



MEMORANDUM

To: Mayor and City Council

Through: Stephanie Hayden-Howard, LMSW, Assistant City Manager *SHH*

From: Adrienne Sturup, Austin Public Health Director *AS*

Date: October 16, 2026

Subject: **Prohibiting the Sale of E-cigarettes, Vapes, and Synthetic Nicotine Products within 1,000 Feet of a School or Daycare – Staff Response (Resolution No. 20250522-054)**

The purpose of this memorandum is to provide a response to [Council Resolution No. 20250522-054](#), which directed the City Manager to explore options to regulate the sale of synthetic nicotine products and e-cigarettes of any kind so that none of these products may be sold within 1,000 feet of a public school, private school, or daycare. A multi-department workgroup led by Austin Public Health (APH) with representation by Austin Planning, Austin Development Services, and Austin City Attorney's Office formed in May 2025 to respond to this resolution.

Background and Proposed Ordinance Changes

Staff conducted a review of 13 ordinances related to regulation of e-cigarette retailers in Texas municipalities and reviewed policies in California, in which 28 municipalities have restricted sale of these products near schools in all retail environments. The following mechanisms were considered for the proposed City of Austin ordinance: (1) a tobacco-retailer licensing ordinance, (2) a zoning ordinance (3) a conditional use permit, or (4) direct regulation.

Tobacco and e-cigarette retail licenses are issued by the Texas Comptroller of Public Accounts and municipalities are preempted from implementing local tobacco or e-cigarette retail licensing ordinances. Direct regulation is not recommended because there is no mechanism to limit issuing of e-cigarette or tobacco retail licenses within the 1,000-foot buffer zone, making direct regulation difficult to enforce. A zoning ordinance has been determined to be the most effective mechanism.

Date: October 16, 2026
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Staff recommends the ordinance language be broader to prohibit retail of all tobacco products and e-cigarettes within 1,000 feet of schools and child-care centers, and not just e-cigarettes, vapes and synthetic nicotine products. Reasons for this broader language include:

- No tobacco products are safe for youth¹, and there is little chemical difference between tobacco-derived nicotine and synthetic nicotine².
- Nearly 9 out of 10 adults who smoke cigarettes daily first try smoking by age 18.³
- Oral nicotine pouches are considered tobacco products, whether they contain synthetic nicotine or nicotine derived from tobacco. These products have risen in popularity.
- The tobacco retail landscape is quickly changing. For example, new dissolvable nicotine products such as nicotine sticks and lozenges are entering the market, and some look like hard candy⁴. These products often contain flavors, which can appeal to youth. Restricting all tobacco products near schools will capture these new products as they are introduced, whether they are made with synthetic nicotine or nicotine derived from tobacco.
- A more inclusive policy will also be easier to enforce, without the need for City staff to identify which products contain synthetic nicotine vs. nicotine derived from tobacco.

Staff recommends creating a new land use that will restrict location of new tobacco or e-cigarette retailers within 1,000 feet of schools and child-care centers. This code change would impact new e-cigarette or tobacco retailers including vape shops, smoke shops, and convenience stores. Preliminary analysis shows that there are over 600 tobacco and/or e-cigarette retailers located within 1,000 feet of a school or child-care center in the City of Austin, the majority of which are licensed to sell both e-cigarettes and tobacco products. Existing retailers would be allowed to continue selling tobacco and/or e-cigarettes, and the new restrictions would apply to new retailers. Additionally, to reduce any unintended consequences of limiting full-service grocery store expansion in areas with low food access, staff are exploring exemption options for these grocery stores.

Staff also recommends an update to [Chapter 10-4](#) and [10-11](#) (Minors' Access to Tobacco, Electronic Smoking Devices) to include synthetic nicotine products and nicotine analogs in the definition of tobacco products and e-cigarettes. In 2022, the Food and Drug Administration (FDA) updated the definition of "tobacco product" to include products containing nicotine from any source due to the prevalence of synthetic nicotine; however, the City of Austin code has not yet been updated to reflect this change. It is important to note that these nicotine analogs are imitation tobacco products that "create the same sensations as nicotine".⁵ These e-cigarette products are often fruit flavored, may appeal to youth, and are otherwise unregulated. Staff also recommend an update to explicitly state that FDA approved tobacco cessation devices are not considered tobacco products.

¹ Centers for Disease Control and Prevention. [E-Cigarette Use Among Youth](#)

² Centers for Disease Control and Prevention. [Nicotine Pouches](#).

³ Centers for Disease Control and Prevention. [Youth and Tobacco Use](#).

⁴ Federal Drug Administration. [Other Tobacco Products](#)

⁵ Public Health Law Center. [Nicotine-Free Products: An Overview](#)

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Community Engagement with Impacted Businesses

Austin Public Health facilitated two virtual business forums to seek feedback from impacted businesses on the proposed ordinance changes. Outreach efforts included sending 525 email invitations to convenience stores and grocery retailers with food establishment permits through APH. The forum invitation was also shared with the Greater Austin Merchant's Association. Invitations to the forums were mailed to 81 smoke and vape shops that were identified to be within the 1,000 foot buffer zone near schools or child-care centers. A total of five participants attended the virtual business forums. Four individuals represented convenience stores, and one represented a grocery store. No participants represented vape shops.

