



COUNCIL REPORT

DATE: May 27, 2025

CATEGORY: New Business

DEPT.: Police

TITLE: **Tobacco and Electronic Cigarette Regulations and Restrictions**

RECOMMENDATION

1. Introduce an Ordinance of the City Council of the City of Mountain View 1) Repealing Article III (Tobacco Control Regulations) of Chapter 21 of the Mountain View City Code, 2) Amending Article II of Chapter 21 of the Mountain View City Code to Make Clarifying Edits, Delete Inconsistent Provisions, and Add a Provision From Article III Prohibiting Smoking and Use of Tobacco-Related Products Around Public Playgrounds, 3) Enacting Chapter 48 of the Mountain View City Code Regulating the Sale of Tobacco Products, Establishing a Tobacco Retail Permit Program, and Banning the Sale of Flavored Tobacco, Electronic Cigarettes, and Vape-Related Products within the City of Mountain View, and 4) Finding that These Code Amendments Are Not Subject to the California Environmental Quality Act ("CEQA"), to be read in title only, further reading waived, and set a second reading for June 10, 2025 (Attachment 1 to the Council report).
2. Authorize the City Manager or designee to enter into an agreement with the County of Santa Clara for enforcement of the City of Mountain View Tobacco Retail Permit Program.

BACKGROUND

California Law

California has enacted some of the strongest regulations for flavored tobacco and electronic cigarettes (also known as e-cigarettes or vaping devices) in the United States. In 2020, California passed Senate Bill 793, banning the retail sale of most flavored tobacco products, including flavored e-cigarettes. Although the law was challenged by the tobacco industry and delayed by a referendum, California voters overwhelmingly upheld it in November 2022, allowing it to take effect January 1, 2023. The law does not prohibit the possession of flavored products; however, it restricts their sale in brick-and-mortar stores and online sales.

In addition to the state ban, many local jurisdictions have passed even stricter ordinances banning all e-cigarette sales regardless of flavor. These laws are part of California's broader

public health strategy to combat youth nicotine addiction, particularly among teens drawn to flavored e-cigarette products.

Implementing a local e-cigarette and flavored tobacco ban may help reduce teen access and use, ultimately protecting youth from the harmful health effects associated with tobacco and vaping. The City can adopt a stricter ordinance in order to ban these products and work towards this objective.

Health Impacts:

Most e-cigarette fluids contain nicotine. It is well accepted that nicotine causes addiction, may harm brain development, and could lead to continued tobacco product use among youth. The Centers for Disease Control and Prevention (CDC) state that e-cigarette fluids contain cancer-causing chemicals, heavy metals, and ultrafine particles that are inhaled deeply into the lungs and may harm the body. The CDC also states nicotine exposure during adolescence can harm the parts of the brain that control attention, learning, mood, and impulse control.

Flavored tobacco and e-cigarette devices are often marketed in a way that appeals to youth. This is done through the use of celebrity role models, vibrant colors, and claims such as that e-cigarettes are “healthier,” “safer,” and can be “smoked anywhere.” Marketing of appealing flavors such as strawberry, cotton candy, gummy bear, twist lime, warm winter toffee, and other flavors appeals to youth. The American Academy of Pediatrics states these marketing approaches threaten to renormalize and glamorize the use of e-cigarette devices potentially causing a new generation of youth to become addicted to nicotine that reverses more than 50 years of progress in tobacco control.

Youth Tobacco Usage

In December 2018, the United States Surgeon General declared youth e-cigarette use an “epidemic,” citing a dramatic increase in usage among adolescents. According to data from the CDC and the Food and Drug Administration (FDA) through the 2018 National Youth Tobacco Survey, current e-cigarette use among high school students rose by approximately 78% between 2017 and 2018. As of 2023, 10% of high school students and 4.6% of middle school students reported using e-cigarettes in the past 30 days.

According to a 2023 California Youth Tobacco Survey, 83.8% of students who ever used tobacco reported trying an e-cigarette as their first tobacco product. This survey also found that 22.4% of current e-cigarette student users who paid for their devices purchased them directly from a store themselves.

As illustrated in Figure 1 below, students viewing another student using a vaping device ranked as the highest illicit product viewed in a school; 57.6 % of students viewed another student use a vaping device within the last 30 days.

