

ORDINANCE NO. 03-24 N.S.

AN URGENCY ORDINANCE, PURSUANT TO GOVERNMENT CODE SECTION 65858, BY THE CITY COUNCIL OF THE CITY OF RICHMOND, ESTABLISHING A TEMPORARY MORATORIUM ON ALL NEW TOBACCO RETAILERS WITHIN THE CITY OF RICHMOND PENDING THE STUDY AND DEVELOPMENT OF REASONABLE REGULATIONS; AND DECLARING THE URGENCY THEREOF

WHEREAS, the City has seen a proliferation of tobacco retailer businesses within the City;

WHEREAS, the City is concerned about this recent proliferation of tobacco retailer businesses, locations of tobacco retailer businesses, and the harmful effects of tobacco on the health, safety, and welfare of City residents and especially youth;

WHEREAS, the City has no specific regulations for tobacco retailer businesses aimed at protecting minors, such as a distance requirement from schools and/or youth-oriented areas;

WHEREAS, this temporary moratorium will provide staff with the opportunity to study various options to regulate tobacco retailer businesses; and,

WHEREAS, Government Code section 65858 provides that to protect against any current and immediate threat to the public health, safety, or welfare, the City Council may adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City plans to study.

NOW, THEREFORE, the City Council of the City of Richmond does hereby ordain as follows:

SECTION 1: That the above recitals are true and correct and are adopted as the City Council's findings.

SECTION 2: Purpose and Authority.

In the interest of protecting the health, safety, and welfare of the residents in the City of Richmond, it is the purpose and intent of this ordinance to place a temporary moratorium on the issuance of any new permit, license, or other entitlement for any tobacco retailer in the City of Richmond. The City Council has authority to adopt this ordinance pursuant to California Constitution Article XI, Section 7 and Government Code section 65858 as an urgency measure prohibiting any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the City is considering or studying.

SECTION 3: Findings.

- A. Smoking and use of tobacco products, particularly by persons under eighteen years of age ("minors"), poses a significant health hazard to the user and persons in proximity to the user, including, without limitation, nicotine addiction, disease, and premature death.
- B. The City of Richmond has a significant interest in discouraging tobacco use by minors and discouraging the sale or distribution of tobacco products to minors, including vape pens and devices, e-cigarettes, and flavored tobacco products.
- C. The City has a significant interest in preserving the health, safety, and welfare of its residents, and in particular its minor residents, in considering enactment of additional regulations on the sale and distribution of tobacco products.
- D. There is a current and immediate threat to the public health, safety, or welfare with respect to the sale and distribution of tobacco products within the City, including access to such products by minors, and the approval of additional permits, licenses, and/or any other entitlement for new tobacco retailers would result in a further threat to public health, safety, or welfare.
- E. This urgency ordinance is necessary to promote the immediate preservation of the peace, health, and safety of the public against the potential detrimental health impacts of tobacco smoking, particularly as concerns minors, in order to allow the City an opportunity to study this issue and

develop and adopt additional appropriate regulations for the sale and distribution of tobacco products.

Section 4: Environmental Review/California Environmental Quality Act (CEQA).

This ordinance is intended to preserve the status quo, and it will not cause a direct physical change in the environment, nor a reasonably foreseeable indirect physical change in the environment. The enactment of this ordinance, therefore, does not constitute the approval of a project under the California Environmental Quality Act ("CEQA"), and it is exempt from CEQA. (Pub. Res. Code § 21065, CEQA Guidelines §§ 15060(c),(2)(3); 15061(b)(3); 15064(d)(3); 15378(a).)

Section 5: Definitions.

As used herein the following definitions shall apply:

A. "Person" shall mean any individual natural person, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

B. "Tobacco retailer" shall have the same meaning as set forth in Richmond Municipal Code section 7.106.030.

Section 6: Moratorium on New Permits, Licenses, and Land Use Entitlements.

A. During the term of this ordinance, any new tobacco retailer shall be prohibited in all zoning districts and lands within the City of Richmond. No application for any permit, license, or land use entitlement shall be granted or approved for any new tobacco retailer in any zoning districts or lands within the City of Richmond.

B. Notwithstanding any other provision of this ordinance, any person who lawfully holds an existing permit, license, and/or land use entitlement for an existing and lawfully operating smoke shop and/or tobacco retailer in the City of Richmond as of the effective date of this ordinance may continue to lawfully operate under that existing permit, license, and/or entitlement, and may apply for the renewal of any such existing permit, license, and/or entitlement, which renewal may be approved or denied by the City under the standards governing such permit, license, and/or entitlement under existing law. Nothing herein shall limit the authority of the City to revoke or suspend any existing license, permit, and/or entitlement as authorized under existing law.

Section 7: Term of Ordinance.

This ordinance shall be in effect from the date of adoption for a period of forty-five (45) days, unless it is extended pursuant to Government Code section 65858(a) or other applicable law, as approved by the City Council.

Section 8: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 9: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 10: Effective Date and Publication.

This ordinance, passed by at least a four-fifths vote of the City Council, is declared to be an urgency ordinance for preserving the public health, safety and welfare and shall take effect and be enforced immediately upon adoption.

I hereby certify that the foregoing Urgency Ordinance of the City Council of the City of Richmond was duly passed and adopted at a regular meeting thereof held April 16, 2024, by the following vote:

AYES: Councilmembers Bana, McLaughlin, Willis, Zepeda, Vice Mayor Jimenez, and Mayor Martinez.
NOES: None.
ABSTENTIONS: None.
ABSENT: Councilmember Doria Robinson.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

EDUARDO MARTINEZ
Mayor

Approved as to form:

DAVE ALESHIRE
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Urgency Ordinance No. 03-24 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on April 16, 2024.



Pamela Christian, Clerk of the City of Richmond