



Staff Report

File #: REPORT 15-0640, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council Regular Meeting of August 25, 2015

**AMEND THE MUNICIPAL CODE BY ADDING CHAPTER 5.76 (TOBACCO RETAILERS)
REQUIRING LICENSURE OF TOBACCO RETAILERS TO REDUCE THE ILLEGAL SALE OF
TOBACCO PRODUCTS TO MINORS, AMENDING CHAPTER 8.40 TO EXPAND THE DEFINITION
OF TOBACCO PRODUCTS TO INCLUDE ELECTRONIC CIGARETTES AND FLAVORED
TOBACCO, AND MAKING VIOLATIONS OF CHAPTER 5.76 SUBJECT TO ADMINISTRATIVE
PENALTY PROCEDURES**

(Continued from the April 21, 2015 meeting)
(Community Development Director Ken Robertson)

Recommended Action:

To Introduce the attached ordinance to add Chapter 5.76 (Tobacco Retailers) and amend Chapter 8.40 .

Background:

At the meeting of September 23, 2014, Council directed staff to obtain input from stakeholders and then return with a proposal for Council consideration. This proposal focuses on the definition of what is considered "smoking" and to address sales to minor from tobacco retailers. The proposal was mailed to tobacco/e-cigarette retailers in Hermosa Beach for review and input on concerns or ways to improve the proposal, and no response was received. The proposal incorporates input received from the LA County health department.

Tobacco Controls in the State of California

Approximately 480,000 people die in the United States from tobacco-related diseases every year, making tobacco use the nation's leading cause of preventable death.¹ 5.6 million of today's Americans who are younger than 18 are projected to die prematurely from a smoking-related illness.² The California Legislature has recognized the danger of tobacco use and has made reducing youth access to tobacco products a high priority. State law prohibits the sale or furnishing of cigarettes, tobacco products, and tobacco paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors (Cal. Pen. Code § 308).

Despite efforts to limit youth access to tobacco, minors are still able to access cigarettes, as evidenced by the fact that:

- In California, 36.8 percent of high school students have smoked a whole cigarette by 14 years of age;³

- In California, 64 percent of adult smokers started by the age of 18;⁴
- Among middle school students who were current cigarette users in 2004, 70.6 percent were not asked to show proof of age when they purchased or attempted to purchase cigarettes from a store, and 66.4 percent were not refused purchase because of their age;⁵
- In 2002, youth smoked approximately 540 million packs of cigarettes, generating nearly \$1.2 billion in tobacco industry revenue⁶;

California retailers continue to sell tobacco to underage consumers: 7.6 percent of all tobacco retailers were witnessed unlawfully selling to minors in 2013.⁷ Research demonstrates that local tobacco retail ordinances dramatically reduce youth access to tobacco products. A review of 33 California communities with strong tobacco retailer licensing ordinances shows that the youth sales rate declined in 31 of these communities after the ordinances were enacted, with an average decrease of 26 percent in the youth sales rate.⁸

Tobacco Retailing in the City of Hermosa Beach

Tobacco retailing in the City of Hermosa Beach broadly reflects that of the wider State of California. While the City of Hermosa Beach has enacted rules prohibiting smoking in many public places, the City was given a grade “D” in the American Lung Association “*State of Tobacco Control 2014*” report card on efforts to combat the harmful effects of tobacco use in the City. Los Angeles County Public Health Department reports that although the California legislature has enacted laws that forbid the sale of tobacco products to minors, they have drawbacks from a local enforcement perspective, and as a result retailers continue to sell to youth. Several retailers in Hermosa Beach were cited for selling to minors in 2014.

On September 23, 2014 City staff, the Beach Cities Health District, and Los Angeles County Public Health Department presented the idea of a tobacco retailer license ordinance to Council.⁹ Over 100 communities throughout California have passed tobacco retailer licenses including Lawndale, Long Beach and Gardena, and Manhattan Beach is also currently considering a tobacco retailer license. The City Council considers that the failure of tobacco retailers to comply with all tobacco control laws, particularly laws prohibiting the sale of tobacco products to minors, presents an imminent threat to the public health, safety, and welfare of the residents of the City.