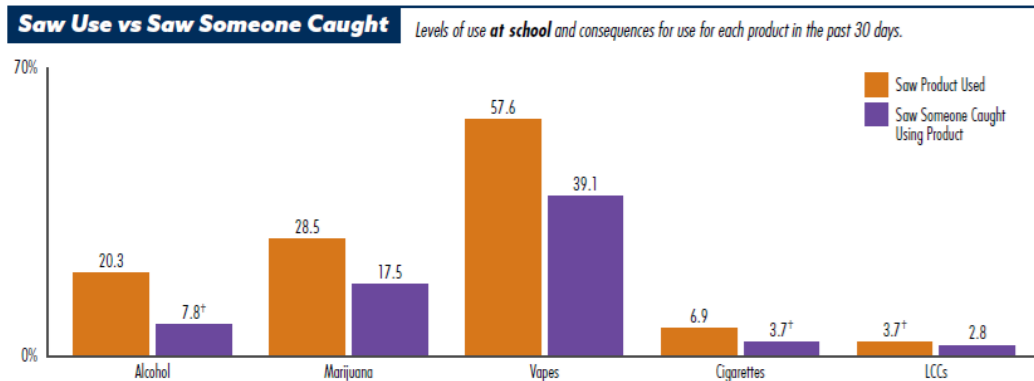


Figure 1: Saw Use versus Saw Someone Caught—2023

These examples reflect a critical public health concern and highlight the urgency of implementing measures to prevent youth access to e-cigarette products.

Mountain View's Current Tobacco Efforts

All tobacco retailers are required to obtain a California Cigarette and Tobacco Retailer's License through the California Department of Tax and Fee Administration (CDTFA). The City of Mountain View does not have a local ordinance banning the sale of flavored tobacco or e-cigarettes. The City also does not have an ordinance requiring a tobacco retailer to apply for any special permit. Only a "Significant Tobacco Retailer," as described below, is required to comply with additional requirements in Mountain View City Code Section 36.30.20. Also described below are the City's current robust efforts to enforce the sale of tobacco products to underage youth.

City Regulation of Significant Tobacco Retailer

In the City Code, there are several requirements that a Significant Tobacco Retailer must follow in order to operate in the City. Among other requirements, a Significant Tobacco Retailer is only allowed in a CRA Zone and requires approval of a Conditional Use Permit. A Significant Tobacco Retailer must also comply with several other ordinance regulations, including securing tobacco products so that only store employees have immediate access to them and adhering to advertising and age restrictions for employees selling tobacco products. The Zoning Administrator may consider location compatibility as part of the approval process.

Police Department Tobacco Enforcement

The Mountain View Police Department has received a grant through the County of Santa Clara Public Health Department to conduct underage tobacco decoy operations at least once a quarter. The goals of the grant are to:

1. Reduce youth access to tobacco products by conducting regular compliance checks at stores selling tobacco products to ensure compliance with laws and requirements, including prevention of tobacco sales to underage individuals;
2. Convene a tobacco prevention task force to serve as a capacity-building and learning collaborative for best practices in increasing compliance with tobacco laws and preventing youth tobacco use; and
3. Increase compliance with local, state, and federal tobacco retailing laws by providing educational resources to tobacco retailers.

In calendar year 2023, the Police Department conducted 100 decoy operations at various tobacco retail locations in Mountain View. These operations resulted in the issuance of 10 citations.

In 2024, the Police Department also conducted two major enforcement operations geared towards retail tobacco enforcement. Two search warrants were executed at two separate retail tobacco businesses. Approximately 13,000 products containing THC and flavored tobacco products were seized along with approximately 475 products containing psilocybin. Both businesses received citations for these violations.

American Lung Association Annual Report

The State of California, through the American Lung Association, provides an annual report evaluating local tobacco control policies. The report assigns grades to every county and city in five key areas: smoke-free outdoor air, smoke-free housing, reducing tobacco sales, flavored tobacco restrictions, and an overall tobacco control grade. The 2024 report gives the City of Mountain View an overall grade of “C” and a grade of “F” in the category of “Reducing Sales of Tobacco Products.” The full report is included in Attachment 2.

