



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda
Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Public Health
Department No.: 041
For Agenda Of: 11/19/19 Set Hearing
12/10/19 1st Reading
12/17/19 2nd Reading
Placement:
Estimated Tme: 90 mins. on 12/10/19
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Van Do-Reynoso, MPH, PhD
Director(s) Public Health Department
Contact Info: Shantal S. Hover, MPH, Tobacco Prevention Program 681-5407
SUBJECT: Tobacco Retail License Ordinance Amendment

County Counsel Concurrence

As to form: Yes

Other Concurrence:

As to form: No

Recommended Actions:

That the Board of Supervisors consider the following recommendations relating to Santa Barbara County Code Chapter 37A – Licensure of Tobacco Retailers for Santa Barbara County:

On November 19, 2019, set a hearing on Departmental Agenda of December 10, 2019 to consider an Ordinance amending County Code Chapter 37A – Licensure of Tobacco Retailers, Section 37A-7(a) to include language to prohibit the sale of flavored tobacco products, small and inexpensive pack sizes, and prohibit the mail-order delivery of tobacco products.

On December 10, 2019

- a) Receive and file a presentation on the dangers of flavored tobacco products, the youth vaping epidemic, and how limiting small and inexpensive pack sizes will reduce youth access to deadly tobacco products in Santa Barbara County;
- b) Consider the introduction (First Reading) of an Ordinance amending County Code Chapter 37A, Section 37A-7(a), effective 30 days from the date of its passage and in force 90 days from the date of its passage; and
- c) Continue to the hearing of December 17, 2019 to consider recommendations, as follows:

On December 17, 2019

Auditor-Controller Concurrence

As to form: Yes

- i. Consider the adoption (Second Reading) of an Ordinance amending County Code Chapter 37A, Section 37A-7(a), effective 30 days from the date of its passage and in force 90 days from the date of its passage; and
- ii. Determine that these activities are exempt from California Environmental Quality Act review per CEQA Guideline Section 15061(b) (3), and direct staff to file the Notice of Exemption.

Summary Text:

This item is on the Agenda to adopt an Ordinance amending County Code, Chapter 37A to add language that provides strengthened public health requirements for tobacco retailers in an effort to prevent youth exposure to tobacco, including electronic smoking devices and flavored tobacco products.

The amendment provides a multi-pronged approach to address underage nicotine use and regulate businesses to prevent youth access to nicotine and tobacco products. The amendment includes language to prohibit the sale of flavored tobacco products, prohibit small and inexpensive pack sizes, prohibit coupons that allow a consumer to purchase a tobacco product for less than the full retail price, prohibit the sale of any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price. This item will prohibit the mail-order, home delivery of tobacco products to consumers.

Background:

In 2012, your Board approved Ordinance 4847 amending County Code, Chapter 37A – Licensure of Tobacco Retailers. That Ordinance removed language concerning fees from the Code and established those fees in a separate Fee Schedule (adopted via Resolution). In 2015, your Board approved Ordinance 4928 amending County Code, Chapter 37 – Smoking, Tobacco Product and Electronic Smoking Device Control Ordinance. That Ordinance added language to protect the public from the harmful secondhand smoke aerosol emissions of electronic smoking devices.

Santa Barbara County has been a leader in regulating the sale of tobacco products to youth for more than two decades. Santa Barbara County was the first in Southern California to regulate the placement of tobacco products and paraphernalia behind the counter (1996) and was one of the early adopters of strong tobacco retail licensing laws (2001).

Tobacco and Public Health

Tobacco use remains a significant public health problem and impediment to health equity in Santa Barbara County and California. Each year, tobacco-related diseases cause the deaths of approximately 40,000 Californians and nearly half a million individuals in the United States, making tobacco use the nation’s leading cause of preventable death. For decades, governments at the federal, state, and local levels have advanced various policies intended to address this significant public health crisis.

