

CITY COUNCIL AGENDA ITEM NO. F.1
05/13/2025

SUBJECT: Adoption of Chapter 5.76 Tobacco Retailers and Adoption of Tobacco Retail License Fee

DEPARTMENT: Community Development

STAFF: Kenneth Murphy, Acting Director of Community Development
Linda Shale, Senior Code Enforcement Officer

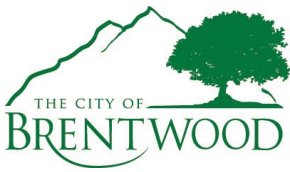
TITLE/RECOMMENDATION

Waive the first reading and introduce an ordinance adopting Chapter 5.76 of the Brentwood Municipal code, entitled "Tobacco Retailers", creating new regulations related to tobacco sales in Brentwood and establishing a Tobacco Retail Licensing program and adopt a resolution amending the Cost Allocation Plan and Schedule of City Fees to implement a new Tobacco Retail License Fees.

The adoption of the ordinance is not subject to further review under the California Environmental Quality Act ("CEQA," codified at Public Resources Code 21000, *et seq.*, as further governed by the State CEQA Guidelines, found at 14 CCR 15000, *et seq.*) pursuant to Section 15358 (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, the adoption of this ordinance is exempt under CEQA pursuant to Section 15061(b)(3) (there exists no possibility that the activity will have a significant adverse effect on the environment) of the CEQA Guidelines because this ordinance will not cause a change in any of the physical conditions within the area affected by the ordinance.

FISCAL IMPACT

There is no fiscal impact associated with adopting Chapter 5.76 Tobacco Retailers ("Ordinance"), other than staff time and outside counsel time to prepare the ordinance. Community Development estimates that up to 41 Tobacco Retail License and/or Wind-Down Permits will be issued during the first year, which would provide one-time revenue of \$90,241. Location restrictions are anticipated to reduce the number of existing tobacco retailers able to continue to operate beyond the first year to approximately 10-12 tobacco retailers. After the first year, this will result in an estimated annual ongoing license revenue of \$22,010 to \$26,412. Fees and any Administrative Fines for enforcement collected would be deposited in the General



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Fund. The General Fund is the source of funding for the Tobacco Retailers License program and Chapter 5.76 requires that all fees be exclusively used to fund this program.

BACKGROUND

On September 24, 2024, the City Council reviewed draft tobacco retailing regulations and provided direction to staff regarding processes for issuing licenses to be included in a final version of the ordinance. Specifically, the Council provided direction on the following items:

1. Whether to implement a first come, first served application process;
2. Whether to issue a tobacco retail permit for one year only to retailers that are noncompliant with new regulations rather than the tobacco retail license.

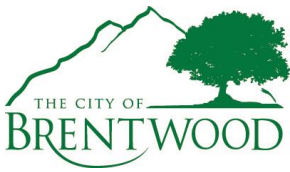
Since that meeting, staff has worked with outside counsel to incorporate the City Council's direction into the proposed new Chapter 5.76 Tobacco Retailers (attached).