ANALYSIS

The City Council included a project to adopt a local ordinance to ban the sale of e-cigarettes Citywide as part of its Fiscal Years 2023-25 Work Plan. Since there is no City of Mountain View ordinance requiring most tobacco retailers to follow any registration process with the City, staff took a broader approach to developing a new ordinance regulating tobacco sales, including e-cigarette devices and flavored tobacco products. Staff reviewed other jurisdictions to identify

best practices and reviewed several other city ordinances banning flavored tobacco and e-cigarettes. These local ordinances vary in many ways, including by jurisdiction in language, application processing and requirements, enforcement, fine amounts, exemptions, definitions, and licensing.

Comparable Jurisdictions

The Santa Clara County Public Health Department maintains a database of cities within the County and their ordinances related to various tobacco-related policies. Nine of the 16 cities have some type of ordinance banning the sale of flavored tobacco. Additionally, seven of the 16 cities have some type of ordinance banning e-cigarette devices. The full list of cities and their tobacco-related policies are included in Attachment 3.

Although some cities have adopted their own local ordinance, many cities, including Palo Alto, Cupertino, and Los Gatos, have partnered with Santa Clara County through their Tobacco Retail Permit (TRP) Program.

Santa Clara County Tobacco Retail Permit Program

Santa Clara County has a comprehensive retail tobacco ordinance that bans, among other things, most flavored tobacco and all e-cigarette devices. The County ban also includes robust licensing, compliance, and enforcement language for initial permitting and ongoing operations. Santa Clara County invites cities to partner in the TRP program.

The Santa Clara County TRP program is more robust than merely banning flavored tobacco and e-cigarettes. Among other things, the TRP also provides a licensing procedure for local retailers to follow, processes retail applications, collects fees, maintains a tobacco retailer database, and conducts a continual yearly renewal process. The City currently does not have these processes or procedures and, as noted above, does not require most tobacco retailers to apply for and maintain a permit to operate in Mountain View. The County's permit system has been in place since 2016.

The County also maintains and provides a city-specific Tobacco Retail Program Fact Sheet for all cities who participate in the TRP. These fact sheets contain program-specific information, including permit information, eligibility, sales requirements, detailed descriptions of prohibited products, and inspection and penalty information. Attachment 4 is a sample fact sheet for unincorporated areas of the County.

TRP Benefits

The TRP offers many administrative benefits:

- Well established since 2010 and regularly updated based on changes in state legislation in the retail tobacco sales environment, which reduces risk of legal challenge.
- Permit applications sent to all existing retailers selling tobacco products and/or electronic smoking devices, and permit issuance as necessary.
- Thorough list of requirements and prohibitions for tobacco retailers, including age restrictions, identification requirements for sales, prohibited advertising materials on storefront, and tobacco display restrictions.
- Transparent and detailed process for permit issuance, denial, and revocation.
- Updated database of retail tobacco permitted businesses in the Tobacco Retail Permit program.
- Partnership for compliance monitoring, through enforcement and inspections, of retail tobacco permit locations.
- Conducts at least one annual inspection of tobacco retailers to ensure compliance with local, state, and federal laws (Police Department may conduct additional inspections at will. The City's quarterly inspections are described in the Background section).
- Record keeping of inspection outcomes for each tobacco retailer.
- Appropriate enforcement action if a violation is not corrected.
- Coordination with the City of Mountain View when violations of sales to minors occur in order to take the appropriate enforcement action.
- Conducts administration hearings if retailer appeals violations.
- Proactive business community engagement to create awareness of the TRP effective date, requirements, fines/penalties, etc.
- Outreach to impacted Mountain View stakeholders and businesses regarding implementation timelines for TRP.

- Response to requests for information from retailers and the public regarding requirements under the TRP.
- Meetings with partner personnel to coordinate enforcement strategies and develop and maintain policy and procedure for enforcement.
- Tobacco retail stores in Mountain View will have a six-month grace period to discontinue selling flavored tobacco and e-cigarette products. Existing tobacco retailers will have a 90-day timeline to apply for a tobacco permit through the County TRP.

The County's TRP program provides the most comprehensive approach and solution to both ban e-cigarette sales in Mountain View and significantly improve the City's permitting and ongoing regulation of retail tobacco stores. Based on this evaluation of the Santa Clara County TRP, staff recommends partnering with the County for ongoing tobacco retail licensing and enforcement.

