



Staff Report

File #: REPORT 18-0684, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council Regular Meeting of November 13, 2018

**CONSIDER AMENDMENT OF THE MUNICIPAL CODE ADDING
CHAPTER 5.78 TO THE HERMOSA BEACH MUNICIPAL CODE
(TOBACCO RETAILERS) REQUIRING LICENSURE OF TOBACCO
RETAILERS AND LIMITING SALE OF ELECTRONIC SMOKING
DEVICES AND FLAVORED TOBACCO PRODUCTS TO REDUCE
THE ILLEGAL SALE OF TOBACCO TO YOUTH AND AMENDING
SECTION 1.10.040 TO MAKE VIOLATIONS OF CHAPTER 5.78
SUBJECT TO ADMINISTRATIVE PENALTY PROCEDURES**

(Continued from meeting of August 25, 2015)

(Community Development Director Ken Robertson)

Recommended Action:

Staff recommends the introduction of an ordinance requiring licensure of tobacco retailers and limiting sale of electronic smoking devices and flavored tobacco products and making violations subject to administrative penalty procedures.

Background:

On [August 25, 2015](https://hermosabeach.legistar.com/LegislationDetail.aspx?ID=2443423&GUID=F0D130AE-C7A5-4238-A12E-A3949436DB8C) <<https://hermosabeach.legistar.com/LegislationDetail.aspx?ID=2443423&GUID=F0D130AE-C7A5-4238-A12E-A3949436DB8C>> (**Attachment 1**), City Council considered an ordinance requiring Tobacco Retailer Licenses, but did not adopt an ordinance at that time, requesting it to be modified and brought back to City Council at a later date.

On August 23, 2016, City Council adopted an ordinance prohibiting smoking in public places, adding a new definition of electronic smoking device and including electronic smoking devices in the definition of Smoking in the Hermosa Beach Municipal Code.

At the July 10, 2018 meeting, City Council requested Tobacco Retailer Licenses be brought back for discussion and consideration.

Tobacco Controls in the State of California

In California, it is illegal to sell or give tobacco products to anyone under the age of 21 (or 18 if active military). California requires a business selling tobacco to obtain a \$265 state tobacco retailer license, although state tobacco laws are primarily enforced by local police.

Tobacco Retailing in the City of Hermosa Beach

Tobacco retailing in the City reflects that of the wider State of California with sales in liquor stores, supermarkets, gas stations, convenience stores and smoke shops. The City currently has 15 retailers that sell tobacco products including cigarettes, cigars, cigarillos/little cigars and electronic nicotine delivery devices such as electronic cigarettes. A map of tobacco retailers in the City is included with this report as **Attachment 3**.

The Hermosa Beach Police Department is currently seeking a grant to help reduce sales of tobacco to youth, which would provide funding for enforcement specifically for this purpose. Tobacco retailers in the City are cited by the Police Department if found to be selling tobacco to underage consumers. Local retailers also work with police to report underage consumers using fraudulent identifications.

While the City has enacted rules prohibiting smoking in public places, it was given a grade "D" in the American Lung Association "State of Tobacco Control 2018" report card for efforts to combat the harmful effects of tobacco use in the City. One of the grading criteria is the requirement of Tobacco Retailer Licenses.

Tobacco Use by Youth

Reducing availability of tobacco to youth is a matter of public health. According to the 2017-1018 California Healthy Kids Survey, among Beach Cities' 11th graders, 3% self reported as being current cigarette smokers and 28% report being current e-cigarette users. More than 60% said that it was easy for them to obtain cigarettes if they wanted them, where 84% said it was easy to obtain e-cigarettes.

The U.S. Surgeon General reports that studies show individuals who begin smoking at a younger age are more likely to develop a more severe addiction to nicotine than those who start later. Both the U.S. Food and Drug Administration and the Surgeon General warn that flavored tobacco products help new users establish habits that can lead to long-term addiction. In addition to e-cigarettes, flavored cigarillos and little cigars are popular with youth. According to a recent University of Michigan study, cigarillo and little cigar use increases teen smoking rates by half, and that more than 87% of adolescents who used cigarillos and little cigars in the past 30 days used flavored products.