PROCESS FOR ISSUING TOBACCO RETAIL LICENSES

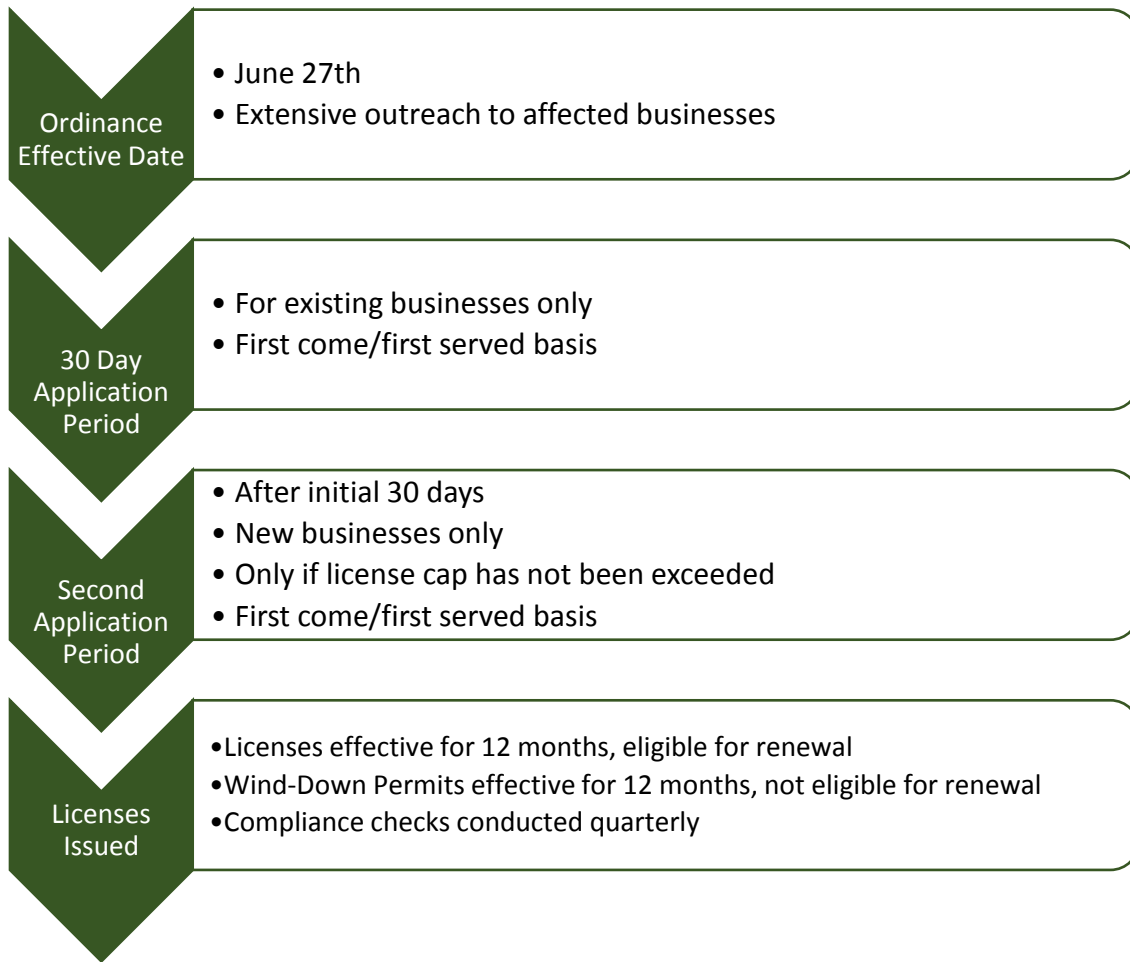
Based on Council direction, the attached ordinance establishes a first come, first serve application process for tobacco retail licenses (TRL's). As illustrated below, existing tobacco retailers legally operating in the City of Brentwood will have a 30-day, first-come, first serve application period. Staff will process applications in the order they are received within that 30 days. If the numeric cap on licenses (discussed in more detail below) is not reached within that 30 days, then businesses not currently operating in the City will have a 30 day, first-come, first serve application period.

Existing tobacco retailers that do not meet the 500' separation requirements from an existing tobacco retailer or from a "Youth Oriented Establishment" will be issued a one time, 12 month "Wind-Down Permit", that would allow the non-compliant retailers the opportunity to sell the rest of their tobacco stock that is out of compliance with the new regulations and/or wind down tobacco retailing operations.

The timeline below anticipates that the City Council will waive the first reading of and introduce this ordinance on May 13, and hold the second reading May 27. The ordinance would take effect 30 days later, on June 27. These dates may change if the Council follows a different course.



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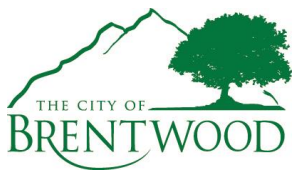


Numeric Cap on Tobacco Retailers and Separation Requirements

Based on Council direction, the attached ordinance contains a numeric cap on the number of tobacco retailer licenses that can be issued. The proposed cap is 41 licenses, which is based on the current number of State-licensed tobacco retailers in the City (as of February 2025). There is no cap on the number of Wind-Down Permits that can be issued because these will expire after one year and are not eligible for renewal.

