



Staff Report

File #: REPORT 18-0732, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council
Regular Meeting of December 11, 2018

**CONSIDER AMENDMENT OF THE MUNICIPAL CODE ADDING
CHAPTER 5.78 (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 August 25, 2015 and November 13, 2018)

(Community Development Director Ken Robertson)

Recommended Action:

Staff recommends the City Council:

1. Introduce an ordinance requiring licensure of tobacco retailers, limiting sale of electronic smoking devices and flavored tobacco products, and making violations subject to administrative penalty procedures; and
2. Adopt the attached resolution establishing a Tobacco Retailer License application fee and annual renewal fee.

Executive Summary:

Tobacco retailer licensing is a public health tool to reduce tobacco access by youth to help avoid life-long tobacco addiction. Tobacco retailer licensing consideration follows a series of policies to reduce smoking and tobacco use in the City.

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**) the City Council considered an ordinance requiring Tobacco Retailer Licenses, but did not introduce 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.

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

On [November 13, 2018 <https://hermosabeach.legistar.com/LegislationDetail.aspx?ID=3725822&GUID=C624B548-46B0-49B5-AC35-2DC44B6D6A0A>](https://hermosabeach.legistar.com/LegislationDetail.aspx?ID=3725822&GUID=C624B548-46B0-49B5-AC35-2DC44B6D6A0A) (**Attachment 2**) the City Council received public comments on the ordinance, directed additional public notice be provided to all affected businesses, and requested the ordinance to be modified and brought back to City Council on December 11, 2018.

Public Comments and City Council Comments

On November 13, 2018, comments from the public included:

- Public agency stating the need to include mint and menthol as banned flavors since they appeal to youth.
- Resident stating the ordinance would be a burden to small businesses.
- Middle school student stating the youth appeal, easy access, and peer pressure to vape.
- Business owner asking for reconsideration of ordinance, stating it unnecessary due to state licensing and easy online access without identification.
- Public agency support as public health measure with statistics indicating tobacco use leads to death.
- Business owner stating ordinance is a “revenue-generating effort.”
- Public agency support of Tobacco Retailers Licenses, stating they are successful in other cities to positively affect public health.

On November 13, 2018, Comments from the City Council included:

- Concern that all retailers did not receive notice of the meeting and ordinance consideration.
- The “electronic smoking device” definition should be consistent with the existing definition.
- Clarification that small markets and delis are not included in restaurant ban.
- Confirmation that mint and menthol flavors are included in flavor ban.

These modifications have been addressed in this report and in the revised ordinance included as **Attachment 3**.

New FDA Flavor Bans Proposed

On November 15th, subsequent to the Council meeting, the Food and Drug Administration announced new steps to curb youth use of flavored tobacco products, including limiting sales of e-cigarettes, banning menthol cigarettes, reducing flavored cigars and limiting e-cigarette flavors to adult stores and online with strict age verification requirements. Also in the news, JUUL Labs, a major retailer of electronic smoking devices and flavored tobacco products, announced on November 13th that the company will stop stocking many sweet and fruit flavors in stores, although mint flavors will continue to be sold in stores and a wider range of flavors will continue to be available online for

consumers who are age 21 or older.

Fee

The proposed annual fee to offset city administration costs by Finance, Community Development and Police departments is an initial application fee of \$404 and annual renewal fee of \$344. A resolution establishing the new Tobacco Retailer License application fee and annual renewal fee is included with this report as **Attachment 4**.

Hermosa Beach Tobacco Retailers

The City currently has 20 retailers that sell tobacco products including cigarettes, cigars, cigarillos/little cigars and electronic nicotine delivery devices such as electronic cigarettes. An updated map of state-licensed tobacco retailers in the City is included with this report as **Attachment 5**.

A courtesy public notice was hand-delivered to all tobacco retailers in the City regarding the proposed Tobacco Retailers License ordinance and City Council Public Hearing scheduled for December 11, 2018.

Analysis:

The proposed ordinance includes the following changes according to City Council direction after Public Comments:

- The definition of electronic smoking device was eliminated since it is defined in the existing Municipal Code Chapter 8.4 Smoking.
- For purposes of this ordinance, “Restaurant” does not include small grocers or markets with a deli where food can be purchased and consumed at their outdoor seating area.
- Clarification that “mint” and “menthol” is included in the flavor ban. The ban on flavored tobacco does not apply to smoke shops where unaccompanied minors are not permitted to enter.

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.

Fiscal Impact:

The proposed annual fee to offset city administration costs by Finance, Community Development and Police departments is an initial application fee of \$404 and annual renewal fee of \$344. The anticipated Tobacco Retailer License fees total \$8,080 in the initial year (\$404 x 20 retailers) and \$6,880 in annual renewal fees (\$344 x 20 retailers) in subsequent years.

Attachments:

1. Link to August 25, 2015 Staff Report and Attachments
2. Link to November 13, 2018 Staff Report and Attachments
3. Proposed Ordinance
4. Draft Resolution
5. Updated Tobacco Retailer Map
6. Correspondence Received

Respectfully Submitted by: Christy Teague, Senior Planner

Concur: Ken Robertson, Community Development Director

Noted for Fiscal Impact: Charlotte Newkirk, Accounting Manager

Legal Review: Mike Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager