



Staff Report

File #: REPORT 19-0276, Version: 1

Honorable Mayor and Members of the Hermosa Beach City Council Regular Meeting of May 14, 2019

**CONSIDER AMENDMENT TO THE MUNICIPAL CODE CHAPTER 5.78 (TOBACCO RETAILERS)
TO INCLUDE PROHIBITIONS ON THE SALE OF FLAVORED TOBACCO PRODUCTS IN ALL
TOBACCO RETAIL ESTABLISHMENTS REGARDLESS OF WHETHER THEY LIMIT ENTRY TO
THEIR ESTABLISHMENTS TO ADULTS ONLY (I.E. PATRONS 21 YEARS OF AGE OR OLDER,
OR ACTIVE DUTY MILITARY PERSONNEL WHO ARE 18 YEARS OF AGE OR OLDER)**

(Community Development Director Ken Robertson)

Recommended Action:

Staff recommends that the City Council waive full reading and introduce on first reading an ordinance amending Section 5.78.030 (Definitions) and Section 5.78.100 (Operating Requirements) in Chapter 5.78 of the HBMC (Tobacco Retailers) to ban tobacco retailers from selling all flavored tobacco products.

Executive Summary:

The requirement for tobacco retailer licensing and restrictions on the sales of flavored tobacco products are public health tools to reduce tobacco access by youths and to help avoid life-long tobacco and nicotine addiction by youths and adults. When adopting Chapter 5.78 into the code, the City Council only allowed the sale of flavored tobacco products in a retail store that permitted entry to adults (21 or older or active military personnel who are 18 and over), thus allowing the sale of flavored tobacco products in at least two retailers in the City. At the time of adoption, the City Council also directed staff to return with an ordinance amending Chapter 5.78 to extend the ban on the sale of flavored tobacco products to all retail stores. Extending the prohibition to all retailers is an accepted local practice to further reduce the availability of flavored tobacco products and reduce tobacco and nicotine addiction.

Background:

On December 11, 2019, the City Council introduced an ordinance requiring tobacco retailer licenses and implementing restrictions on all flavored tobacco products and electronic smoking devices. The ordinance included exceptions to both of these restrictions on all flavored tobacco products and electronic smoking devices for “a retailer that permits only patrons 21 years of age or older, or active duty military personnel who are eighteen (18) years of age or older, to enter the location where the Tobacco Product is sold.” (See HBMC Section 5.78.100(F) and (G).)

On January 9, 2019, the City Council adopted the ordinance with an effective date of June 1, 2019. After hearing testimony about the negative effects of flavored tobacco products and testimony from retailers expressing concern about losing their ability to sell flavored tobacco products when flavored tobacco products would still be available at adult-only smoke shops which would put them at a competitive disadvantage, the Council also directed staff to draft an amendment to the ordinance extending the ban on flavored tobacco products to all retail establishments.

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. Three of the establishments are primarily involved in the sale of smoking products and accessories and either currently limit access to adults only or could potentially consider such a limitation to sell flavored tobacco products. Other smoke shops could potentially open up in the permitted commercial locations, as identified on the attached map, to sell flavored tobacco products to patrons 21 years or older (or active duty military personnel who are 18 years or older). A courtesy public notice relating to the attached ordinance was hand-delivered to the three retailers in the City.

Analysis:

The proposed ordinance includes minor clean up changes to Section 5.78.030 (Definitions) and includes the following change to Section 5.78.100(G) pursuant to City Council direction:

A. Flavored Tobacco Products. ~~No retailer shall sell Flavored Tobacco Products. The prohibition in the preceding sentence shall not apply to a retailer that permits only patrons twenty-one (21) years of age or older, or active duty military personnel who are eighteen (18) years of age or older, to enter the location where the Tobacco Product is sold.~~

1. It shall be a violation of this Chapter for any Tobacco Retailer or any of the Tobacco Retailer's agents or employees to sell or offer for sale, or to possess with intent to sell or offer for sale, any Flavored Tobacco Product.
2. There shall be a rebuttable presumption that a Tobacco Retailer in possession of four or more Flavored Tobacco Products, including but not limited to individual Flavored Tobacco Products, packages of Flavored Tobacco Products, or any combination thereof, possesses such Flavored Tobacco Products with intent to sell or offer for sale.
3. There shall be a rebuttable presumption that a Tobacco Product is a Flavored Tobacco Product if a Tobacco Retailer, Manufacturer, or any employee or agent of a Tobacco Retailer or Manufacturer has done the following:
 - (a) made a public statement or claim that the Tobacco Product imparts a Characterizing Flavor;
 - (b) used text and/or images on the Tobacco Product's Labeling or Packaging to explicitly or implicitly indicate that the Tobacco Product imparts a Characterizing Flavor;

or

(c) taken action directed to consumers that would be reasonably expected to cause consumers to believe the Tobacco Product imparts a Characterizing Flavor.

The change to this section makes it clear that flavored tobacco products would be prohibited from all retailers, without exception. This extended prohibition is aimed to reduce adult and youth access to flavored tobacco products as flavored tobacco products are often the first type of tobacco products tried by adults and youths. This extended prohibition is aimed to reduce tobacco and nicotine addiction.

Additionally, this broad prohibition responds to the following issue highlighted by the LA County Department of Public Health to help reduce youth access to tobacco:

- Efforts to prevent access by age restrictions are not always successful. Some youths will still be able purchase products from adults that may intentionally purchase flavored products for younger customers they cannot buy directly from the retailer-sometimes referred to as “shoulder tapping”.

Prohibiting all retailers from selling flavored tobacco products will make the products less available within the City and will reduce the “shoulder tapping” avenue for youths to obtain flavored tobacco products.

The rebuttable presumptions listed in the proposed amendment will assist code enforcement when determining if a retailer has flavored tobacco products with intent to sell in violation of the ordinance and determining whether a product qualifies as a flavored tobacco product. For example, if the retailer has flavored tobacco products in its possession, it could deny that it intended to sell those products. If the retailer has four or more flavored tobacco products, there is a rebuttable presumption that it had intent to sell the flavored tobacco products.

General Plan Consistency:

Tobacco Retailer Licensing and extending the prohibition on flavored tobacco products 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:

Adding the proposed flavored tobacco product restrictions to the recently adopted tobacco licensing program in HBMC Chapter 5.78 is considered best practices to reduce tobacco product sales to youths and to reduce tobacco and nicotine addiction.

Fiscal Impact:

Extending the ban is not anticipated to result in any direct fiscal impact. Sales tax revenue in the City may be effected, but the amount is unknown.

Attachments:

1. Link to January 8, 2019 Staff Report and Attachments
2. Link to December 11, 2018 Staff Report and Attachments
3. Proposed Ordinance
4. Tobacco Retailers Map
5. LA County Public Health Reference Documents
 - California Flavored Tobacco and Menthol Cigarette Policy Matrix
 - CDPH Survey- Tobacco Sales to Minors
 - Center for Disease Control Fact Sheet
 - Center for Disease Control Press Release

Respectfully Submitted by: Ken Robertson, Community Development Director

Noted for Fiscal Impact: Viki Copeland, Finance Director

Legal Review: Mike Jenkins, City Attorney

Approved: Suja Lowenthal, City Manager