



# STAFF REPORT

Item Number 16.A

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**SUBJECT:** Workshop to Discuss Potential Regulation of Tobacco and Vape Products in Lincoln. (Kristine Mollenkopf)

**SUBMITTED BY:** Kristi McKenney

**DEPARTMENT:** City Attorney's Office

**DATE:** November 18, 2025

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**STAFF RECOMMENDATION:**

Staff seeks direction from the City Council regarding whether or how they wish to regulate tobacco retailers, including vape shops.

**BACKGROUND/INTRODUCTION:**

In 2019, a new vape shop opened in a very prominent location in downtown Lincoln, approximately ½ mile from Lincoln High School. Council members at that time raised concerns regarding its location so close to a school. The City’s current Municipal Code does not generally regulate establishments that sell tobacco products. The Municipal Code only requires the retailer to be located in a proper zone, obtain a conditional use permit that requires state licensing, and a general Lincoln business license.

In 2019, the City of Lincoln had 22 retailers selling tobacco and/or vape products. Currently, in 2025, the City of Lincoln has 24 retailers selling tobacco and/or vape products. A few of the retailers are specialty shops, meaning that they only sell tobacco or vape related products. However, several of the retailers, such as gas stations or convenience stores, sell multiple types of products in addition to tobacco and vape products. The allocation of retailers is shown on the table below:

<b>Type of Retailer</b>	<b>Number of These Retailers w/in Lincoln</b>
Grocery stores/Markets	6
Pharmacies	1
Gas Stations/Mini-Marts	8
Liquor Stores	1
Country Club/Golf Club	2

Recently, Councilmembers have raised concerns again about the number of tobacco and vape locations within Lincoln as well as their proximity to schools or to one another and requested suggest options for how to regulate these uses.

## **FINDINGS/ANALYSIS:**

### **Health Impacts from Vaping**

Vaping is the act of inhaling and exhaling an aerosol, often referred to as vapor, which is produced by an e-cigarette or similar device[1]. The term is used because e-cigarettes do not produce tobacco smoke, but rather an aerosol, often mistaken for water vapor, that consists of fine particles. Many of these particles contain varying amounts of toxic chemicals, which have been linked to cancer, as well as respiratory and heart disease.

Vaping has grown in popularity with the rise of e-cigarettes, which were introduced to the mass market in the U.S. in 2007. Vaping devices include not just e-cigarettes, but also vape pens and advanced personal vaporizers, also known as MODS. E-cigarettes, which resemble smoked cigarettes, and vape pens, which resemble large fountain pens, are typically simpler in design and less expensive than devices that have been customized by the user.

Generally, a vaping device consists of a mouthpiece, a battery, a cartridge for containing the e-liquid or e-juice, and a heating element. When the device is used, the battery heats up the heating element, turning the e-liquid into an aerosol that is inhaled into the lungs and then exhaled.

The e-liquid in vaporizer products usually contains a propylene glycol or vegetable glycerin-based liquid with nicotine, flavoring and other chemicals and metals, but not tobacco. Some these devices to vape THC, the chemical responsible for most of marijuana's mind-altering effects, or even synthetic drugs like flakka (essentially bath salts), instead of nicotine.

The most popular vaping product is the JUUL, which is a small, sleek device that resembles a computer USB flash drive. Its design makes it easy to hide, which helps explain why it has become so popular among middle and high school students. In 2018, it accounted for

approximately 72% of the market share of vaping products in the United States. It comes in many flavors like crème Brulé, mango and fruit medley. Every JUUL product contains a high dose of nicotine: one pod or flavor cartridge contains about the same amount of nicotine as a whole pack of cigarettes.

A growing body of evidence indicates that vaping products may be a health hazard. Despite early optimism when these products first came on the market in the late 2000's, health advocates now recommend caution in using them considering growing evidence suggesting that their risks, especially to young people, outweigh their benefits.

In August of 2020, Senate Bill 793 was passed which aimed to halt the sale of most flavored tobacco products, including e-liquids, menthol cigarettes, and flavored smokeless tobacco. The bill was a response to growing concerns over the rising rates of nicotine addiction among young people. The implementation was delayed by a referendum funded by the tobacco industry which placed the fate of the flavored tobacco ban in the hands of California voters as Proposition 31 in November 2022. A majority of voters voted in favor of the ban making it no longer legally permitted for tobacco retailers to sell these items.

