b. City park parking lots;
- c. Within twenty feet of any city park;
- d. Within twenty feet of any city park parking lot; and
- e. Within twenty-five feet of any playground or tot-lot sandbox area.

Table 18.06.040.A - Land Use Matrix of Title 18 (Zoning) of the LHMC identifies the zone in which various types of land use are permitted, conditionally permitted, or not permitted. However, the Land Use Matrix does not specifically address Tobacco Retailers. As such, City Planning staff currently treat Tobacco Retailers as General Retail uses for permitting purposes, meaning they are not subject to specific zoning requirements for their location or operation beyond those for General Retail. Pursuant to Table 18.06.040.A - Land Use Matrix of Title 18 (Zoning) of the LHMC, General Retail uses are permitted within commercial zones, require a conditional use permit (CUP) in industrial zones, and are not permitted in the City's office and residential zones. The Land Use Matrix is provided as Attachment 4.

Although the Land Use Matrix does not specifically address Tobacco Retailers, it does identify that "Smoking Lounges" require a CUP in most of the same zones where General Retail uses are permitted. LHMC Section 18.12.170 (Smoking Lounges) defines a "Smoking Lounge" as a business establishment dedicated, in whole or in part, to the smoking of tobacco, including cigar lounges, hookah cafés, tobacco clubs, or tobacco bars. Smoking Lounges are permitted subject to the approval of a CUP in the C-1, C-2S, C-2, C-3, SP-1, and PC-I zones. Smoking Lounges are also subject to location restrictions, such as being located at least 200 feet from any residential zone boundary and 1,000 feet from any educational institution. There are currently no permitted Smoking Lounges within the City of La Habra. The full text of LHMC Section 18.12.170 (Smoking Lounges) is provided as Attachment 5.

California State Law

California has some of the most stringent age-related tobacco laws in the country. In 2016, the state raised the minimum legal age to purchase or possess tobacco products from 18 to 21, aligning with the federal Tobacco 21 law enacted in 2019. This applies to all tobacco products, including cigarettes, cigars, smokeless tobacco, and electronic smoking devices. Retailers must verify a purchaser's age before completing a tobacco sale, typically by checking government-issued identification. Businesses that fail to enforce these restrictions face escalating fines and potential license suspensions. The STAKE (Stop Tobacco Access to Kids Enforcement) Act mandates undercover compliance checks conducted by the California Department of Public Health to ensure retailers do not sell to underage individuals. The STAKE Act is codified in Sections 22950-22964 of the California Business and Professions Code (BPC) and provided as Attachment 6. BPC Section 22957 allows local agencies to conduct inspections and assess penalties for violations of the STAKE Act.

Most recently, Assembly Bill (AB) 3218 (Wood, Chapter 849, Statutes of 2024) and Senate (SB) 1230 (Rubio, Chapter 462, Statutes of 2024), which strengthen California's flavored tobacco laws, went into effect on January 1, 2025:

- Requiring the California Attorney General to create an Unflavored Tobacco List (UTL) of unflavored products legal for sale in California
- Prohibiting online and delivery sales of illegal flavored tobacco products
- Requiring tobacco sellers and deliverers to comply with all state and local tobacco laws that apply to local retailers where the products are shipped
- Allowing the California Department of Tax and Fee Administration (CDTFA) and other enforcing agencies to seize illegal flavored tobacco products found during inspections
- Updating the definition of "characterizing flavor" to include products that produce a cooling sensation
- Updating the definition of "nicotine" to include nicotine analogs
- Increasing penalties for noncompliant retailers
- Updating penalties for retailers selling to minors

As noted above, California imposes extensive regulations on tobacco sales. In addition, businesses must obtain a California Cigarette and Tobacco Products Retailer's License from the California Department of Tax and Fee Administration (CDTFA). This license, established under the California Cigarette and Tobacco Products Licensing Act of 2003, and codified in Sections 22970-22991 of the California Business and Professions Code (BPC), ensures compliance with state tax laws and sales restrictions. It must be renewed annually, and failure to maintain proper licensure can result in product confiscation and business closure. Retailers must obtain a separate license for each location where they will sell cigarettes or tobacco products. BPC Section 22971.3 also allows cities to require their own permitting or licensing requirements, often referred to as "Tobacco Retail Licenses" or "TRL", in addition to the State license, so that jurisdictions can suspend or revoke the local license for any violation of state or local tobacco control law. BPC Sections 22970-22991 are provided as Attachment 7.