The ordinance also includes separation requirements of 500' from other tobacco retailers and from Youth Oriented Establishments (YOE's). The ordinance defines a YOE as a parcel in the City occupied by:

- a. a private or public elementary, middle, junior high, or high school;
- b. a library open to the public;



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- c. a youth center, defined as a facility where children, ages up to 17, come together for programs and activities;
- d. any business establishment likely to be frequented by minors, such as, but not limited to, video game arcades, skating rinks, bowling alleys, etc.

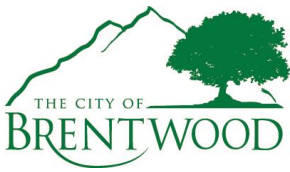
The attached map prepared for the City by Contra Costa Health shows that there are a large number of existing tobacco retailers within 500' of each other or of a YOE; particularly in the northeast and western portions of the City. As a result of these separation requirements, the total number of tobacco retailers receiving a license will likely be below the cap of 41 TRL, and will likely continue to be lower in the future.

TRL FEES

In order to implement the Ordinance, a fee for the TRL needs to be adopted by the City Council. Staff calculated the reasonable costs associated with processing the TRL and conducting the three annual inspections required by the Ordinance as \$2,201. These costs are summarized below. Processing of the TRL will consist in part of evaluating the locations based on the requirements of the ordinance for proximity to other tobacco retailers and any existing Youth Oriented Establishments. The evaluation will utilize electronic means, as well as site visits. Two of the annual compliance checks will be conducted by Community Enrichment personnel only and a third will be conducted in conjunction with Police Department personnel. The chart below represents Staff's estimation of the time involved over a 1-year period related to each TRL.

Estimated Costs Per License (~42 Licenses year 1)											
Staff	Total Hourly Rate (Fully Loaded - Step E)	Application Processing	Cost - Application Processing	1st Compliance Inspection	Cost - 1st Compliance Inspection	2nd compliance Inspection	Cost - 2nd Compliance Inspection	3rd compliance Inspection	Cost - 3rd Compliance Inspection	Total Hours Per License	Total Staff Cost
Code Enforcement Officer II	\$ 267.18	0.5	\$ 133.59	1	\$ 267.18	1	\$ 267.18	1	\$ 267.18	3.5	\$ 935
Senior Code Enforcement Officer	\$ 288.31	2	\$ 576.62	0.5	\$ 144.16					2.5	\$ 721
Administrative Assistant II	\$ 193.91	1	\$ 193.91							1	\$ 194
Police Officer	\$ 223.79							1	\$ 223.79	1	\$ 224
Police Sergeant	\$ 254.88							0.5	\$ 127.44	0.5	\$ 127
Total		3.5	\$ 904.12	1.5	\$ 411.34	1	\$ 267.18	2.5	\$ 618.41	8.5	\$ 2,201

Attachment 4 provides a list of similar tobacco retail license fees in other jurisdictions in Contra Costa County for comparison purposes. The average fee for an initial license is \$367, with the lowest fee being \$29 per year (Antioch) and the highest being \$1,602.44 per year (Richmond). The TRL programs in the County involve various amounts of oversight, which accounts for the wide range of fees. Staff is recommending that the City Council adopt the attached resolution amending the Cost Allocation Plan and Schedule of City Fees to implement the new Tobacco Retail License Fee in the amount of \$2,201 in order to achieve full cost recovery for



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administering the program. It should be noted, Brentwood PD has grant funding for calendar year 2025, which could be utilized to offset a portion of the fee for each tobacco retailer. The offset would be in the amount of \$465.61 for each tobacco retailer. Any activities that were to be covered by the grant funding would have to be conducted during the 2025 calendar year and continuation of grant funding cannot be guaranteed. (Per the Ordinance, the TRL is not automatically renewed every year; therefore, staff does not recommend a separate and lower renewal fee for the license.) This fee is non-refundable. Alternatively, the Council may establish a lower fee by amending the attached resolution.