Since 2022, Assembly Bill 935, Senate Bill 1230, and Assembly Bill 3218 have expanded the initial law and closed a few loopholes. These bans include a wide range of products with a "characterizing flavor" other than tobacco which encompasses fruit, candy, mint, and menthol flavors, and applies to all vaping cartridges, pods, and e-liquids containing nicotine or not. These new laws went into effect on January 1, 2025.

The City of Lincoln presently has 6 self-designated vape shops, and a total of 24 licensed California cigarette and tobacco products retailers. Without performing a complete audit of all the retailers, it is not known whether the other 18 shops sell vape products in addition to more traditional tobacco products.

The City of Lincoln may regulate the sale of tobacco products as part of its broad police power, to protect the health, safety and general welfare of its residents. (Cal. Const. article XI, § 7; *Carlin v. City of Palm Springs* (1971) 14 Cal.App.3d 706, 711.) If the City Council elects to regulate tobacco retailers, there are several options available.

### **Example Regulatory Models:**

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The Rocklin regulatory model:

Rocklin prohibits tobacco retailers within one thousand feet of any developed or designated public, private or charter school providing primary or secondary education, or within one thousand feet of any preexisting tobacco retailer. (The Rocklin ordinance is Attachment A.) The ordinance further sunsets pre-existing grandfathered tobacco retailers if the use is abandoned for a period of ninety continuous days, whether or not there was the intent to abandon the use. The ordinance also prohibits pre-existing uses from being enlarged, expanded, or extended.

This model of ordinance would be relatively simple for staff to implement. It would require analysis at the point of the business license application, and more routine monitoring to ensure uses were not expanded.

#### The Sacramento regulatory model:

The City of Sacramento enacted a complete ban on the sale of flavored e-cigarette cartridges, menthol cigarettes and other flavored tobacco products, effective October 1, 2019. The Sacramento staff report and ordinance are Attachment B.

The ordinance does not require any of Sacramento's roughly 383 tobacco retailers to close. The City will, however, close shops that increase their inventory of flavored tobacco products, stop selling tobacco products for more than 60 days, or fail to renew their licenses. If the City closes shops for those reasons, those licenses will not be issued to new shops. No new tobacco retailers are allowed to open within 1,000 feet of another one.

Retailers complained that their inability to sell these products would be financially devastating to their businesses, and several have closed in the face of the ordinance change.

This model too would be relatively simple for staff to implement. It would require analysis at the point of the business license application, and more routine monitoring to ensure uses were not expanded.

#### The San Francisco regulatory model

The County of San Francisco's ordinance, a copy of which is Attachment C, bans all new

tobacco products until and unless the product obtains a premarket review order by the federal Food and Drug Administration. If a retailer sells unapproved tobacco products in violation of the ordinance, the retailer's tobacco sales permit may be revoked. The ordinance also prohibits the sale of flavored tobacco products.

Administering this type of ordinance in Lincoln would present some obstacles. City staff are not trained and educated to monitor federal FDA compliance. Monitoring the products sold by Lincoln's 25 retailers would require periodic inspections. Violations resulting in revocation of a retail tobacco sales permit would require an administrative process in which the State would need to be a willing partner.

**Other Regulatory Considerations:**

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Possession of tobacco products by persons under the age of 21

At the State level, Business & Professions Code § 22950, et seq., the Stop Tobacco Access to Kids Enforcement (STAKE) Act, prohibits a person from selling or otherwise furnishing tobacco products to a person under 21 years of age. Existing law authorizes specified enforcing agencies to assess civil penalties for violations of the STAKE Act. While selling tobacco to a person who is under-age is illegal activity by the seller, it is not illegal for someone under the age of 21 to possess tobacco products. Based upon information provided by the Lincoln Police Department, a Municipal Code ordinance making possession of tobacco products by persons under the age of 21 an infraction or misdemeanor, subject to a fine, would give the Police Department and School Resource Officers another tool for enforcement. Possession under the age of 18 could result in juvenile court involvement.

Enactment of an ordinance banning possession of tobacco products by persons under the age of 21 will necessarily involve coordination between law enforcement issuing citations, and the City Attorney's Office in the prosecution and/or resolution of the citations, which could include financial penalties, education courses, or community service requirements in exchange for a dismissal.