According to the Policy Evaluation Tracking System (PETS) and the American Nonsmokers' Rights Foundation (ANRF), as of January 2024, at least 230 municipalities in California require a TRL (see Attachment 8), including the cities of Buena Park, Santa Ana, Stanton and Westminster in Orange County. PETS and ANRF also provide a matrix of selected policy provisions that have been adopted in 149 of these 230 municipalities, including prohibiting free samples and discounted products (see Attachment 9).

Tobacco Retailers in La Habra

According to CDTFA records, in 2024 there were 68 locations within the City of La Habra that are licensed by the State of California for the retail sale of tobacco (see Attachment 10). Retailers range from large grocery stores to gas stations and convenience markets, to retailers that appear to primarily sell tobacco, as well as two doughnut shops. Using the CDTFA list and the City's business license records, staff identified 20 retailers that appear to sell tobacco products as their primary category of merchandise. These retailers are shown in Table 1 below, which also identifies when these businesses opened. The first six retailers were established over a 10-year period, from 2008 to 2018; however, an additional 14 new retailers have opened in the past five years, indicating that these types of businesses are rapidly proliferating in the City.

Table 1: Existing Tobacco Retailers as Primary Category of Merchandise

#	Name	Address	Date Opened
1.	La Habra Tobacconist	1484 W Whittier Boulevard	1/1/2008
2.	Smoke House #1	2121 W Imperial Highway, Suite B	12/1/2008
3.	Beach & Lambert Water & Smoke	681 S Beach Boulevard, Unit A	11/3/2010
4.	Wonderland Smoke Shop	1230 W Imperial Highway, Suite M	2/1/2012
5.	La Habra Smoke Shop	919 N Harbor Boulevard, Suite B	7/30/2014
6.	M & M Cigars and Tobacco	1581 W Whittier Boulevard	10/11/2018
7.	El Beso Cigars ¹	581 W La Habra Boulevard	3/10/2020
8.	G D Smoke Shop	665 S Beach Boulevard	10/15/2021
9.	Lambert Smoke Shop I	1403 E Lambert Street, Suite L	3/9/2022
10.	La Habra Smoke Shop	150 W La Habra Boulevard	4/1/2022
11.	AMK Smoke Shop & More	376 N Harbor Boulevard	4/18/2023
12.	Smoke Zone Cigar and Funky Exotic Snacks	1530 S Harbor Boulevard	11/28/2023
13.	Smoken Smoke Shop	2420 W Whittier Boulevard	1/1/2024
14.	Upsky Smoke Shop	751 E Whittier Boulevard	6/18/2024
15.	Wake N Vape	1861 W La Habra Boulevard	7/8/2024
16.	Showtime Smoke and Vape	700 E Whittier Boulevard	9/16/2024
17.	Lambert Smoke Shop II	528 W Lambert Road	11/14/2024
18.	Rodeo Smoke Shop	251 W Whittier Boulevard	11/19/2024
19.	Hub Smoke Shop	335 S Harbor Boulevard	4/10/2025
20.	Orbit Smokeshop ²	1230 W Imperial Highway, Suite M	5/12/2025

1. Closed - Building is for lease.

2. Formerly Pipeking, which opened on 12/11/2023

Tobacco Retailers in other Cities

Staff have researched how the following cities have addressed the proliferation and regulation of tobacco retailers:

- Gardena:
 - Outlines the permitting requirements for tobacco retailers, as defined in Chapter 5.52 of the Gardena Municipal Code.
 - Adopted Urgency Ordinance No. 1850 on March 28, 2023, establishing a temporary moratorium on new "Significant Tobacco Retailers" due to a proliferation of these businesses (from 10 in October 2021 to 16 in March 2023) and concerns about the harmful effects of tobacco, especially on youth. This moratorium allowed staff time to research and propose new regulations.
 - Significant Tobacco Retailer is defined in Gardena's Zoning Code as a tobacco retailer for which the principal or core business is selling tobacco products, tobacco paraphernalia, or both, as evidenced by: 20% or more of the floor/display area is devoted to tobacco products/paraphernalia, or 67% or more of gross sales are from these products, or 50% or more of transactions include these products.
 - Gardena later adopted Ordinance No. 1871 (Attachment 11) on May 14, 2024, which prohibits future "Significant Tobacco Retailers" from locating in the City and clarifies that hookah lounges and cigar lounges are not considered "Significant Tobacco Retailers". Cigar and hookah lounges are permitted in certain zones with a Conditional Use Permit (CUP) and must prohibit entry to individuals under 21.
- Anaheim:
 - Adopted Ordinance No. 6611 (Attachment 12) on June 12, 2025, to amend its Zoning Code to establish a new Tobacco Retail Permit (Section 18.16.090).
 - The ordinance aims to regulate tobacco sales, reduce illegal activities (e.g., sale of controlled substances, drug paraphernalia, gambling, illegal weapons), discourage tobacco use by those under 21, and protect children from illegal sales.
 - The regulations include mandatory separation distances of 1,000 feet from sensitive uses (schools, parks, community centers, libraries, mental health facilities) and 500 feet from other tobacco retailers.
 - Tobacco retailers are prohibited from operating between 12:00 a.m. and 6:00 a.m.
 - Existing tobacco retailers must obtain a permit by January 1, 2026, or their next annual business license renewal, whichever is later, and comply with the ordinance's provisions.
- Fullerton:
 - The Fullerton Planning Commission considered proposed amendments (Attachment 13) on April 9, 2025, and directed staff to establish a Tobacco Sales Permit with a fee and bring the item back at a future meeting.
 - A "Tobacco Smoke Shop" is defined as a retail store dedicating over 15% of its total floor area, or more than a two-foot by four-foot shelf space, to tobacco, tobacco products, electronic cigarettes, or paraphernalia, excluding grocery stores, supermarkets, convenience stores, or similar retail uses where conventional tobacco sales are ancillary.
 - Tobacco smoke shops would be permitted in General Commercial (G-C), Central Business District Commercial (C-3), and Commercial Manufacturing (C-M) zones, and require a Conditional Use Permit (CUP) in Office Professional (O-P), Central Business District within the Restaurant Overlay District (C-3 ROD), Manufacturing Park (M-P), and Manufacturing General (M-G) zones.
 - Separation requirements include 500 feet from public or private K-12 schools, public parks, childcare centers, or tutoring centers, and 250 feet between tobacco smoke shops.
 - The proposed regulations also include prohibitions on selling tobacco products to persons under 21 years of age, requiring photo identification, prohibiting self-service displays, and banning the sale of flavored tobacco products (with exemptions for flavored shisha tobacco products by permitted hookah tobacco retailers and retail sale of premium cigars or loose-leaf tobacco)
- Stanton:
 - Adopted Ordinance No. 1095 on November 26, 2019, requiring tobacco retailer registration.
 - Adopted Urgency Ordinance No. 1138 on January 23, 2024, establishing a 45-day temporary moratorium on the establishment of any new "Tobacco Retailer" businesses and any expansion, enlargement, or alteration of existing ones. On February 27, 2024, the Urgency Ordinance was extended an additional 10 months and 15 days.
 - The moratorium was enacted due to ongoing violations by local tobacco retailers continuing to sell flavored tobacco products in violation of state law and the Stanton Municipal Code, and concerns about the persistent challenge of adolescent tobacco use, particularly e-cigarettes, to provide the City with time to study the impacts and develop new municipal and zoning code regulations for Tobacco Retailers, and to strengthen enforcement strategies and licensing protocols.
 - The moratorium applied to "Subject Tobacco Retailers", defined as any individual, business, or entity where at least fifty percent of the retailer's regular stock-in-trade, as displayed for sale or exchange, consists of tobacco, tobacco products, or tobacco paraphernalia.
 - On November 27, 2024, the Stanton City Council adopted Ordinance No. 1153, which revised the definitions of "Tobacco Product" and "Tobacco Retailer" and added definitions for "Characterizing Flavor" and "Flavored Tobacco Product," required compliance checks twice a year, and required the City Council to establish an application fee for tobacco retailer registration.