If the City denies or rejects the License application of an existing Tobacco Retailer based solely on any of the limitations listed in 5.76.080, and if the Tobacco Retailer is legally operating at the time of adoption of this Ordinance, the denied Tobacco Retailer may instead be issued a non-renewable twelve (12) month Tobacco Retailer's Wind-Down Permit. Without a Wind-Down Permit, a Tobacco Retailer that is not licensed by the City may not operate as a Tobacco Retailer under any circumstances. The Wind-Down permits will require the same level of processing and compliance checks. Therefore, staff is recommending the same fee of \$2,201 be applied to these permits, as well.

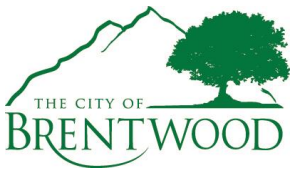
A Tobacco Retailer that is legally operating at the time of adoption of this Ordinance, may also be issued a no-fee (\$0) non-renewable twelve (12) month Tobacco Retailer's Wind-Down Permit, for the specific purpose of selling off tobacco products stock that is not in compliance with the regulations of this Code (for example, minimum package size, electronic smoking devices, flavored smoking products).

A fine of one thousand dollars (\$1000) would be imposed upon a tobacco retailer upon a finding of a violation of the ordinance.

The City reviews and updates its fees on an annual basis. Fees are adjusted at the beginning of each fiscal year by the annual changes to the April San Francisco – Oakland – Hayward, California Consumer Price Index (CPI) Urban Wage Earners and Clerical Workers, unless a fee is tied to an alternative index. Staff is proposing to adjust the TRL Fee annually on July 1, beginning July 1, 2025, by the same index; however, the City Council has the discretion to direct that the TRL Fee not be subject to an annual increase. If approved, the new fee shall become effective June 2, 2025.

PUBLIC OUTREACH

Community Enrichment staff has conducted extensive outreach to tobacco retailers prior to the City Council meeting. Outreach included emailing and mailing all 41



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known tobacco business on March 21st, providing notification of the upcoming Council meeting to adopt Tobacco Retail ordinance. Once Council approves the ordinance, a second round of outreach will occur, including information on the operational requirements, and distribution of the application to obtain a Tobacco Retail License/Wind-Down permit, an inspection checklist, and FAQ handout.

NEXT STEPS

If the City Council adopts the attached ordinance, the Ordinance will be effective on June 27, 2025. Staff will continue to conduct outreach to the business community once the ordinance is adopted and will begin accepting applications on a first come, first served basis beginning at 8:00 am on June 2nd. Any applications accepted prior to the June 27th effective date will be held until the ordinance is effective.

CITY COUNCIL STRATEGIC INITIATIVE

Not applicable.

PREVIOUS ACTION

Previous Action by the City Council is included on Attachment 1.

DATE OF NOTICE

The City of Brentwood published a public hearing notice in the Brentwood Press on May 2, 2025 and May 9, 2025.

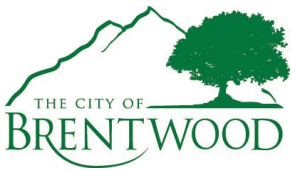
ENVIRONMENTAL DETERMINATION

The adoption of the ordinance is not subject to CEQA pursuant to Section 15358 (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, the adoption of this ordinance is exempt under CEQA pursuant to Section 15061(b)(3) (there exists no possibility that the activity will have a significant adverse effect on the environment) of the CEQA Guidelines because this ordinance will not cause a change in any of the physical conditions within the area affected by the ordinance.

ALTERNATIVE OPTION(S)

Alternative Options to the Staff Recommendation:

1. Do not approve Staff's recommendation.



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2. Modify staff's recommendation or fee amount based on legally defensible findings.
3. Continue the item with direction for staff to return with additional information.

ATTACHMENT(S)

1. Previous Action
2. Ordinance
3. Resolution
4. Map of Brentwood Tobacco Retailers Within 500 Feet of a Youth Oriented Establishment (YOE)
5. TRL Fees in Contra Costa County