Sale of non-Tobacco or Vape Items

*Nitrous Oxide*

The Lincoln Police department has suggested the City Attorney's office include the prohibition of tobacco and vape shops selling items that are not specifically related to tobacco or vaping but rather, are generally known to law enforcement to be used for other types of illegal drug activities. Items such as disposable glass pipes or nitrous oxide, commonly referred to as whippets, are sometimes sold in tobacco or vape shops. Nitrous oxide is used as a sedative and anesthetic for dental or surgical procedures, or as a charger for whipped cream dispensers. Nitrous oxide can also be inhaled and used as an illegal drug.

### *Kratom and 7-OH*

Other items to consider prohibiting are kratom and its active alkaloid 7-hydroxymitragynine (7-OH). Although kratom is derived from a tropical tree native to Southeast Asia and has traditionally been used for its stimulant and pain-relieving effects, U.S. regulators emphasize that neither kratom nor any of its alkaloids are approved for medical or dietary use.

The FDA reports growing evidence that kratom can produce opioid-like effects, including euphoria, respiratory depression, physical dependence, and withdrawal symptoms. The agency notes that the alkaloid 7-OH, though present only in small quantities in natural leaf material, is far more potent at the mu-opioid receptor than mitragynine, kratom's primary compound. This potency raises particular concern when 7-OH is either concentrated during processing or added synthetically to commercial products. The FDA has issued multiple warnings and enforcement actions against companies marketing kratom- or 7-OH-containing drinks, powders, and gummies, stating that these products may cause sedation, respiratory failure, seizures, and death.

Several case reports and toxicological reviews submitted to the FDA and the Centers for Disease Control and Prevention (CDC) describe hospitalizations and fatalities in which kratom or 7-OH was detected. In these cases, users presented with symptoms consistent with opioid toxicity, such as slowed breathing, loss of consciousness, and cardiac arrest. Although some deaths involved co-use with other substances, the FDA maintains that kratom itself poses sufficient toxicological risk to warrant regulatory restriction. Animal and in vitro studies confirm that mitragynine is converted in the body to 7-OH, which has significantly higher opioid receptor activity, suggesting that even natural kratom can lead to opioid-type adverse effects in certain doses or formulations.

At the state level, the CDPH released an advisory in October 2025 declaring foods, dietary supplements, and medical products containing kratom or 7-OH to be "dangerous and illegal to sell or manufacture" in California. This action followed six fatal overdoses in Los Angeles County linked specifically to products containing 7-OH. The CDPH emphasized that ingestion of kratom or 7-OH can cause addiction, psychosis, seizures, and potentially fatal respiratory depression. California authorities have begun removing these items from retail shelves and

caution that even so-called herbal kratom drinks and gummies may contain undisclosed or unsafe concentrations of 7-OH.

Both the FDA and CDPH have underscored the particular risk to minors. Kratom products are frequently sold in convenience stores and gas stations in packaging that resembles energy drinks or candy, often without age restrictions. Health officials warn that adolescents who experiment with kratom may develop physical dependence or experience overdose, especially if they consume products adulterated with 7-OH or combine kratom with alcohol or other drugs. Because 7-OH acts on the same receptors as opioids, repeated exposure can alter adolescent brain development and increase vulnerability to substance use disorders later in life. Law enforcement agencies in several California counties have also reported seizures of kratom products from minors and unlicensed retailers, prompting calls for stronger age-related controls and public education campaigns.

From a public health standpoint, both federal and state agencies view kratom and 7-OH as unregulated psychoactive substances with unpredictable pharmacology and significant potential for harm, particularly among youth and unknowing consumers. The absence of manufacturing standards and the variability in alkaloid concentrations among products mean that users cannot reliably gauge potency or toxicity. For these reasons, the FDA continues to recommend that consumers avoid all kratom-containing products, and the CDPH has moved to classify such products as illegal within California.

### *Children's Toys and Stuffed Animals, etc*

Children's toys and stuffed animals should be prohibited from sale, display, or distribution within smoke and vape shops because their presence undermines youth protection policies and creates an implicit appeal to minors. These establishments sell products containing nicotine, cannabis, or other psychoactive substances that are legally restricted to adults. Displaying toys or child-themed items in these environments blurs the boundary between adult-only businesses and spaces meant for children, normalizing or glamorizing the use of restricted substances.

During a recent local inspection conducted by regional law enforcement and LPD officers, multiple smoke and vape shop locations were observed displaying both large and small stuffed animals throughout the premises. Some were sealed in original retail packaging, while others were unpackaged and openly displayed near counters or product shelves, positioned as items for sale or decorative features. These findings indicated that the stores were marketing or presenting child-associated merchandise within environments dedicated to adult-only products, in direct conflict with the intent of youth access prevention regulations. The presence of these items within such establishments demonstrates a tangible example of how youth-oriented goods can appear in inappropriate retail contexts and highlights the need for an

explicit prohibition in local code to prevent recurrence.

