



City of Palo Alto

City Council Staff Report

(ID # 9071)

Report Type: Action Items

Meeting Date: 4/16/2018

Summary Title: Public Hearing: Fee Ordinance for the Tobacco Retail Permit

Title: PUBLIC HEARING: Adoption of an Ordinance (1) Amending Chapter 4.64 (Permits for Retailers of Tobacco Products) of the Municipal Code to Allow Fees to be set by Ordinance; and (2) Amending the FY18 Municipal Fee Schedule to add an Application and Permit Fee for the Tobacco Retailer Permit Program

From: City Manager

Lead Department: Public Works

Recommended Motion

Staff recommends that the City Council adopt the ordinance included as Attachment A approving amendments to (1) Chapter 4.64 of the Municipal Code (Permits for Retailers of Tobacco Products) to allow fees for the tobacco retailer program to be set by ordinance (in addition to resolution); and (2) the Public Works section of the Municipal Fee Schedule for Fiscal Year 2018 to add fees related to the City's tobacco retailer permit program, which was adopted on October 2, 2017 ([CMR 8532](#) at <https://www.cityofpaloalto.org/civicax/filebank/documents/61257>)

Background

In October 2017, the City Council adopted the tobacco retailer permit ordinance, now codified at Chapter 4.64 of the Municipal Code. Chapter 4.64 requires tobacco retailers to apply for and obtain a permit before selling tobacco products within the City of Palo Alto, among other requirements. Chapter 4.64 allows fees to be charged in the administration of the ordinance. The County of Santa Clara's Public Health Department runs the permit program on behalf of the City pursuant to an agreement that was passed by the City Council, and enforcement is scheduled to begin in July 2018.

The attached ordinance will (1) amend Chapter 4.64 to allow tobacco permit program fees to be set by ordinance; and (2) will set the application fee and the annual permit fee to match that of the County of Santa Clara, which administers and staffs the retailer permit program on behalf of the City. As part of the City's agreement with the County, the City agreed that it would pass an ordinance to set the application fee and annual permit fee to be the same as the County's fees, which this ordinance does.

Currently, the fees are set at \$340 for a one-time application fee and \$425 for an annual permit. The fee amounts are supported by the County's costs per retailer for each application and permit, respectively. See Exhibit B (Resolution of the Board of Supervisors of the County of Santa Clara No. 2010-447). There is no financial impact to the City because the fees are collected by the County and they administer the permit program.

Timeline

Based on State law, fee adjustments can become effective no less than 60 days after Council's adoption of the resolution.

Environmental Review

The adoption of user fees is exempt from environmental review under the California Environmental Quality Act (CEQA). (See CEQA Guidelines Section 15273.)

Attachments:

- Attachment A: Ordinance to (1) Amend Chapter 4.64 to Allow Fees to be set by Ordinance, and (2) Amend the FY18 Municipal Fee Schedule to Add Tobacco Permit Fees
- Attachment B: Santa Clara County Board of Supervisors Resolution 2010-447 Adopting Fees for Tobacco Retailer Permits

Ordinance No. _____

Ordinance of the Council of the City of Palo Alto Amending the Fiscal Year 2018
Municipal Fee Schedule to Add Application and Permit Fees for the Tobacco
Retailer Permit Program

The Council of the City of Palo Alto ORDAINS as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

A. The County of Santa Clara adopted an ordinance creating a Tobacco Retailer Permit program in 2010 and passed a resolution (Resolution of the Board of Supervisors of the County of Santa Clara, Resolution No. 2010-447) establishing an application fee and an annual permit fee for the program.

B. The City of Palo Alto worked with the County of Santa Clara to create a Tobacco Retailer Permit program for the City. In 2017, the City adopted Ordinance No. 5418, which established a tobacco retailer permit program to be administered by the County. The City Council also approved an agreement between the City and the County of Santa Clara to administer the program on the City's behalf.

C. As the City's Tobacco Retailer Permit program is administered by the County of Santa Clara, the City intends to set its program fees at the same levels as those set by the Board of Supervisors of the County of Santa Clara.

SECTION 2. Section 4.64.100 of Chapter 4.64 (Permits for Retailers of Tobacco Products) of Title 4 (Business Licenses and Regulations) is hereby amended to read as follows (unchanged text is in plain font, additions to code are in underlined-italics font):

4.64.100 Fees.

The city or its designee shall not issue or renew a retailer permit prior to full payment of any applicable fees. The city shall, from time to time, establish by resolution or ordinance the fees to issue or to renew a retailer permit. The fees shall be calculated so as to recover the cost of administration and enforcement of this chapter, including, for example, issuing a permit, administering the permit program, conducting retailer education, performing retailer inspection and compliance checks, documenting violations, and prosecuting violators, but shall not exceed the cost of the regulatory program authorized by this chapter. All fees and interest earned from such fees shall be used exclusively to fund administration and enforcement of this chapter.