In an attempt to address this public health issue, the federal Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) banned the manufacturing of flavored cigarettes in 2009. However, the law contains an exception for menthol cigarettes and does not restrict flavored non-cigarette tobacco products, such as smokeless tobacco and electronic smoking devices. Moreover, California doesn’t have any state laws that regulate the sale of menthol cigarettes or flavored non-cigarette tobacco products.

The Dangers of Flavored Tobacco: Over 15,500 Flavors and Counting

Flavored tobacco products are considered “starter” products that help establish long-term tobacco use, and they are particularly appealing to youth and young adults. Thousands of flavored tobacco products

marketed at youth includes names such as mango, coco pops, and cookies and milk. Marketing and packaging often resembles popular snack, drink, and candy items.

These products also pose significant barriers to achieving health equity. Communities of color, youth, low-income populations, and members of LGBTQ+ communities are significantly more likely to use flavored tobacco products, particularly menthol cigarettes, and disproportionately bear the burden of tobacco-related harm. This is largely due to tobacco companies' marketing efforts.

Menthol cigarettes are of particular concern because despite decreases in overall cigarette use, the proportion of cigarette smokers who use menthol cigarettes continues to rise. Tobacco companies add menthol to their products because the crisp, minty flavor masks the natural harshness and taste of tobacco, making the products milder and therefore easier to use and more appealing to youth and new users. Smoking menthol cigarettes is associated with reduced likelihood of successfully quitting smoking.

Over Forty-five (45) municipalities in California have enacted some form of restriction on flavored tobacco products, including menthol.

The proposed ordinance amendment would prohibit the sale of “flavored tobacco products”, including menthol.

Electronic Smoking Devices:

The U.S Surgeon General has declared a vaping epidemic among youth, emphasizing the importance of protecting our children from a lifetime of nicotine addiction and associated health risks. This epidemic is fueled by the proliferation of over 15,500 flavored tobacco products and new types of e-cigarettes with extremely high concentrations of nicotine.

Local and National Data:

- In Santa Barbara County, between 2016 and 2018 the use of electronic smoking devices almost doubled from 6% to 10% among 9th graders and from 8% to 15% among 11th graders, according to California Healthy Kids Survey Data.
- The CDC reports nationwide e-cigarette usage by high school students increased 78% from 2017-18.
- For every 1 adult smoker that switches to e-cigarettes, 81 teens will initiate the use of JUUL, the most popular e-cigarette product on the market. (Soneji SS et al. 2018)
- The American Journal of Preventive Medicine reports that 4 out of 5 kids who have used tobacco started with a flavored product.
- According to the CDC, among established smokers in the United States, more than eighty percent (80%) began smoking before the age of 18.

Health Effects:

Flavored electronic smoking device products contain high concentrations of nicotine, toxins, and over 60 chemicals, many of the same ones found in tobacco products. Ingredients include heavy metals, diacetyl, solvents such as vegetable glycerin and propylene glycol, volatile organic compounds, ultrafine particles, oils, and many unknown components. These products are not approved by the FDA and are unregulated. Many of these ingredients take on different properties when heated into an aerosol, and little is known about the effects those elements have on the human body when inhaled.

Nicotine is a toxic poison that can rewire the brain, which is particularly vulnerable in the developing years from adolescence to mid-twenties. Nicotine changes the teen brain and impacts attention, learning, and memory. It can worsen stressors already challenging in adolescence such as learning difficulties, irritability, and anxiety. Key brain receptors are impacted which can alter brain development and lead to impaired cognitive functioning later in life.

These products damage lung & heart tissues, as seen in the recent outbreak of lung injury associated with e-cigarette use, or vaping. As of October 29, 2019, 1,888 lung injury cases associated with the use of e-cigarette, or vaping, products have been reported nationwide. Thirty seven deaths have been confirmed in 24 states and the District of Columbia. All patients have reported a history of using e-cigarette or vaping products. Both THC and nicotine containing products play a role in the outbreak.

The proposed ordinance amendment would add an updated definition of “electronic smoking devices” to the definition of “tobacco product”, which includes any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine. This definition does not include cannabis products.