The U.S. Food and Drug Administration (FDA) has warned that certain e-cigarette products and accessories have been designed or marketed to resemble toys, action figures, or school supplies, intentionally appealing to youth and increasing underage interest in nicotine products. Similarly, a 2025 public health assessment in Transylvania County, North Carolina, documented smoke and vape shops displaying youth-targeted marketing elements such as cartoons, candy imagery, and toy-like merchandise within adult retail spaces. These patterns illustrate that the incorporation of toy-related imagery and products in tobacco or vape retail settings is not incidental but reflects broader marketing and aesthetic practices that can influence minors.

From a public health standpoint, prohibiting children's toys or stuffed animals in smoke and vape shops is consistent with federal and state strategies to reduce youth exposure to nicotine and tobacco marketing. Studies from the Centers for Disease Control and Prevention (CDC) and the Surgeon General show that adolescents are highly responsive to environmental cues and branding that associate adult behaviors with youthful or playful imagery. Removing such visual triggers from adult-only businesses helps prevent inadvertent youth targeting, aligns with advertising and zoning restrictions, and reinforces community norms that protect minors from early exposure to addictive substances.

Adding this prohibition to a municipal code would establish a clear and enforceable standard. It would ensure that retailers of adult products maintain an environment consistent with youth protection goals, provide a legal mechanism for enforcement during inspections, and support broader community and public health objectives to reduce underage nicotine initiation and exposure.

### Concealed Compartments

Hidden compartments or secret rooms in retail establishments that sell tobacco, vaping, or adult products create serious public safety and regulatory risks. These structural modifications allow restricted products, such as illicit tobacco, unlicensed cannabis items, flavored nicotine or vape cartridges, and gambling devices, to be stored or sold out of sight of inspectors and the public. This undermines transparency, weakens age-verification safeguards, increases youth access, and hampers enforcement efforts. Including a prohibition against hidden compartments in a municipal code ensures that retail spaces are fully visible, supports inspections, reduces illicit activity, protects minors, and reinforces public health and safety standards.

## Requirement for Glass Displays and Shelving

To enhance regulatory oversight, public safety, and accountability, smoke and vape shops should be required to use transparent glass displays and open shelving for all products. This ensures that all merchandise is fully visible to inspectors and the public, preventing the concealment of restricted or illegal items behind other products, a practice observed during multiple recent inspections.

Requiring glass displays and open shelving improves inspection efficiency by allowing regulators to quickly verify inventory and ensures that no products can be surreptitiously hidden. It also increases accountability for store owners, reduces opportunities for illicit sales, and reinforces youth protection measures by making age-restricted products clearly visible and easily monitored.

## City-Specific Tobacco License

Of the many city ordinances reviewed in preparation for this workshop, the majority of cities regulating tobacco required a city-specific tobacco license. Regardless of whether the City of Lincoln requires a city-specific tobacco license, the City would still be able to do an early implementation of the tobacco and vape regulations to ensure compliance when a new retailer applies for a general business license by flagging the application and checking it for compliance before issuing the business license.

## Location of Tobacco and Vape Shops

One regulatory tool implemented in many jurisdictions is restricting the distance between a tobacco or vape shop and sensitive uses. For example, Rocklin currently has a requirement that no tobacco or vape shops are permitted within 1000 feet of a school.

## Prohibition of Tobacco or Vape Sales within Specific Types of Businesses

Of the cities who have ordinances regulating tobacco or vape shops, many of them have prohibitions for certain types of retailers selling tobacco products. The most common prohibition is in pharmacies. In Lincoln, only one pharmacy is currently selling tobacco

products, so this regulation would not have a significant impact.

A method for how to wind up the tobacco sales from businesses that are currently selling tobacco products which would no longer be allowed if an ordinance is passed is a Compliance Date with a sell-down period. For this option, the ordinance would state a final date by which the businesses must stop selling tobacco products. This date would generally be 90-180 days after the ordinance goes into effect. This allows the business to sell its remaining tobacco inventory so there is no financial loss. Once the compliance date passes, the City can inspect the businesses and issue fines until compliance is obtained. Again, this poses some administrative challenges.

