

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,
ADDING ARTICLE 37 TO CHAPTER 9 OF THE FRESNO
MUNICIPAL CODE, TOBACCO RETAILER ORDINANCE

WHEREAS, the California Legislature recognizes the danger of tobacco use and has made reducing youth access to tobacco products a high priority; and

WHEREAS, California Penal Code Section 308 prohibits the sale or furnishing of cigarettes, tobacco products, and smoking paraphernalia to anyone under 21 years of age; and

WHEREAS, California Business and Professions Code Section 22956 requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under 21 years of age; and

WHEREAS, California Business and Professions Code Section 22952 and California Penal Code Section 308 require that tobacco retailers post conspicuously, at each point of purchase, a notice stating that selling tobacco to anyone under 21 years of age is illegal and subject to penalties; and

WHEREAS, California Business and Professions Code Section 22962 prohibits the sale or display of cigarettes through a self-service display; and

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Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: 

Ordinance No.

WHEREAS, the City of Fresno (City) has a substantial interest in promoting compliance with federal, state and local laws intended to regulate tobacco sales to persons under 21 years of age; and

WHEREAS, the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to persons under 21 years of age, presents an imminent threat to the public health, safety and welfare of the residents of the City of Fresno; and

WHEREAS, the City desires to add Chapter 9, Article 37 Tobacco Retailer Ordinance to uniform its regulations and to ensure consistency with state law.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Article 37 of Chapter 9 is added to the Fresno Municipal Code to read:

ARTICLE 37

TOBACCO RETAILER ORDINANCE

Section	9-3701.	Title
Section	9-3702.	Purpose
Section	9-3703.	Scope
Section	9-3704.	Definitions
Section	9-3705.	Required Licensing
Section	9-3706.	Regulations
Section	9-3707.	Compliance Monitoring
Section	9-3708.	Administrative Violations and Penalties
Section	9-3709.	Appeals
Section	9-3710.	Youth Decoys
Section	9-3711.	Severability

SECTION 9-3701. - TITLE. This Article shall be known as the "Tobacco Retailer Ordinance".

SECTION 9-3702. - PURPOSE. The purpose of this Article is to promote health and safety through enforcement of Federal, State, and local laws regulating the sale and marketing of tobacco products.

SECTION 9-3703. - SCOPE. This Article shall apply to all Tobacco Retailers.

SECTION 9-3704. - DEFINITIONS. For purposes of this Article, the following words and phrases shall have the following meanings:

(a) “Flavored Tobacco Product” shall have the same meaning as provided in 104559.5 of the Health and Safety Code, including any amendments or successor statutes thereto.

(b) “Package” means an individual packet, box, wrapping, or container of any kind in which a tobacco product or tobacco product flavor enhancer is sold or intended to be sold at retail. Package does not include containers such as cartons, cases, or boxes within which smaller individual packets, boxes, wrappings, or containers are stored.

(c) “Sale”, “Sell”, or “Sells” means any transaction where, for any consideration, ownership of a tobacco product is transferred from one person to another, including but not limited to, any transfer of title or possession for consideration, exchange, or barter in any manner or by any means.

(d) “Tobacco Paraphernalia” means cigarette papers or blunt wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed, marketed, or used for the smoking, consumption, use, preparation, or ingestion of tobacco products.

(e) “Tobacco Product” shall have the same meaning as provided in 104559.5 of the Health and Safety Code, including any amendments or successor statutes thereto. Tobacco Product does not include a 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 the product is marketed and sold solely for such an approved purpose.

(f) “Tobacco Product Flavor Enhancer” shall have the same meaning as provided in 104559.5 of the Health and Safety Code, including any amendments or successor statutes thereto.

(g) “Tobacco Retailer” means any person or entity that sells, distributes, offers for sale or distribution, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, distributed, offered for sale or distribution, exchanged, or offered for exchange.

(h) “Tobacco Retailing” means selling, distributing, offering for sale or distribution, exchanging, or offering to exchange for any form of

consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, distributed, offered for sale or distribution, exchanged, or offered for exchange.

SECTION 9-3705. - REQUIRED LICENSING.

(a) No Tobacco Retailer shall operate in the City without first obtaining all of the following:

(1) A Business License pursuant to Chapter 7, Article 10 of the Fresno Municipal Code for each fixed location.

(2) A license from the California Department of Tax and Fee Administration (CDTFA) for each fixed location.

(3) Such other permits or licenses as may be required by State or local law.

(b) All required licenses must be kept valid and current.

(c) All required licenses must be displayed in a manner visible to the public at the fixed licensed location.

SECTION 9-3706. - REGULATIONS.

(a) Compliance with Laws. Tobacco Retailers must remain in compliance with all local, State, and Federal laws, regulations, and orders, as well as all conditions of approval imposed on the use. This includes compliance with annual City business license fees.

(b) Signage.

(1) Tobacco Retailers shall be subject to all applicable provisions of Fresno Municipal Code Chapter 15, Article 26.

(2) Any establishment located within 500 feet of a park, school (private or public), day care, or other youth-sensitive place (e.g. boys and girls club, youth activity centers) may not advertise smoking sales (such as for tobacco, vapor, or similar projects) or related paraphernalia in a manner visible from the outside of the establishment, such as from a public thoroughfare, sidewalk, or parking lot.

(3) Every business that sells tobacco must post the required STAKE Act age-of-sale warning signs at each point of sale (including cash registers).