- Stanton's requirements for Tobacco Retailer Registration are codified in Chapter 5.67 (Tobacco Retailer Registration) of the Stanton Municipal Code (Attachment 14).

Tobacco Retail License vs. Conditional Use Permit

A TRL is a regulatory permit through which a city establishes requirements and restrictions to protect the health, safety, and welfare of the community. For example, La Habra requires regulatory permits for massage establishments and certain establishments where entertainment is provided. A TRL, like other regulatory permits, is typically issued administratively.

Various sources cite the following benefits to requiring a TRL:

- Helps determine who is selling tobacco/tobacco products in the community.
- Helps decrease illegal tobacco sales to young people.
- Helps increase compliance with tobacco-related laws.

A conditional use permit (CUP) is a land use entitlement that requires discretionary approval from a city. CUPs consent to a use not allowed by-right in a particular zone and are issued at the discretion of the local jurisdiction. Such permits are typically issued with conditions. CUPs run with the land. A CUP cannot be modified or revoked without notice and a hearing.

Moratorium

A moratorium is a stringent temporary land use control based on documented health, safety, and general welfare concerns made pursuant to police power. Pursuant to California Government Code Section 65858, cities may adopt temporary ordinances prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the city plans to study within a reasonable time. To adopt a moratorium, a city must follow the requirements set forth in California Government Code Section 65858, which, among other things, requires the City to make specified statutory findings and requires a four-fifths vote of the City Council to approve the temporary ordinance.

Proposed Action for the City of La Habra

Given the concerns raised by the City Council and during public comments, and in light of the actions taken by neighboring cities of the past several years to help address the proliferation and impacts of tobacco retailers, staff recommends that the City Council direct staff to initiate amendments to the LHMC to address Smoke Shops and prepare an Urgency Ordinance to establish a temporary moratorium on new Smoke Shops. If approved by City Council to move forward, these items will be brought back to City Council at a later date for review and consideration for final approval.

FISCAL IMPACT/SOURCE OF FUNDING:

Costs associated with City-initiated amendments to the LHMC that pertain to the Community and Economic Development Department are generally assumed as part of the Department's annual budget.

GENERAL PLAN RELEVANCE/CITY COUNCIL GOALS & OBJECTIVES:

Applicable General Plan Goals:

- EJ 1.2: Alcohol and Tobacco
- S 1.5: Sustainable and Healthy Development

Applicable City Council Goals and Objectives:

- Goal 5: Development Activity and Business Assistance
 - Objective J: Review the Zoning Code on an on-going basis and process amendments that ensure compliance with recent State legislation, streamline project processing, remove unnecessary regulations, and/or make the Zoning Code easier to implement.

Attachments

- ATT 1 LHMC Chapter 9.02
- ATT 2 H&SC Section 11364.5
- ATT 3 LHMC Chapter 9.04
- ATT 4 Land Use Matrix
- ATT 5 LHMC Section 18.12.170
- ATT 6 BPC Sections 22950-22964
- ATT 7 BPC Sections 22970-22991
- ATT 8 Cities with TRL
- ATT 9 Matrix of TRL Policies
- ATT 10 Tobacco Retailers in La Habra

ATT 11 Gardena Ordinance
ATT 12 Anaheim Ordinance
ATT 13 Fullerton Draft Amendments
ATT 14 Stanton Regulations