Correspondence also included an email address that businesses could contact if they wished to provide feedback but could not attend either forum. No individuals contacted APH via the email address provided for feedback outside of the forum. Due to the lack of participation by vape shops in the forums, staff conducted phone outreach to 12 smoke and vape shops to solicit feedback using a randomly generated list of businesses, resulting in two additional stakeholder interviews. The remaining businesses were unreachable or did not respond to the request to provide feedback.

Feedback from the business stakeholders included:

- The ordinance could limit future expansion opportunities for grandfathered businesses as they would be more limited in selection of new sites.
- Grandfathering existing tobacco retailers near schools and child-care centers could create an unintended consequence of inhibiting competition for convenience stores since no new retailers could compete in the same geographic area.
- Economic impact was a concern, with a respondent citing concerns about profit margin and limiting new development or growth.
- There was a recommendation for considering an evaluation measure for tracking the effectiveness of the anticipated ordinance.
- There are existing state laws that have already been implemented to minimize youth access and there is not enough local data to back up the proposed ordinance.
- Limiting new retailers of all tobacco products near schools and child-care centers and not just e-cigarettes and synthetic nicotine products is an overreach of the resolution language.
- The distance buffer to schools and child-care centers should be less than 1,000 feet.
- The ordinance should apply to all retailers unless they have an exemption for grocery retail.
- The need to hold retailers that are selling to youth more accountable and add extra layers of accountability, beyond just limiting geographic access near schools, as youth are obtaining products from multiple access points and locations.
- The desire to see tobacco prevention education expanded for youth in the City of Austin.

No feedback was received related to the proposed definition changes of tobacco products or e-cigarettes in the public health code.

Date: October 16, 2026
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Community Engagement with Schools, Child Care Providers and Youth Serving Organizations

Austin Public Health facilitated three stakeholder interviews with school personnel, one interview with a child-care center, and two interviews with youth serving organizations to seek feedback on the proposed ordinance changes. Outreach efforts consisted of connecting with established partners and programs and outreach emails to request participation in stakeholder interviews. Austin Independent School District and Del Valle Independent School District were represented. Staff contacted two organizations to provide input from parents and caregivers; however, no parent or caregiver stakeholder feedback was received.

The following feedback was received from school, child-care, and youth serving organization respondents:

- Nearly all respondents noted the impact of e-cigarettes on youth in their organizations. Confiscation of e-cigarettes was noted frequently. Respondents noted that e-cigarette use is disruptive in schools and the magnitude of infractions is high. Stakeholders also mentioned students selling e-cigarettes to other students.
- Most respondents saw a positive effect of limiting new tobacco and e-cigarette retailers near schools, indicating that these limitations could make it harder for students to access these products in the long term as well as reduce tobacco marketing exposure overall. Respondents had concerns that the grandfathering of existing retailers would reduce impact, leaving many retailers located near schools and child-care centers.
- Respondents mentioned the need for higher accountability of retailers and enforcement of laws related to the sale of tobacco and e-cigarette products to minors.

Next Steps

The multi-departmental team is working through the code amendment process with anticipated hearing of the proposed ordinance changes at Planning Commission and City Council meetings in the coming fall or winter months. Staff met with City Attorney's Office regarding the possibility of including sale of hemp derived products in the proposed 1000-foot buffer near schools and childcare centers, and whether retailers in the buffer that continue to sell tobacco to minors could be considered a public nuisance. City Council may prohibit the sale of hemp products in certain zoning districts by limiting sales to certain land uses and distance requirements. For instance, hemp sales use may only be allowed in a commercial zoning district when located more than 1,000 feet from a public educational facility, private educational facility, or childcare services. City Council can include language in the City Code that states that illegal sales are a public nuisance. However, the City Attorney's Office would need to explore how that designation would work in practice, including how it could impact operations for a retailer. As this process moves forward, the City Attorney's Office will explore the impact of such a designation.

Additional Considerations: Passage of State Laws Regulating E-Cigarettes

The Texas Legislature enacted several laws during the last legislative session which impact retail of e-cigarettes and e-cigarette marketing. These laws became effective September 1, 2025:

- [SB 1316](#) prohibits the advertising of e-cigarettes within 1,000 feet of a school, consistent with a similar restriction for cigarette marketing. This does not include marketing within a retail store.

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- [SB 2040](#) prohibits the marketing and sale of e-cigarettes that look like alternative products (such as school supplies, cosmetics, watches, etc.) as well as those manufactured in China. It also prohibits sale and marketing of e-cigarettes that contain or are mixed with any cannabinoids, alcohol, kratom, kava, mushrooms, tianeptine, or any derivatives of those substances.
- [SB 1313](#) prohibits e-cigarettes and tobacco advertisements that are clearly aimed at minors such as those that use cartoon-like fictional characters or celebrities.

Unless directed otherwise, staff will proceed with the code amendment process and then close out this resolution. Should you have any questions or concerns, please contact Adrienne Sturup, Director of Austin Public Health at Adrienne.sturup@austintexas.gov or 512-972-5010.

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