Analysis:

The proposed ordinance would do the following:

1. Extend the definition of ‘smoking’ in Chapter 8.40 of the City’s Code, which prohibits smoking in many public places, to include electronic cigarettes and flavored tobacco products.
2. Add Chapter 5.76 ‘Tobacco Retailers’ to the Business License section of the City’s Code. It would require retailers to obtain a license, similar to a business license, in order to sell tobacco/e-cigarette products to consumers. The license would need to be renewed annually, and an annual license fee would be levied to assist in funding enforcement. The fee amount has not been established at this time, staff plans to bring a fee resolution when the ordinance is adopted.

3. An application would be filed with the City's Finance Department. There is a list of application requirements in Section 5.76.060 and approval requirements are found in Section 5.76.070. Grounds for denial include that the applicant has violated any provision of the Chapter or any state law related to the sale of cigarettes and/or tobacco to minors.
4. Section 5.76.110 outlines the Tobacco Retailer's responsibilities, including prohibitions on issuing licenses to restaurants and bars, premises where smoking is permitted onsite and for locations near to schools and childcare facilities and limitations on the size of signage displays.
5. The draft would make retailers accountable through fines, penalties, and license suspension or revocation if caught selling tobacco to minors. Violations would be subject to the City's Administrative Citations and Penalties (Chapter 1.10). The Chief of Police or other individual designated by the City Manager would be responsible for compliance monitoring (Section 5.76.120). In addition, the license may be revoked or suspended if any law pertaining to sale of cigarettes or tobacco to minors is violated (Section 5.76.130(B)).
6. The draft ordinance would coordinate tobacco regulations so that violation of any existing local, state or federal tobacco laws would constitute a violation of the local law, helping to reduce this imminent threat to the public health, safety, and welfare of the residents of the City of Hermosa Beach.

If the ordinance is introduced, staff will return with a resolution at the second reading of the ordinance on September 24 to establish the fee for the license.

¹ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking - 50 Years of Progress. A Report of the Surgeon General*, www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf

² U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking - 50 Years of Progress. A Report of the Surgeon General*, www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf

³ Chapman, R. 2012. *State Health Officer's Report on Tobacco Use and Promotion in California*. California Department of Public Health, California Tobacco Control Program, p. 5, www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf <<http://www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf>>

⁴ Chapman, R. 2012. *State Health Officer's Report on Tobacco Use and Promotion in California*. California Department of Public Health, California Tobacco Control Program, p. 6, www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf <<http://www.cdph.ca.gov/Documents/EMBARGOED%20State%20Health%20Officers%20Report%20on%20Tobacco.pdf>>

⁵ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. 2005. *Morbidity and Mortality Weekly Report: Tobacco Use, Access & Exposure to Tobacco Among Middle & High School Students, U.S., 2004*. 54(12): 297-301, www.cdc.gov/mmwr/preview/mmwrhtml/mm5412a1.htm <<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5412a1.htm>>

⁶ Heaton C, Farrelly MC, Weitzenkamp D, et al. 2006. "Youth Smoking Prevention and Tobacco Industry Revenue." *Tobacco Control* 15: 103-106, 2006.

⁷ California Department of Public Health, Tobacco Control Program. 2013. *Youth Tobacco Purchase Survey*, p. 1, www.cdph.ca.gov/programs/tobacco/Documents/News_and_Alerts/YTPS_Charts_2013.pdf

⁸ American Lung Association in California, Center for Tobacco Policy & Organizing. 2013. *Tobacco Retail Licensing is Effective*, <http://center4tobaccopolicy.org/wp-content/uploads/2013/09/Tobacco-Retailer-Licensing-is-Effective-September-2013.pdf>

⁹ The Staff Report and Council may be reviewed online at: http://hermosabeach.granicus.com/MetaViewer.php?view_id=6&clip_id=3305&meta_id=161366

Council deliberation is provided here:

[<http://hermosabeach.granicus.com/MediaPlayer.php?view_id=6&clip_id=3305&meta_id=161365>](http://hermosabeach.granicus.com/MediaPlayer.php?view_id=6&clip_id=3305&meta_id=161365)

Attachment:

Proposed Ordinance.

Respectfully Submitted by: Ken Robertson, Community Development Director

Concur: Sharon Papa, Police Chief

Noted for Fiscal Impact: Viki Copeland, Finance Director

Legal Review: Mike Jenkins, City Attorney

Approved: Tom Bakaly, City Manager