Tobacco Retailer Licenses

The Beach Cities Health District, Los Angeles County Public Health Department and American Lung Association recommend local jurisdictions require Tobacco Retailer Licenses to assist with tobacco law compliance, particularly prohibiting the sale of tobacco products to youth. Currently, over 140 California jurisdictions, including 44 Los Angeles County jurisdictions, have passed Tobacco Retailer License requirements. In the Beach Cities area, Manhattan Beach enacted a Tobacco Retailer License in 2015 and Redondo Beach is currently considering a Tobacco Retailer License. A list of Los Angeles jurisdictions requiring Tobacco Retailer Licenses is included with this report as **Attachment 4**.

Many provisions can be included in a Tobacco Retailer License to prevent youth access to tobacco products, including:

- Regulating the location of retailers and their proximity to youth-populated areas such as schools, parks and youth centers.
- Limiting sales of flavored tobacco products and electronic smoking devices to only smoke shops where unaccompanied minors are not allowed to enter.
- Limiting cigarillos and little cigars to within packages only and not individual sales.
- Banning self-service displays.
- Banning tobacco sales in pharmacies and restaurants.

One component of a Tobacco Retailer License is limiting tobacco sales within proximity of schools, parks, library and community centers. In a small city such as Hermosa Beach, the typical 500-foot radius restriction, if not allowed to remain (or "grandfathered"), would affect some established businesses; eight of the 15 tobacco-selling businesses are within 500-feet of parks and schools. It should be noted that many adults buy cigarettes when shopping at the grocery store or purchasing gas. If cigarettes are no longer permitted to be sold, these customers would support grocery stores or gas stations elsewhere, resulting in the loss of more than tobacco sales to the businesses and overall sales within the City. For this reason, it is proposed that existing legally operating businesses selling tobacco products be permitted to continue with the proposed annual Tobacco Retailer Licenses and businesses which are sold can be issued licenses, but that no new licenses may be issued within 500 -feet of schools, parks, library and youth centers.

Some cities' ordinances require a minimum distance between tobacco retailers, such as 1,500 feet. Due to the limited commercial areas in the City and existing business proximities, there is no proposal for minimum distances between tobacco retailers in the ordinance. Tobacco retailers in the City are located on four streets: Pacific Coast Highway (6), Pier Avenue (4), Hermosa Avenue (3), and Manhattan Avenue (2).

Another method of reducing sales to youth is to prohibit sales of individual small cigars and cigarillos, which are available in multiple-count packages much like cigarettes. By requiring small cigars and cigarillos to be sold by the pack only, it reduces the access to younger consumers who tend to have limited spending money.

The banning of flavored tobacco products is an effective deterrent to youth tobacco use, since many of the flavored products are marketed to young people with sweet flavors and colorful packaging. A ban of flavored tobacco products goes beyond the standard ordinance for Tobacco Retailer Licenses, but specifically reduces products most attractive to youth and is expected to positively affect public health of younger residents who could become lifelong tobacco users. The ban of flavored tobacco products does not include smoke shops which do not allow unaccompanied minors to enter.

The City of Manhattan Beach banned flavored tobacco as part of its 2015 Tobacco Retailer License Ordinance. Similar to that ordinance, the ban of flavored tobacco is proposed to specifically exclude menthol cigarettes.

Electronic smoking devices are popular among youth for "vaping." These devices can be disguised as pens, USB devices or other non-tobacco related items, and are popular for use of flavored tobacco products. Similar to the sales of flavored tobacco products, the proposed ordinance limits sales of electronic smoking devices to smoke shops which do not allow unaccompanied minors to enter. State law prohibits self-service displays of tobacco and allows vending machines only in restaurants. The proposed ordinance does not allow tobacco sales in restaurants. This does not affect any current retailers in the City.