SECTION 3. The Council of the City of Palo Alto adopts the changes to the Municipal Fee Schedule as set forth in Exhibit "A" and incorporated here by reference.

SECTION 4. The amount of the new fees is no more than necessary to cover the reasonable costs of the governmental activity, and the manner in which those costs are allocated to a payer bears a fair and reasonable relationship to the payer’s burden on, or the benefits received from, the governmental activity.

SECTION 5. Fees in the Municipal Fee Schedule are for government services provided directly to the payor that are not provided to those not charged. The amount of this fee does not exceed the reasonable costs of providing the services. Consequently, pursuant to Art. XIII C, Section I(e)(2) of the California Constitution, such fees are not a tax.

SECTION 6. The Council finds that this project is exempt from the provisions of the California Environmental Quality Act (“CEQA”), pursuant to Section 15061 of the CEQA Guidelines, because it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 7. This ordinance shall be effective on the 31st day after the date of its adoption except for Section 3, which shall be effective sixty days after the date of its adoption.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

City Attorney

City Manager

Director of

Not Yet Approved

Attachment A

Director of Administrative
Services

Attachment A

**Public Works
Tobacco Retailer Permit Program**

Fee Title	FY18 Rate
Tobacco Retailer	
Tobacco Retailer Permit Program – Application Fee for New Applications	Rate set by County of Santa Clara (currently \$340.00 per application)
Tobacco Retailer Permit Program – Annual Permit Fee (including renewals)	Rate set by County of Santa Clara (currently \$425.00 per annual permit)

RESOLUTION NO. 2010-447

**RESOLUTION OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
ADOPTING A SCHEDULE OF FEES APPLICABLE TO
PERMIT REVIEW, ISSUANCE AND ENFORCEMENT FOR TOBACCO RETAILERS
IN THE COUNTY OF SANTA CLARA**

WHEREAS, the Board of Supervisors will consider an ordinance (Ordinance No. NS-300.832) which requires a permit for tobacco retailers to operate in the unincorporated areas of the County;

WHEREAS, pursuant to County Ordinance No. NS-300.832, Section A18-376, the Board of Supervisors is authorized to adopt fees for the administration and enforcement of the permit requirements for tobacco retailers to operate in the unincorporated areas of the County;

WHEREAS, the County's Department of Environmental Health will review applications, issue permits, and ensure compliance with the permit requirements; and

WHEREAS, a fee schedule to be paid by those applying for such permits needs to be adopted so that the County may carry into effect its policies, should Ordinance No. NS-300.832 be adopted; and

WHEREAS, the nature of the fees and the total amounts of the fees, which are described on Attachment A to this Resolution are determined to be reasonable in that the amounts of the fees are not in excess of the estimated reasonable costs of administering and enforcing the permit requirements established by Ordinance No. NS-300.832;

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Adopted

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Santa Clara, State of California, that:

1. The fees, attached to this Resolution as Attachment A and incorporated herein by reference, are adopted.
2. Contingent upon the Board's approval of Ordinance No. NS-300.832, this Resolution is approved and effective as of the effective date of that Ordinance.


PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, this 19th day of October, 2010, by the following vote:

AYES: CORTESE, GAGE, KNISS, SHIRAKAWA, YEAGER

NOES: NONE

ABSENT: NONE

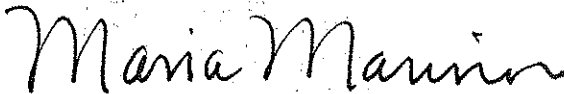
ABSTAIN: NONE



Ken Yeager, President
Board of Supervisors

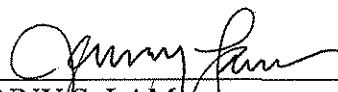
Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:



MARIA MARINIS
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



JENNY S. LAM
Deputy County Counsel

Exhibit to this Resolution:

A – Fees (Proposed)

Attachment A
Tobacco Retailer Permit Fee Schedule (Proposed)

Tasks and Expenses	Estimated Costs Per Retailer	Proposed Fee for New Permit	Proposed Fee for Permit Renewal
<i>Recurring Tasks Charged to Annual Permit Fee</i>			
Compliance monitoring & associated activities (Department of Environmental Health)	\$289.22		
Training and ordinance review for staff (Department of Environmental Health)	\$20.66		
Conducting administrative appeal hearings (Department of Environmental Health)	\$115.27		
Subtotal	\$425.15	\$425	\$425
<i>One-Time Application Fee Charged to New Permits Only</i>			
Processing permit applications (Department of Environmental Health)	\$123.95		
Activities to bring retailers under compliance (Department of Environmental Health)	\$216.91		
Subtotal	\$340.86	\$340	
TOTAL	\$766.01	\$765	\$425

Adopted