Agenda Report

Fullerton City Council

MEETING DATE: **NOVEMBER 17, 2026**

TO: **CITY COUNCIL / SUCCESSOR AGENCY**

SUBMITTED BY: **SUNAYANA THOMAS, DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT**

PREPARED BY: **CHRIS SCHAEFER, AICP, PLANNING MANAGER**

DAVID LOPEZ, SENIOR PLANNER

SUBJECT: **FULLERTON MUNICIPAL CODE AMENDMENT TO PROHIBIT FLAVORED TOBACCO PRODUCTS SALES**

SUMMARY

This amendment would establish regulations to prohibit flavored tobacco sales and add tobacco product sales regulations including a tobacco retail license requirement and zoning amendments to identify zones permitting tobacco retail sales and zones requiring a Conditional Use Permit (CUP).

PROPOSED MOTION

1. Introduce Ordinance XXXX for first reading by title only and waive further reading of the ordinance.

   ORDINANCE NO. XXXX – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, AMENDING FULLERTON MUNICIPAL CODE TITLE 3 REGULATION OF ACTIVITIES AND TITLE 15 ZONING BY ADDING CHAPTER 3.45 REGULATIONS FOR BUSINESSES SELLING TOBACCO PRODUCTS TO PROHIBIT THE SALE OF FLAVORED TOBACCO PRODUCTS AND AMEND SECTIONS 15.30.030.1 PERMITTED USES IN THE O-P ZONING DISTRICT, 15.30.030.2 PERMITTED USES IN THE G-C ZONING DISTRICT, 15.30.030.3 PERMITTED USES IN THE C-3 ZONING DISTRICT, 15.30.030.4 PERMITTED USES IN THE C-M ZONING DISTRICT AND TABLE 15.40.020.A

2. Direct staff to prepare a resolution amending the City Schedule of Fees and Charges to establish tobacco retail license registration and renewal fees pursuant to FMC Section 3.45.110 and based on cost analysis in this report for adoption at a noticed public hearing.

ALTERNATIVE OPTIONS

- Approve the Proposed Motion
- Direct staff to revise ordinance with other America on Track recommendations
- Introduce the ordinance without directing staff to prepare a fee resolution
- Other options recommended by City Council.

STAFF RECOMMENDATION

Staff recommends the Proposed Motion.

CITY MANAGER REMARKS

None.

PRIORITY POLICY STATEMENT

Not applicable.

FISCAL IMPACT

Introducing the ordinance has no direct fiscal impact. Establishing fees would incur annual revenue to offset costs for compliance inspections, land use enforcement and business registration review and processing. The fees may not exceed reasonable program costs. Proposed fees would not include Police Department undercover and minor decoy operations, estimated at approximately $160,000 per year, which would continue to receive California Department of Justice (DOJ) Tobacco Grant Program funds. Chapter 3.45 applies to all tobacco retailers, including convenience stores, gas stations and liquor stores. The number of licensed retailers would increase both revenue and program costs.

DISCUSSION

Staff worked with the Planning Commission since March 2024 to draft tobacco retailers regulations for the City. The process surveyed other cities, prepared various Title 15 Zoning amendments, identified specific uses and business types that require additional consideration when in close proximity to a tobacco retail store and specified separation requirements from those specific uses and business types as well as separation from other tobacco retailers.

America On Track, a non-profit organization funded by the California Department of Public Health presented to the Planning Commission On April 9, 2025. The Planning Commission recommends City Council establish a Tobacco Retail Sales Permit and/or License with processing fees and include a separation distance from schools and parks and from other tobacco retailers.

The Planning Commission proposed the following municipal code amendments:

Title 3 Regulation of Activities Amendments

- Add new Chapter 3.45 Regulations for Businesses Selling Tobacco Products to contain tobacco retail sales regulations
- Prohibit flavored tobacco products sales
- Require tobacco retail stores to obtain a tobacco retail sales permit and/or license
- Require new tobacco retail stores locate at least 500 feet from a public or private K-12 grade school, public park, childcare center or tutoring center
- Require 250 feet of separation between new tobacco retail stores.

Title 15 Zoning Amendments

- Amend Section 15.30.030.1 Permitted Uses in the O-P Zoning District to require a CUP to operate a tobacco retail store in the Office Professional zone
- Amend Section 15.30.030.2 Permitted Uses in the G-C Zoning District to permit tobacco retail stores in the General Commercial zone subject to Chapter 3.45
- Amend Section 15.30.030.3 Permitted Uses in the C-3 Zoning District to permit tobacco retail stores in the Central Business District Commercial zone not within the Restaurant Overlay District subject to Chapter 3.45 and require a CUP to operate a tobacco retail store in the Central Business District Commercial zone within the Restaurant Overlay District
- Amend Section 15.30.030.4 Permitted Uses in the C-M Zoning District to permit tobacco retail stores in the Commercial Manufacturing zone subject to Chapter 3.45
- Amend Table 15.40.020.A to require a CUP to operate a tobacco retail store in the M-P or M-G zone (Manufacturing Park, Manufacturing General).