The proposed ordinance bans tobacco sales in pharmacies. Currently there are two pharmacies in the City, both of which are CVS Pharmacies. CVS has a corporate policy not to sell tobacco in its pharmacies. Though no existing businesses would be affected by a ban in pharmacies, the proposed ordinance would not allow any future pharmacies to sell tobacco products.

Public Comment and City Council Comment

Several public and Council concerns have been integrated into the proposed ordinance from the 2015 ordinance consideration. Comments from the public include merchant concerns regarding continuation of tobacco sales with change in ownership and opposition to minimum pricing for individual cigars. Both of these issues have been addressed in the proposed ordinance. One merchant stated concern that the Tobacco Retailer Permit would be a business hardship.

Comments from the Council include: the proposed 16-page ordinance was too complicated, that the then-proposed minimum cigar pricing was not appropriate, that Pier Plaza enforcement was a higher priority, and the request for more information regarding state licensing. These matters have been modified in the proposed 11-page ordinance and this report.

The August 25, 2015 City Council meeting video and merchant letters received can be reviewed from the link listed above in the Background section.

A courtesy public notice was mailed to tobacco retailers in the City regarding the current consideration of a Tobacco Retailers License.

Fee:

The license fee is intended to cover enforcement activities and administration. In Los Angeles County, the fees range from \$50 - \$500. Penalties can range from fines to suspensions or revocation of license after multiple violations. The proposed annual fee to offset city administration costs by Finance, Community Development and Police departments is an initial fee of \$404 and annual

renewal fee of \$344.

Analysis:

The proposed draft ordinance would do the following:

- Add Chapter 5.78 "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 products to consumers. The license would need to be renewed annually, and an annual license fee would be levied to fund administration and enforcement. An application would be filed with the City's Finance Department. Similar to business licenses, Finance would issue licenses after review and approval by Community Development for location requirements.
- Add tobacco retailer limitations, including prohibitions on issuing licenses to pharmacies, restaurants and bars, and for new business locations near schools, parks, library and youth centers.

The ordinance would make retailers accountable through fines, penalties, and license suspension or revocation. 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. In addition, the license may be revoked or suspended if any law pertaining to sale of cigarettes or tobacco to youth is violated.

The ordinance includes tobacco regulations so that violation of any existing local, State Department of Public Health or Federal U.S. Food and Drug Administration tobacco laws would constitute a violation of the local law, helping to reduce the threat to the public health, safety, and welfare of Hermosa Beach residents.

General Plan Consistency:

Tobacco Retailer Licensing is consistent with the following PLAN Hermosa goals:

Government Goal 7.3 - Integrate health, livability and sustainability principles when adopting new policies and periodically review and evaluate adopted policies for their impact or opportunity to improve health, livability and sustainability.

Sustainability & Conservation Goal 3.6 - Healthy Air Hermosa. Maintain high quality outdoor and public spaces in Hermosa Beach through the Healthy Air Hermosa program or subsequent programs which aim to reduce cigarette smoke.

Conclusion:

Tobacco Retailer Licenses are considered as Best Practices to reduce tobacco sales to youth. Consideration of Tobacco Retailer Licensing is the next step in the City's efforts to promote clean air in Hermosa Beach. Retailer limits and increased enforcement tools would help reduce tobacco sales to Hermosa Beach youth.

If adopted, a fee resolution will be included with the second reading of the ordinance at a future City Council meeting.

Fiscal Impact:

The proposed annual fee to offset city administration costs by Finance, Community Development and Police departments is an initial fee of \$404 and annual renewal fee of \$344. The anticipated annual revenues are \$6,060 from initial fees and \$5,160 from renewal fees.

Attachments:

1. Link to August 25, 2015 Staff Report
2. Proposed Ordinance
3. City of Hermosa Beach Tobacco Retailer Map
4. City List of Los Angeles County Cities with Tobacco Retailer Licenses

Respectfully Submitted by: Christy Teague, Senior Planner

Concur: Ken Robertson, Community Development Director

Approved: Suja Lowenthal, City Manager