(4) In addition to any other State or Federal requirements, the following is required to be prominently posted in a readily visible manner on an interior wall or fixture and not on windows:

(i) “California State Law Prohibits the Sale of Tobacco Products to Persons Under 21 Years of Age”

(ii) “No Loitering is Allowed On or In Front of These Premises”

(iii) “No Smoking or Vaping is Allowed on These Premises”

(c) Prohibited Products. A Tobacco Retailer, or any agents or employees of a Tobacco Retailer, shall not sell, offer for sale, or possess with the intent to sell or offer for sale, a Flavored Tobacco Product, Tobacco Product Flavor Enhancer, or other products prohibited by law.

(1) There is a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a manufacturer or any of the manufacturer’s agents or employees, in the course of their agency or employment, has made a statement or claim directed to consumers or to the public that the Tobacco Product has or produces a characterizing flavor, including, but not limited to, text, color, images, or all, on the product’s labeling or packaging that are used to explicitly or implicitly communicate that the Tobacco Product has a characterizing flavor.

(d) Vending. No Tobacco Products or Tobacco Paraphernalia shall be sold via vending machine or automatic sales dispenser.

(e) Age Requirements.

(1) No person engaged in Tobacco Retailing shall sell or transfer a Tobacco Product or Tobacco Paraphernalia to another person who appears to be under the age of thirty (30) years without first examining

the identification of the recipient to confirm that the recipient is at least the minimum age under State law to purchase and possess the Tobacco Product or Tobacco Paraphernalia.

(2) No person under 21 years of age shall engage in Tobacco Retailing.

(f) On-Site Sales. All sales of Tobacco Products shall be conducted in person inside the licensed location. It shall be a violation of this Article for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to engage in the delivery sale of Tobacco Products or to knowingly or recklessly sell or provide Tobacco Products to any person that intends to engage in the delivery sale of the Tobacco Products in the City of Fresno.

SECTION 9-3707. – COMPLIANCE MONITORING.

(a) Compliance with this Article shall be monitored by Code Enforcement. In addition, any peace officer may also enforce this Article. All licensed premises must be open to inspection by Code Enforcement or the Police Department during regular business hours.

(b) Inspection and enforcement of this Article may include undercover and/or decoy operations.

(c) Code Enforcement and/or the Police Department may request and utilize assistance from other City departments or other agencies as needed for the enforcement of this Article.

(d) Should Flavored Tobacco Products, Tobacco Product Flavor Enhancers, or other products prohibited by law be found during inspection, the Police Department or Code Enforcement may seize and destroy said products.

(e) Nothing in this section shall create a right of action against the City or its agents.

SECTION 9-3708. - ADMINISTRATIVE VIOLATIONS AND PENALTIES.

(a) Committing, causing, permitting, aiding, abetting, or concealing a violation of any provision of this Article shall constitute a violation.

(b) A violation of this Article may result in modification or revocation of a City issued business license or other City issued permits.

(c) A violation of this Article constitutes a public nuisance and may be abated.

(d) The remedies provided by this Article are cumulative and in addition to any other remedies available at law or in equity.

(e) The City may seek recovery of its costs of enforcement and abatement pursuant to Article 5 (Cost and Penalty Recovery) of Chapter 1

(General Provisions) of this Code. Both the property owner and the Tobacco Retailer shall be liable to the City for recovery of costs as specified under Section 1-504.

(f) Violations of this Article may, in the discretion of the City Attorney, be prosecuted as infractions or misdemeanors.

(g) In any action or proceeding brought by the City to enforce this Article, the City shall be entitled to recover its attorney's fees and costs when it is the prevailing party.

(h) Whenever evidence of a violation of this Article is obtained in part through the participation of a person under the age of 18 years, such person shall not be required to appear or give testimony in any civil or administrative process brought to enforce this Article and the alleged violation shall be adjudicated based upon the sufficiency and persuasiveness of the evidence presented.

(i) All Tobacco Retailers are responsible for the actions of their employees relating to the Sale, offer to Sell, and furnishing of Tobacco Products at the retail location. The Sale of any Tobacco Product by an employee shall be considered an act of the Tobacco Retailer.

(j) A violation of this Article may result in the imposition of fines upon the person, entity, business owner, Tobacco Retailer, and/or property owner pertaining to the location of the violation.

(1) Fines may be imposed in accordance with Sections 1-305 and 1-308 of the Fresno Municipal Code and State law.

(2) Fines pursuant to Section 1-308 shall be imposed in accordance with the Master Fee Schedule.

(3) For a violation of Section 9-3706(c) Prohibited Products, a fine may be imposed per Package as set forth in the Master Fee Schedule.

SECTION 9-3709. - APPEALS. Administrative fines may be appealed pursuant to Chapter 1, Article 4, of the Fresno Municipal Code.

SECTION 9-3710. - YOUTH DECOYS. The City shall not enforce any law establishing a minimum age for tobacco purchases or possession against a person who otherwise might be in violation of such law because of the person's age (hereinafter "Youth Decoy") if the potential violation occurs when:

(a) The Youth Decoy is participating in a compliance check supervised by a peace officer or a code enforcement officer of the City; or

(b) The Youth Decoy is participating in a compliance check funded in part, either directly or indirectly, through subcontracting by the Fresno County Department of Public Health or California Department of Health Services.

SECTION 9-3711. - SEVERABILITY. If any provision, clause, sentence or paragraph of this Article is for any reason held to be invalid or unenforceable,

such invalidity or unenforceability shall not affect other provisions of this Article which can be given effect without the invalid provisions or application, and to this end the provisions of this Article are declared to be severable.

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2025.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2025
Mayor Approval/No Return: _____, 2025
Mayor Veto: _____, 2025
Council Override Vote: _____, 2025

TODD STERMER, MMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Date
Senior Deputy City Attorney