The proposed Chapter 3.45 regulations would apply to all tobacco retailers. The ordinance would require all existing and future tobacco retailers obtain a tobacco retail license within one year from the ordinance effective date. The distance and separation requirements and the proposed zoning amendments to the allowable uses within the various commercial and industrial zoning designations, especially those zones subject to a CUP approval, would apply to all tobacco retail stores established after the ordinance effective date. No existing tobacco retailers would need to obtain a Conditional Use Permit. The ordinance would let the city fine a retailer, suspend or revoke a license and seize products for violations.

Planning staff notified 24 tobacco retail stores within the City throughout the zoning code amendment process. None of the tobacco retail stores provided staff with comments.

Planning Commission

The Planning Commission considered LRP-2024-0007 on August 27, 2025. Commissioner Wehn moved, seconded by Vice Chair Tutor, to bifurcate the recommendation. Motion carried 3 – 2 (Opposed: Valadez, Dino). Commissioner Wehn recommended approving Title 15 amendments to include the distance and separation requirements and did not support the Title 3 amendments.

Commissioner Valadez then moved, seconded by Chair Dino, to recommend City Council approve Title 3 amendments. Commissioner Wehn withdrew his original motion. Motion carried 3 - 2 (Opposed: Tutor, Wehn).

Commissioner Wehn moved, seconded by Commissioner Valadez, to recommend City Council approve Title 15 amendments with no changes. Motion unanimously carried. (Yes: Wehn, Valadez, Fleenor, Tutor, Dino). Staff presents the draft ordinance City Council as recommended by the Planning Commission.

Proposed Ordinance and Sample Ordinance

Staff attached two draft ordinances to this report but recommends only Draft Ordinance No. XXXX for adoption (Attachment 2).

- Draft Ordinance No. XXXX (Attachment 2) adds both Chapter 3.45 (the tobacco retail license, flavored tobacco prohibition, operating requirements and penalties) and amends Title 15 (zoning). Section 3.45.110 authorizes the City to charge application, renewal and annual license fees, set by City Council resolution in an amount necessary to recover the cost to review applications and administer or enforce the chapter. The ordinance does not set a fee amount.
- Sample Comprehensive Tobacco Retailer Licensing Ordinance (Attachment 6 for reference only and not proposed for adoption) is a model ordinance prepared by the Public Health Law Center and the American Lung Association, provided by America on Track. The Planning Commission did not recommend adopting this ordinance. Staff would return with a revised ordinance at a future meeting if City Council prefers to add provisions from this draft ordinance.

The proposed ordinance contains several core tobacco retail licensing program elements, including:

- annual, nontransferable license required for each location
- flavored tobacco products prohibition
- minimum 21 years old sales age with photo identification required for customers who appear under 30
- self-service displays prohibition
- separation requirements from sensitive uses and other tobacco retail stores
- at least one annual compliance inspection for each retailer
- graduated administrative fines ($1,000, $1,500 and $5,000) with license suspension and revocation
- unlawful products seizure.

City staff met with America on Track, a non-profit organization that designed and executed programs in youth leadership development, mentoring, fitness and nutrition education, tobacco and drug use prevention and policy development, on April 30, 2026.

The organization recommended proposed tobacco regulations and provided a copy of the Sample Comprehensive Tobacco Retailer Licensing Ordinance (Attachment 6).

The Planning Commission, however, did not recommend the following policy considerations and the proposed ordinance before Council does not include these recommendations. Staff recommends City Council introduce the ordinance as presented or direct staff to incorporate additional requirements, in which case staff would present a revised ordinance to City Council after first referring zoning or land-use changes to the Planning Commission.

Policy Consideration	**In proposed ordinance?**	**Implementation considerations**
a. Restrict tobacco sales within pharmacies	No	Would require amendment to prohibit tobacco sales in pharmacies and public hearing process in Section 3.45.040
b. Prohibit coupons and discounts	No	Enforced through Police Department retail inspections
c. At least two compliance checks per year	No (one per year required)	Would increase Police Department inspection costs and the annual fee
d. Minimum package size	No	Enforced through Police Department retail inspections
e. Increase buffers to 1,000 feet	No (500 feet / 250 feet)	Would reduce locations eligible for new tobacco retail stores / Would not affect existing stores
f. Flavored tobacco definition with no exemptions	No (exempts flavored shisha at 21 years and older hookah retailers, premium cigars and loose-leaf tobacco)	Would remove the exemptions in FMC Section 3.45.040.F.1
g. Onsite sales only (no delivery or online sales)	No	Would require a new prohibition in FMC Section 3.45.040