Additionally, this amendment would require a tobacco retailer license in order to sell electronic smoking devices, and prohibits the delivery of electronic smoking devices to consumers other than via face-to-face sales at a fixed licensed location. This amendment will prohibit internet sales and delivery of tobacco products to individual consumers.

Tobacco Product Pricing:

The link between the price of tobacco products and consumption is well established, especially among youth. When tobacco products cost more, fewer people use tobacco because fewer start and more quit. Evidence suggests that tobacco companies deliberately target youth and underserved communities with price discounts and coupons. Tobacco industry price reduction strategies also appeal to adult tobacco users, with nearly 20% of adult cigarette smokers using coupons and other price discounts to purchase cigarettes. Other studies have found that more than half of U.S. adult cigarette smokers use price minimization strategies. Tobacco product price restrictions, coupons, and promotion interventions can counter these industry price-discounting strategies. These efforts have the potential to produce significant public health and equity benefits.

The proposed ordinance amendment would set minimum price and packaging requirements to prohibit small and inexpensive pack sizes. Additionally, the amendment would prohibit coupons that allow a consumer to purchase a tobacco product for less than the full retail price, prohibit the sale of any tobacco product to a consumer through a multiple-package discount or otherwise provide any such product to a consumer for less than the full retail price

The minimum prices established in this section shall be adjusted annually by the annual average of the percentage change in the Consumer Price Index for all urban consumers for all items for the Los Angeles statistical area as reported by the United States Bureau of Labor Statistics or any successor to that index.

Mobile Tobacco Product Sales and Delivery:

Mail order and internet sales and delivery of tobacco products, especially electronic smoking devices, is an unregulated mechanism for youth to gain access to these products in Santa Barbara County. The lack

of enforcement abilities and state and federal loop holes allow for continued, unrestricted sale and delivery of tobacco products via mail order and internet sales.

The California Stop Tobacco Access to Kids Enforcement (STAKE) Act places restrictions on mail order and internet sales of tobacco products, including electronic smoking devices, but exempts the U.S. Postal Service and other common carriers from penalties when they deliver a package. The Federal Prevent All Cigarette Trafficking Act of 2009 (“PACT Act”) also places restrictions on mail order and internet sales of cigarettes and smokeless tobacco. The PACT Act does not include comprehensive regulation of other tobacco products and limits state and local authority to regulate common carriers and delivery services. However, it does preserve state authority to prohibit delivery sales of cigarettes or other tobacco products to individual consumers or personal residences. Additionally, while the Tobacco Control Act directed the FDA to issue regulations on mail order/internet sales of tobacco products, the FDA has not yet issued those regulations.

The proposed ordinance amendment would require all sales of tobacco products to occur at fixed, licensed locations, and it would prohibit retailers within the County, or those that deliver to customers within the County, from selling or delivering products except at the licensed place of business (i.e., strictly requiring on-site sales of tobacco products).

Fiscal and Facilities Impacts: Budgeted: N/A

Fiscal Analysis:

There is no fiscal impact with the approval of this ordinance amendment. The amount of fines that may result from those tobacco retailers that may not comply timely with the amended ordinance is unknown and is not believed to be significant.

Special Instructions:

1. Request Clerk of the Board to publish notice of this hearing, per the attached Public Notice in a publication of general circulation, 10 days prior to the hearing and again 5 days prior to the hearing, in accordance with Government Code §6062a.
2. Return an original, adopted Ordinance and Minute Order to PHD Contracts Unit, 300 N. San Antonio Road, Bldg. 8, Santa Barbara, CA 93110, Attn: Contracts Unit.

Attachments:

- A. Ordinance to Amend Chapter 37A - Strikethrough Version
- B. Ordinance to Amend Chapter 37 – Final Version
- C. Notice of Public Hearing
- D. CEQA Notice of Exemption
- E. Presentation on Tobacco Retail License Ordinance Update to Include Restriction on Sale of Flavored Tobacco and Minimum Price and Pack Size

Authored by:

Shantal S. Hover, MPH