### **Regulation Roll-Out Options:**

If Council gives this direction, there are several options for “sunsetting” nonconforming businesses if they are found to be currently doing business within an area deemed a “sensitive use”. A “sensitive use” area generally includes K-12 schools, but could also include parks or playgrounds depending on Council’s direction. Some options to consider are as follows.

#### Amortization Period

This method would allow businesses operating within a sensitive use zone to continue to operate for a specific period, after which it must cease operations or relocate. The core legal requirement for this approach is that the amortization period be reasonable. “Reasonableness” is determined by several factors including each business’s capital investment, remaining lease term, investment in improvements, the nature of the business, and any offered public benefit. Amortization could be done on a fixed schedule or a variable schedule. A variable schedule is determined on a case-by-case basis and is likely more legally sound, but may be challenging to implement.

#### Grandfather Clause

This method would “grandfather in” existing businesses, allowing them to operate indefinitely, but with strict limitations designed to phase them out over time. The business would be a “legal nonconforming use” but could continue as long as the use remains unchanged. Some items which could be included in the clause could include; no expansion or alteration (prohibiting expansion or alteration of business), discontinuation (status is lost if business ceases operation for a continuous period), destruction (if the business property is destroyed there is no right to re-establish), or change of ownership (nonconforming use terminates upon the sale or transfer of business to a new owner).

### Voluntary or Incentivized Program

This method inspires voluntary compliance by using incentives to encourage compliance. Some options for this would be; voluntary buyouts, relocation assistance such as grants or low interest loans to help businesses cover the cost of moving to a new location, or fee waivers on items such as planning, permits, or other administrative fees.

[1] All information regarding vaping was derived from research presented by Linda Richter, Ph.D., Director of Policy Research and Analysis, Center on Addiction, 2018. Other resources include:

1. U.S. Food and Drug Administration. FDA and Kratom – Public Health Focus. 2025.
2. U.S. Food and Drug Administration. Consumer Update: Products Containing 7-Hydroxymitragynine Can Cause Serious Harm. 2025.
3. U.S. Food and Drug Administration. Press Release: FDA Takes Steps to Restrict 7-OH Opioid Products Threatening American Consumers. July 2025.
4. Kruegel, A.C. et al. "Preclinical Characterization of Mitragynine and 7-Hydroxymitragynine." *Neuropharmacology*. 2019.
5. Yohannan, J. et al. "Human Pharmacokinetics of Mitragynine and 7-Hydroxymitragynine." *Molecules*. 2024.
6. California Department of Public Health. Public Health Advisory: Foods, Dietary Supplements, and Medical Drugs Containing Kratom and 7-OH Are Dangerous and Illegal. October 24, 2025.
7. Los Angeles County Department of Public Health. Report on Kratom-Related Fatal Overdoses. 2025.
8. Ventura County Public Health. Advisory on Kratom and 7-OH Products. October 2025.
9. Centers for Disease Control and Prevention. Toxicology and Overdose Surveillance Data on Kratom. 2024.
10. U.S. Food and Drug Administration. "FDA Moves Against Vape Products That Mimic Toys, Slushies, and Appeal to Kids." *HealthDay*, November 2023.
11. Transylvania County CARE Coalition. "Smoke Shop Report 2025: Assessment of Youth-Targeted Marketing in Tobacco and Vape Retail Environments." June 2025.
12. Centers for Disease Control and Prevention. "Youth and Tobacco Use." 2024.
13. U.S. Surgeon General. "Preventing Tobacco Use Among Youth and Young Adults." 2024 Report.
14. California Department of Public Health. "Flavors Hook Kids: Youth Tobacco and Vaping Prevention Campaign." 2024.

### **FISCAL IMPACT:**

The designated vape shops in Lincoln collectively produce approximately \$21,600 in sales tax per year for the general fund. The City does not have specific statistics relative to sales taxes

generation for the other retailers because they all sell general retail goods as well and the taxes are commingled.

**ATTACHMENTS:**

[Rocklin Municipal Code re tobacco retailers.doc](#)

[Sacramento staff report and ordinance.pdf](#)

[San Francisco Ordinance.pdf](#)

[Tobacco Retail.png](#)

[Schools.png](#)

[SchoolsPerimeterTobaccoRetail.png](#)

[SchoolsTobacco Retail.png](#)

[Parks.png](#)

[ParksTobaccoRetail.png](#)

[ParksPerimeterTobaccoRetail.png](#)

[SensitiveLocations.png](#)

[SensitiveLocation&TobaccoRetail.png](#)