Existing Tobacco Enforcement

The Fullerton Police Department (PD) has conducted tobacco enforcement operations funded through the DOJ Tobacco Grant Program since June 2018, to reduce tobacco product accessibility and use citywide by discouraging selling, giving or in any way furnishing tobacco products or paraphernalia to individuals under the legal age. PD accomplishes this through education, investigation, compliance and enforcing state and local laws. PD conducts operations quarterly, and conducts the following each year:

- 160 retail inspections (any establishment that has a tobacco license)
- Approximately eight undercover operations focused on flavored tobacco products sale and seizure

- Approximately 160 locations for minor decoy operations.

PD conducted numerous operations to seize prohibited flavored tobacco products, including the properly booking and disposing these items. PD has law enforcement authority to investigate violations and conduct seizures when legally authorized.

These operations enforce state law. Fullerton does not have a local tobacco retail license, so the City cannot suspend or revoke a local license when a retailer violates the law. The proposed ordinance would give the City this additional enforcement tool with codified standards and graduated penalties.

Enforcement and Implementation

FMC Section 3.45.120 requires the Police Department and/or Code Enforcement to inspect tobacco retailers at least once a year. Staff would implement the program by dividing responsibilities according to department authority and building on the existing PD program:

Department	**Implementation responsibilities**
Police Department	• Annual retail compliance inspections for each licensed retailer, focusing on flavored tobacco product sales • verifying each business holds a valid tobacco retail license and has properly posted • undercover and minor decoy operations (grant-funded) • investigate violations • seize, book, store and dispose unlawful products • refer violations to CED for administrative action on the license.
Community and Economic Development and Administrative Services	• Business registration and license processing (intake, issuance and renewal) • new tobacco retail stores planning review for zoning, separation and CUP requirements • maintain licensed retailers list • administrative fines, suspension and revocation proceedings under FMC Sections 3.45.130 through 3.45.150 • respond to zoning-related complaints.

The eight annual PD retail inspections would satisfy the FMC Section 3.45.120 annual compliance inspection. PD and CED would confirm these inspections reach each licensed retailer at least once per year. Code Enforcement would not conduct routine annual inspections and staff anticipates no additional Code Enforcement staffing needed.

- PD and CED would establish a written coordination process that includes:
- confirming the number of licensed retailers with PD quarterly
- PD identifying violations with CED
- a referral procedure and timeline for violations requiring administrative action on a license

- PD notifying CED of potential zoning violations observed in the field.

Proposed Tobacco Retail License Fees

FMC Section 3.45.110 authorizes application, renewal and annual license fees in an amount necessary to recover city costs. State law limits regulatory fees to the reasonable cost of the regulatory program. Staff prepared the following cost analysis in-house, using hourly rates and fees already adopted in the FY 2025-26 Schedule of Fees and Charges. Staff grouped costs by the four required program functions: business registration processing, planning review, CED enforcement and PD license compliance inspections. Staff would estimate staff time across divisions and confirm before a fee hearing.

Comparable Jurisdictions

Jurisdiction	*Tobacco retail license fee*
Pasadena	$681 annual retailer fee $224 inspection fee plus license information change fees
Santa Ana (smoke shops)	$533.08 (Code Enforcement) annual inspection fees $709.98 (Police) annual inspection fees
Anaheim	$868 permit fee
Orange	$880 permit fee $337.10 change of information fee
Buena Park	$495 application fee $275 per year annual renewal fee
Sacramento	$550.80 application fee $507.60 renewal fee
Pico Rivera	$521.60 fee per year
Los Angeles	$437 fee per year

Fee Adoption Process

City Council must adopt a resolution to add fees to the City Schedule of Fees and Charges per FMC Section 3.45.110. The ordinance does not include set amounts. Government Code Section 66016 requires City Council adopt new fees at a regular City Council meeting with supporting cost data available to the public at least ten days before the meeting. Staff would present a fee resolution and final cost analysis at a noticed public hearing. Existing retailers would have one year from the ordinance effective date to obtain a license and City Council would adopt fees, if any, before the City issued licenses.

Attachments:

- Attachment 1 – PowerPoint Presentation
- Attachment 2 – Draft City Council Ordinance No. XXXX
- Attachment 3 – Planning Commission Staff Report dated August 27, 2025
- Attachment 4 – Planning Commission Resolution No. PC-2024-19
- Attachment 5 – Planning Commission Meeting Minutes dated August 27, 2025
- Attachment 6 – Sample Comprehensive Tobacco Retailer Licensing Ordinance

cc: City Manager Eddie Manfro