Key Elements of the Proposed Ordinance

Joining the TRP program through Santa Clara County requires the City of Mountain View to adopt a local tobacco ordinance that is substantially similar to the County's ordinance and enter into an agreement with the County for implementation and enforcement.

Key elements of the proposed ordinance are as follows:

- Unlawful for any tobacco retailer to sell tobacco products within the City of Mountain View without a permit.
- Permit must be displayed.
- Must post notice of minimum age for sale (21 years old).
- Positive identification required for purchase.
- Limitation of storefront advertising.
- Prohibition on vending machines for tobacco products.
- Flavored tobacco products prohibited; includes traditional tobacco products and e-cigarette fluids, described as:

"No Retailer shall Sell a Tobacco Product containing, as a constituent or additive, an artificial or natural flavor or aroma (other than tobacco) or an herb or spice, including, but not limited to, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice,

cocoa, chocolate, cherry, mint, menthol, or coffee, that is a characterizing flavor or aroma of the Tobacco Product, smoke, or vapor produced by the Tobacco Product.”

- All electronic cigarette products prohibited, described as:
 - Any device or delivery system that can be used to deliver nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or hookah.
 - Any component, part, or accessory of such a device or delivery system that is used during its operation.
 - Any flavored or unflavored liquid or substance containing nicotine, whether sold separately or sold in combination with any device or delivery system that could be used to deliver nicotine in aerosolized or vaporized form.
 - Any product for use in an electronic nicotine device or delivery system, whether or not it contains nicotine or tobacco or is derived from nicotine or tobacco.
 - Electronic Cigarette Products shall not include any battery, battery charger, carrying case, or other accessory not used in the operation of the device if sold separately. Electronic Cigarette Products shall not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where that product is marketed and sold solely for such approved use. See 21 U.S.C. § 387(a). As used in this subsection, nicotine does not include any food products as that term is defined pursuant to Section 6359 of the California Revenue and Taxation Code.

Business Outreach

The Mountain View Police Department contacted the owners and employees of two retail tobacco stores, Great Vape and the Fatty Zone, that predominantly sell tobacco and e-cigarette devices in Mountain View. These retailers were provided with information about the upcoming proposed ordinance change being presented to the City Council. Both businesses stated that the sales of e-cigarette devices were not a significant portion of their overall sales. The businesses were provided with the contact information if they had any questions about the proposed ordinance.

FISCAL IMPACT

Staff anticipates there will be a nominal reduction in sales tax revenue due to the banning of e-cigarette devices in the City. Sales of flavored tobacco have already been banned since

November 2022. Furthermore, sales tax revenue specific to e-cigarette devices cannot be individually identified separately from other items sold by a retailer.

LEVINE ACT

California Government Code Section 84308 (also known as the Levine Act) prohibits city officials from participating in any proceeding involving a “license, permit, or other entitlement for use” if the official has received a campaign contribution exceeding \$500 from a party, participant, or agent of a party or participant within the last 12 months. The Levine Act is intended to prevent financial influence on decisions that affect specific, identifiable persons or participants. For more information see the Fair Political Practices Commission website: www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html

Please see below for information about whether the recommended action for this agenda item is subject to or exempt from the Levine Act.

EXEMPT FROM THE LEVINE ACT

☒ General policy and legislative actions

NEXT STEPS

If the City Council adopts the proposed ordinance, the City and County will draft and enter into an agreement for implementation of the tobacco retail permit program and enforcement of the tobacco and electronic cigarette retail restrictions. The Mountain View Police Department will also work with the County to provide notice of and conduct outreach and education on the tobacco retail permit program and the ban on the sale of flavored tobacco, electronic cigarettes, and related products. As noted above, existing businesses will have six months to cease the sale and distribution of all banned tobacco and electronic cigarette products and 90 days to come into compliance with the remaining requirements of the ordinance, including the permitting requirement.

ALTERNATIVES

1. Do not adopt the proposed ordinance modifying the City’s existing tobacco regulations.
2. Direct staff to assess other ordinance options to ban the sale of e-cigarettes.
3. Provide other direction.

PUBLIC NOTICING—Agenda posting.

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SN/4/CAM
300-05-27-25CR
204952

- Attachments:
1. Proposed Ordinance
 2. California State of Tobacco Control 2024
 3. Santa Clara County Comparable Cities—Tobacco Control Policies
 4. Tobacco Retail Program Fact Sheet